S259850

IN THE SUPREME COURT OF CALIFORNIA

PRESBYTERIAN CAMP AND CONFERENCE CENTERS, INC.,
Petitioner,

v.

THE SUPERIOR COURT OF SANTA BARBARA COUNTY,
Respondent.

CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION AND CHARLES E. COOK,
Real Parties in Interest.

AFTER A DECISION BY THE COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION SIX, CASE NO. B297195
SANTA BARBARA SUPERIOR COURT—MAIN, CASE NO. 18CV02968
THOMAS P. ANDERLE, JUDGE • PHONE: (805) 882-4570 • EMAIL: TANDERLE@SBCOURTS.GOV

OPENING BRIEF ON THE MERITS

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ISSUES PRESENTED

1. Can a person (corporate or natural) be vicariously responsible on what would amount to a claim of respondeat superior for fire suppression and investigation costs under Health and Safety Code sections 13009 and 13009.1, when the person alleged to be liable neither performed, authorized, or ratified the allegedly negligent act that caused a wildfire, nor negligently failed to do something that would have prevented the fire from starting in the first place?

2. An irreconcilable conflict now exists on this issue between two Courts of Appeal that have interpreted the effect of the 1971 change to Health and Safety Code section 13009 and the later enacted section 13009.1: the Third Appellate District's decision in *Department of Forestry & Fire Protection v. Howell* (2017) 18 Cal.App.5th 154, 182 (*Howell*), and the Court of Appeal's decision in this case. Which of these two published decisions is correct?

INTRODUCTION

A. California's evolving statutes allowing the recovery of wildfire suppression costs

California is confronting an unprecedented increase in the frequency and ferocity of wildfires. As the need to deploy sophisticated firefighting resources has grown to confront "risks all too familiar to Californians" (*Scholes v. Lambirth Trucking Company* (2020) 8 Cal.5th 1094, 1099 (*Scholes*), the costs of suppression have skyrocketed[1] so that they may, as in this case, greatly exceed the expense of compensating a fire's victims. Public agencies incur these expenses by performing a basic governmental

[1] By September 2018, California's fire agency had reportedly exhausted its annual budget of $442.8 million and needed an additional $234 million to continue fighting wildfires. (Shoot, *California's $442 Million Fire Budget Is Exhausted—and Needs $234 Million More to Keep Fighting* (Sept. 6, 2018) Fortune <https://fortune.com/2018/09/06/california-fire-2018-cost-insurance-claims/> [as of Apr. 14, 2020].) This followed total fire suppression spending of $773 million in 2017. (*Ibid.*)

service funded by taxpayers. Such public agencies alone have the means to efficiently prepare for and fight fires, and they may seek additional public resources should actual needs exceed what was budgeted.

There is no common law right for the agencies to recover these costs from persons who caused the fires they fight. The authority for reimbursement, if any, is purely statutory. (*Howell*, *supra*, 18 Cal.App.5th at p. 176.) Health and Safety Code sections 13009 and 13009.1[2] are the California statutes that authorize such cost recoveries.

The language of the current law is derived in significant part from the "Fire Liability Law," which was enacted in 1931 and made liability for suppression costs coextensive with liability under the statute to compensate fire victims for their damages. In almost identical language, the provisions of the 1931 statute were subsequently codified in 1953 as Health and Safety Code sections 13007, 13008, and 13009.[3] In particular, section 13007 preserved the liability to fire victims that had existed for any person who "personally or through another" was responsible for negligently

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[2] Health and Safety Code section 13009.1 was enacted in 1984 to authorize public entities to recover their costs of investigating fires, in addition to the fire suppression costs. Because the circumstances for recovering costs under sections 13009 and 13009.1 are identical, our references to the recovery of suppression costs under section 13009 encompasses the recovery of investigation costs under section 13009.1, unless the context indicates otherwise.

[3] Henceforth, statutory references are to the Health and Safety Code unless otherwise stated.

setting a fire, or allowing a fire to be set or to spread.[4] And under section 13009, any person made liable by section 13007 was also made liable to reimburse public agencies for their firefighting expenses. In this way, section 13009 incorporated by reference the phrase "personally *or through another*" in section 13007 to describe who could be responsible for such costs. (Emphasis added.)

The Legislature deleted this key incorporation by reference when it substantially revised section 13009 in 1971. Specifically, the revision removed the cross-reference to section 13007. In its place, the Legislature added a new first sentence to section 13009 that omitted the phrase "personally or through another" to describe who might be liable for suppression costs. As reworded, section 13009 liability reached any *person* responsible for setting a fire, etc. This 1971 change has persisted through subsequent amendments to section 13009 and the enactment of its companion section 13009.1 in 1984, which authorizes reimbursement for an agency's costs to investigate fires.

B. The conflict concerning vicarious liability for fire suppression costs

In this action, the California Department of Forestry and Fire Protection (CalFire) invokes sections 13009 and 13009.1 to recover more than $12 million from the Presbyterian Camp and Conference Centers (PCCC) for suppression costs arising from the

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[4] For the convenience of this court, copies of some of the prior statutory enactments to which we refer in this brief are attached as exhibits to this brief. (See pp. 55-64, *post*.)

7500-acre "Sherpa" fire in Santa Barbara County in 2017. CalFire contends that PCCC is responsible for those costs because its alleged agent or employee, Charles Cook, negligently started the fire. PCCC contends that the 1971 amendments to section 13009, as correctly construed in *Howell*, *supra*, 18 Cal.App.5th 154, preclude such vicarious liability on the theory of respondeat superior.

"Vicarious liability is based on the concept that one person's wrongful act will be *imputed* to another despite the fact the latter is free from fault." (*Wise v. Thrifty Payless, Inc.* (2000) 83 Cal.App.4th 1296, 1305 (*Wise*); see also *Lathrop v. HealthCare Partners Medical Group* (2004) 114 Cal.App.4th 1412, 1423 (*Lathrop*) [vicarious liability "is wholly derived from the liability of the employee"].) This represents a departure from the general principle of tort law that liability should follow fault. (*Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 208 (*Mary M.*); *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377, 393.)

In *Howell*, *supra*, 18 Cal.App.5th at pages 175-182, the Third District held that the 1971 changes to section 13009 *eliminated* the vicarious liability for fire suppression costs that had previously existed. *Howell* concluded that, while the Legislature in 1971 maintained the liability for such costs for those persons who are *directly* responsible for starting the fires, employers of a negligent agent or employee were no longer liable for the costs under the rule of respondeat superior, which presupposes that the employer has itself done nothing wrong. (*Id.* at pp. 176-182.) Until *Howell*, no reported California decision after the amendments had even

considered the argument that such liability continued to exist. Meanwhile the Legislature left section 13007 and the potential for vicarious liability for damages to fire *victims* unchanged.

Sound policy reasons supported treating compensation to fire victims differently from reimbursement for public agencies' costs.

In the context of tort law, the rule of respondeat superior imposes vicarious liability on an otherwise innocent employer to (among other things) assure that injured victims receive compensation for their property and personal losses caused by the employer's negligent agents or employees. Accordingly, section 13007 places the responsibility to compensate fire victims on persons who act "personally *or through another*." (Emphasis added.)

There is less justification for imposing the burden of vicarious liability for public firefighting expenditures on the innocent employer that already helped fund the public agencies through its taxes. The common law goal of spreading the burden of loss should not apply in this context because the agencies are not victims needing compensation for injury, but instead have provided the basic governmental service for which they were created and for which they were allocated public funds. As the Third District correctly observed, it is not "incongruous that the Legislature may have afforded a longer reach in recovery efforts to an owner whose property was *damaged* than it afforded those who expended funds *fighting or investigating* the fire." (*Howell*, *supra*, 18 Cal.App.5th at p. 179, emphases added.)

The Second District here expressly disagreed with *Howell*. (*Presbyterian Camp & Conference Centers, Inc. v. Superior Court* (2019) 42 Cal.App.5th 148, 152 (*PCCC*).) The court affirmed the trial court ruling that PCCC *could be held* vicariously liable for CalFire's costs based solely on Cook's alleged negligence. (*Id*. at pp. 152, 156-157, 163.)

Underlying the Second District's decision is the false premise that the liability of a corporation like PCCC is *always* "vicarious." As a result, the court reasoned, *Howell's* result meant that corporations could *never* be held responsible for costs under section 13009.

The Second District's rationale is flawed. The issue of vicarious liability under section 13009 has implications for *any* "person"—corporate *or natural*—who may choose to act through agents or employees. Most significantly for our purpose, under *Howell's* construction of section 13009 all persons, including corporations, remain directly liable for their own wrongful acts or omissions.

In reaching its result, the Second District also mistakenly construed the 1971 amendments as operating solely *to expand* public agencies' authority to recover fire suppression costs. Although the Legislature did broaden agencies' authority to recover their expenditures by extending section 13009 to fires that did not escape the person's property, the amendments *also curtailed* the agencies' authority in at least three ways. Two changes limited the types of fires for which suppression costs could be recovered and one, as we contend, eliminated vicarious liability.

The Second District also departed from well-established rules of statutory construction. The court dismissed as "mere surplusage" the phrase "personally or through another" that had been incorporated by reference into section 13009 and that *still* remains in section 13007. The court gave no weight to the continued use of this phrase in section 13007 *and its absence* in section 13009 after 1971 in ascertaining the Legislature's intent when it revised section 13009.

This Court should hold *Howell* correctly interpreted section 13009. As amended in 1971, the law now requires that a person (corporate or natural) must in some *direct* way be responsible for a fire before liability for suppression costs will attach.

STATEMENT OF THE CASE[5]

A. CalFire incurs more than $12 million in costs responding to the "Sherpa" fire set by Charles Cook, PCCC's alleged agent or employee.

PCCC is a religious corporation that owns properties that it uses or makes available for conferences and other purposes. (Vol. 1, exh. 3, pp. 21-22.) One such property, named Rancho La Sherpa (the Camp Property), is in an unincorporated area in the hills

[5] Because this appellate proceeding reviews an order overruling PCCC's demurrer to CalFire's complaint, our statement of the case assumes the truth of well-pleaded facts in CalFire's complaint. PCCC reserves the right to contest the veracity of those facts in any future trial court proceeding.

above Goleta, Santa Barbara County. (*Ibid.*; see *PCCC*, *supra*, 42 Cal.App.5th at p. 152.)

CalFire alleges that Charles Cook oversaw the Camp Property as PCCC's agent or employee. (Vol. 1, exh. 3, p. 21; *PCCC*, at p. 152.) On June 15, 2016, the cabin Cook occupied filled with smoke from a smoldering log in the fireplace. (Vol. 1, exh. 3, pp. 20, 23; *ibid.*)

There is no allegation that the smoke in the cabin or the fireplace set fire to the surrounding area. Instead, Cook decided to take the log and carry it outside, whereupon burning embers fell onto dry vegetation and ignited what became known as the "Sherpa" fire. (Vol. 1, exh. 3, pp. 20, 23; *PCCC*, *supra*, 42 Cal.App.5th at p. 152.)

CalFire alleges that it incurred over $12 million in expenses responding to the fire. (Vol. 1, exh. 3, p. 23; *PCCC*, *supra*, 42 Cal.App.5th at p. 152.) It seeks to recover those costs from PCCC and Cook pursuant to sections 13009 and 13009.1. (Vol. 1, exh. 3, p. 35; *PCCC*. at p. 153.)

B. PCCC demurs to CalFire's complaint for costs, asserting unsuccessfully that under the Third District's *Howell* decision, it is not vicariously liable for Cook's negligence. The Second District upholds the trial court's ruling, expressly disagreeing with *Howell*. This Court grants review.

PCCC demurred to CalFire's complaint, arguing that under *Howell*, *supra*, 18 Cal.App.5th at page 182, it was not vicariously liable for CalFire's costs in responding to the fire that Cook's conduct triggered. (Vol. 1, exh. 4, pp. 36-38; exh. 5. pp. 39-41; exh. 6, pp. 42-59; *PCCC*, *supra*, 42 Cal.App.5th at p. 153.) In its order overruling PCCC's demurrer, the trial court acknowledged *Howell* but concluded the holding there was limited to its specific facts. (Vol. 1, exh. 2, pp. 16-18; exh. 8, pp. 69-72; *PCCC*, at p. 153.)

PCCC petitioned the Second District, Division Six, for relief by writ. CalFire supported PCCC's request for a decision on the merits, and the court issued an Order to Show Cause.

After full briefing, the Second District affirmed the trial court's order overruling PCCC's demurrer, expressly rejecting the result and reasoning of the Third District's *Howell* decision. (*PCCC*, *supra*, 42 Cal.App.5th at pp. 152, 163.) The court held that despite the 1971 amendments to section 13009, PCCC can be vicariously liable for the fire-related costs that CalFire incurred as a result of Cook's alleged negligence. (*Id*. at pp. 156-158, 163.) The court modified its opinion on PCCC's petition for rehearing, but left its holding and judgment intact. (See *id*. at pp. 1173a-1173d.)

This Court granted PCCC's petition for review.

LEGAL ARGUMENT

I. The 1971 amendments to Health and Safety Code section 13009 eliminated vicarious responsibility for fire suppression costs based on respondeat superior.

A. Prior to 1971, the statutes governing civil liability for fires allowed a person's vicarious liability both for fire damage and for suppression costs.

The risks and devastating consequences of wildfires have become familiar to Californians. (See *Scholes*, *supra*, 8 Cal.5th at p. 1099.) After every such disaster, there follow the vexing questions of who may have been responsible and should bear the burdens of loss and expense. "That fire liability is an enormously consequential and complicated issue for Californians is beyond question." (*Id.* at p. 1117.)

The origin of civil liability for fire damage in California's statutory law goes back to 1872 and the enactment of former Political Code section 3344. (See pp. 55-56, *post*.) Since then, the Legislature has repeatedly enacted other statutes on the same or related matters.[6] The liability for fire damage to another's property or person is currently governed by sections 13007 and 13008 of the Health and Safety Code.

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[6] See, e.g., former Civ. Code, § 3346a [repealed by Stats. 1931, ch. 790, § 6, p. 1644]; Civ. Code, § 3346; Code Civ. Proc., § 733.

A public agency's authority to recover the potentially enormous costs of suppressing wildfires has also received specific attention from the Legislature over the decades. A person's responsibility for such costs has its origin in the 1905 "California Forestry Act,"[7] which said: "Persons or corporations causing fires by violations of [this act] shall be liable to the state or county in action for debt, to the full amount of all expenses incurred by the state or county in fighting such fires." (Stats. 1905, ch. 264, § 18, p. 240; see pp. 57-58, *post*.)

The Legislature followed up on that and existing victim compensation laws when it enacted the "Fire Liability Law" in 1931.[8] (Stats. 1931, ch. 790, §§ 1-3, p. 1644.) In pertinent part, the 1931 statute provided:

Section 1. "Any person who . . . [¶] . . . [p]ersonally or through another" negligently set fire to, or allowed a fire to be set or to escape to, another's property, was liable for the damages the fire caused to the other person.

Section 2. "Any person" who failed to exercise due diligence to prevent a fire burning on his property to escape to the property of another was likewise liable for the damages the fire caused.

Section 3. "The expenses of fighting such fires shall be a charge against any person made liable by this act for damages caused thereby." The responsibility to pay the firefighting

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[7] See *County of Ventura v. So. Cal. Edison Co.* (1948) 85 Cal.App.2d 529, 536 (*County of Ventura*).

[8] See *PCCC*, *supra*, 42 Cal.App.5th at p. 157.

expenses was a "debt . . . collectible . . . in the same manner as in the case of an obligation under a contract, expressed or implied." (See p. 60, *post*.)

In 1953, the Legislature enacted Health and Safety Code sections 13007 and 13008 to codify and replace sections 1 and 2 of the 1931 Fire Liability Law, almost verbatim. (Stats. 1953, ch. 48, §§ 1-2, p. 682; see p. 61, *post*.) The wording of those Health and Safety Code sections as they exist today is unchanged from 1953. They continue to make persons liable for property and personal losses suffered by victims of the kinds of fires described in the statutes.

At the same time, Health and Safety Code section 13009 codified section 3 of the 1931 of the Fire Liability Law, and it had the same effect. Specifically, the introductory sentence of section 13009 stated that "[t]he expenses of fighting any fires mentioned in Sections 13007 and 13008 are a charge against any person *made liable by those sections* for damages caused by such fires." (Stats. 1953, ch. 48, § 3, p. 682, emphasis added; see p. 61, *post*.) Furthermore, consistent with the 1931 statute, section 13009 continued to provide that such a charge for public expenditures would constitute a "debt" of the person responsible that was collectible as an "obligation under a contract." (Stats. 1953, ch. 48, § 3, p. 682.)

Because of the cross-reference to section 13007, the liability for fire suppression costs under 13009 as first enacted necessarily extended to any person who "personally or through another" was responsible for negligently setting a fire or allowing it to be set or

to spread.[9] (See p. 61, *post*.) *Howell* understood that this wording created vicarious liability for fire-related public agency expenditures. (See *Howell*, *supra*, 18 Cal.App.5th at pp. 178-179.)

B. The 1971 amendments to section 13009 both expanded and curtailed a public agency's authority to recover fire suppression costs.

At issue here is the effect of the 1971 amendments to section 13009 on a public agency's authority to recover its firefighting expenses.

In *People v. Williams* (1963) 222 Cal.App.2d 152, 155, the court held that as worded in 1953, section 13009 did not authorize the recovery of suppression costs for a fire that did not escape from the property of the person sought to be charged because neither section 13007 nor section 13008 referred to such a fire. To abrogate that result, the Legislature deleted the first sentence of section 13009 and substituted language borrowed—in part—from section 13007. As reworded, section 13009 stated that "[a]ny person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him to escape onto any forest, range or nonresidential grass-covered land is liable for the expense of fighting the fire." (Stats. 1971, ch. 1202, § 1, p. 2297; see p. 62, *post*.)

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[9] The phrase "personally or through another" has never been in section 13009 itself. (*Howell*, *supra*, 18 Cal.App.5th at pp. 176-179.)

Lacking the limiting cross-references to fires described in sections 13007 and 13008, the amended section 13009 covered fires that never escaped to the property "of another." In this way, the 1971 changes to section 13009 expanded a public agency's authority to recover its fire suppression costs. (See *Howell*, *supra*, 18 Cal.App.5th at p. 178.)

At the same time, however, the Legislature also *curtailed* the agency's right to recover its costs from what had previously existed, in at least three ways. First, as enacted in 1931 and then codified in 1953, section 13009 applied broadly (through its cross-references to sections 13007 and 13008) to fires that spread to any "property of another, whether privately or publicly owned." (Stats. 1953, ch. 48, §§ 1-3, p. 682; see p. 61, *post*.) This allowed a public agency to recover the cost of fighting urban fires that spread to nearby structures. The 1971 amendments narrowed the scope of section 13009, so that it applied only to fires that "escape[d] onto any forest, range or nonresidential grass-covered land."[10] (Stats. 1971, ch. 1202, § 1, p. 2297; see p. 62, *post*.)

Second, the 1971 amendments *omitted* any responsibility for suppression costs for persons who were liable to pay compensatory damages under section 13008 solely for a fire (regardless of its origin) that they negligently allowed to escape onto a neighboring

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[10] Section 13009 was amended again in 1982 to apply once more, as it currently does, to "any public or private property." (Stats. 1982, ch. 668, §1, p. 2738; see p. 63, *post*.) By contrast, the Legislature has never put the words "personally or through another," or their equivalent, back into the statute. (See pp. 28-29, *post*.)

property.[11] (*People v. Southern Pacific Co.* (1983) 139 Cal.App.3d 627, 638 (*Southern Pacific*).) This changed the law from what it had been since 1931, by removing a public agency's authority to recover its costs from a landowner who was not responsible for allowing a fire to start but somehow contributed to its spread.[12]

The court in *Southern Pacific*, *supra*, 139 Cal.App.3d at page 637, identified what may have motivated the Legislature to lift the potentially bankrupting burden of suppression costs from persons who are liable only under section 13008. "[T]he Legislature, viewing the issue more closely than previously, may have decided that liability for firefighting expenses should not be imposed in the absence of *responsibility for the existence* of the fire."[13] (*Southern Pacific*, at p. 637, emphasis added [observing that after 1971, a person liable for damages under section 13008 was no longer liable

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[11] Section 13008 and section 2 of the 1931 Fire Liability Law, upon which section 13008 was based, have always been worded more narrowly than section 13007, both to describe the passive conduct that would create a liability for damages (negligently allowing a fire on one's property to escape to another's property) and, by omitting the phrase "personally or through another," to describe who could be liable.

[12] Contrary to CalFire's argument below, the Legislature did not "fold" the language of section 13008 into section 13009 as amended in 1971. (See CalFire's Return to PCCC's writ petition (Return) 44.) To the contrary, it altogether *excluded* a public agency's recovery of its suppression costs for fires covered by section 13008.

[13] For example, trespassers or lightning could start a fire for which a wholly innocent property owner would not be liable under section 13007. However, the owner might still be liable to its neighbor under section 13008 if it negligently failed to summon local firefighting agencies to prevent the fire's spread.

for suppression costs under section 13009].) Simply stated, a person who allows a fire, for which the person *is not responsible*, to escape to the property of another is less culpable under the statutory scheme than the person who started the fire.

The third substantive effect of the 1971 change in wording of section 13009 likewise lifted the burden of paying suppression costs from persons who were not personally responsible for starting a fire. As we discuss in the next section, *Howell* considered the result of the amendments to rebalance competing interests with respect to the recovery of such taxpayer-funded expenditures. *Howell* correctly held that the new wording of the statute eliminated a public agency's authority to recover its expenses from a person on a theory of vicarious liability.

C. In *Howell*, the Third District held that the 1971 amendments to section 13009 eliminated an employer's vicarious liability for fire suppression costs due to its agent or employee's mistakes.

In *Howell*, a timber purchaser hired Howell's Forest Harvesting (Howell's Forest) to cut trees on land belonging to a third party. (*Howell*, *supra*, 18 Cal.App.5th at p. 164.) While working on the property, one of the employees of Howell's Forest struck a rock with a bulldozer, which caused a superheated metal fragment to splinter off and ignite surrounding vegetation. (*Ibid.*) The fire spread when the employees failed to timely complete a

required inspection of the area where they had been working. (*Ibid*.)

Relying on section 13009, CalFire sued to recover its fire suppression costs from the landowners, their property manager, and the purchaser of the timber, as well as from Howell's Forest and its employees. (*Howell*, *supra*, 18 Cal.App.5th at pp. 162-163, 165.) The landowners, property manager, and the timber purchaser argued they could not be liable as a matter of law, and the trial court agreed.[14] (*Howell*, at pp. 165, 175-176.)

CalFire appealed. Observing that CalFire's ability to recover its fire suppression costs was "strictly limited to the recovery afforded by statute," the *Howell* court summarized the legislative history of the pertinent Health and Safety Code provisions and their predecessor statute. (*Howell*, *supra*, 18 Cal.App.5th at pp. 176-179; see *Scholes*, *supra*, 8 Cal.5th at pp. 1115-1116.) The court noted that, as the Fire Liability Law was enacted in 1931 and then codified in 1953, a public agency could seek to recover its suppression costs from the same people who would be liable for any damage that the fire caused. (*Howell*, at p. 177.) Those potentially liable therefore included any person who acted personally *or through another* to set fire, or allow a fire to be set or to escape to, the property of another, as provided in section 13007. (*Id*. at pp. 177-179, emphasis added.) A " 'person' " for this purpose included " 'any person, firm, association, organization,

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[14] Howell's Forest and its employees did not join their codefendants' argument on this point in the trial court. (See *Howell*, *supra*, 18 Cal.App.5th at pp. 164-165, 175 & fn. 11, 182.)

partnership, business trust, corporation, limited liability company, or company,' " as provided by section 19. (*Id*. at p. 177.)

Thus, to the extent it had existed in the past, a person's vicarious liability for fire suppression costs was a purely statutory creation rooted in Health and Safety Code section 13009's incorporation by reference of the first sentence of Health and Safety Code section 13007. (*Howell*, *supra*, 18 Cal.App.5th at pp. 176-179.) Vicarious liability did not arise out of an application of the common law rule of respondeat superior reflected in Civil Code section 2338.

The court in *Howell* properly recognized that the 1971 amendments substantially changed section 13009. (*Howell*, *supra*, 18 Cal.App.5th at p. 178.) The Legislature rewrote the statute's first sentence by eliminating the cross-references to sections 13007 and 13008 to describe the types of fires for which a public agency could recover its suppression costs and who would be responsible to pay them. (*Id*. at pp. 177-179.) In place of the cross-references, the new first sentence stated that " '[a]ny person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him to escape onto any forest, range or grass-covered land' " was responsible for the costs of suppressing a fire. (*Id*. at p. 178.)

While this 1971 rewording continued to echo the operative language of section 13007 to describe *the conduct* that would trigger responsibility for suppression costs under section 13009, it omitted the phrase "personally or through another" to describe *who could be liable*. (*Howell*, *supra*, 18 Cal.App.5th at pp. 177-

178.) In light of the 1971 amendment, the *Howell* court decided that section 13009 no longer imposed vicarious liability for fire suppression costs. (*Howell*, at pp. 176-179, 182.) *Howell* held that section 13009 applied to "one who . . . through his *direct action* proximately cause[d] the fire." (*Id*. at p. 181, emphasis added; see *id*. at pp. 175, 180-181.) As a result, a person may be liable for such costs if, but only if, the person negligently acts or fails to act in the way the statute describes, or authorizes or ratifies conduct that will trigger the statutory liability. (See Civ. Code, § 2339.)

In other words, after 1971, section 13009 distinguished between a person's *direct responsibility* for the conduct described in the statute, which continued to obligate the person to reimburse for the public expenditures, and a person's *vicarious responsibility* for such conduct by "another" actor under a theory of respondeat superior, which was eliminated. This effect of the amendment is clear, because the former broader language "personally or through another" was retained without change in section 13007.

D. There were sound reasons for the Legislature to reject respondeat superior as a basis for a public agency to recover its fire suppression costs.

In the context of tort liability, the common law and its statutory analogue, Civil Code section 2338, hold an innocent employer answerable for the negligence of an agent or employee. This rule of vicarious liability on the theory of respondeat superior represents a significant departure from the general principle that liability follows fault. Respondeat superior " 'is a rule of policy, a

deliberate allocation of a risk.' " (*Hinman v. Westinghouse Elec. Co.* (1970) 2 Cal.3d 956, 959 (*Hinman*).) A major goal is to give greater assurance of compensation for an injured victim's property and personal losses.[15] (*Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 967 (*Perez*).) It is assumed that employers can prepare for such a liability as a cost of doing business or through insurance. (*Johnston v. Long* (1947) 30 Cal.2d 54, 64; *Rodgers v. Kemper Constr. Co.* (1975) 50 Cal.App.3d 608, 618.)

Consistent with this justification for respondeat superior, section 13007 places the responsibility to compensate fire victims for their losses on persons who act "personally *or through another*." (Emphasis added.) This statutory language allows for vicarious liability. (See *Howell*, *supra*, 18 Cal.App.5th at pp. 177-179.)

The justification for spreading the burden of responsibility in this way is far more attenuated when it concerns reimbursement for public expenditures to fight wildfires. The common law justification for departing from the usual rule that liability follows fault does not apply because public agencies that fight the fires are not victims needing compensation for injuries.

Instead, the agencies incur their expenses in the course of providing the basic governmental service for which they have been created. As governmental entities, they alone are in a position to

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[15] Related to that objective is the goal of ensuring that the victim's losses will be equitably borne by those who benefit from the enterprise that gave rise to the injury. (*Mary M.*, *supra*, 54 Cal.3d at pp. 208-209; *Hinman*, *supra*, 2 Cal.3d at pp. 959-960.) A final goal is to " 'provide a spur toward accident prevention.' " (*Perez*, *supra*, 41 Cal.3d at p. 967.)

prepare and pay for the large-scale fire suppression resources that are required. Their taxpayer-funded budget allocation is intended to cover the costs of fire suppression and control. They may also seek additional funding from the public treasury to pay for more resources when their actual needs exceed those budgeted.

Private persons, even corporations, cannot realistically budget for such costs. Nor is it likely that private persons could rely on insurance to cover the expense—*if such insurance was even available*. The costs of fire suppression, like the fires themselves, are highly unpredictable, which can create an exposure out of all proportion to what anyone could sensibly plan for. Over the years, the costs have steadily risen. A significant part of the increase is due to prior governmental management strategies for forest and brush areas and the effects of climate-change. Also important is the increasing encroachment of governmentally approved residential developments into rural regions susceptible to fires. Together, these circumstances have put ever greater demands on firefighters to protect property and lives, as well as timber and wildlife.[16]

Yet, as the allegations in this case show, the trigger for a disastrous event like the Sherpa fire covering vast areas of land can be what, in normal conditions, would be considered a minor

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[16] See generally Allianz Global Corporate & Specialty, *Burning Issues: California Wildfire Review* (2018) Allianz <https://www.agcs.allianz.com/content/dam/onemarketing/agcs/agcs/reports/AGCS-california-wildfire-review.pdf> [as of Apr. 15, 2020]; *2019 Fire Season*, Cal Fire <https://www.fire.ca.gov/incidents/2019/10/23/> [as of Apr. 15, 2020].

mistake by an individual. If what occurred here had happened on a wind-free day after the rains had started, then the cost, if any, to fight the fire would have been far less. The Legislature was entitled to take that possibility into consideration when putting limits on a person's potential liability to public agencies.

Meanwhile, awarding suppression costs to public agencies that fight large wildfires does nothing to benefit those who were injured. If anything, the agencies' claims for reimbursement could *reduce* the compensation available to those who suffered actual losses. We saw that possibility in the Pacific Gas & Electric Company bankruptcy litigation, where there are competing claims for damages by injured property owners and for expense reimbursement by government agencies who fought the fires. The plaintiffs complained that the public agencies' demands " 'would make the fire victims' recovery the lowest of any creditor group in [PG&E's] bankruptcy.' "[17]

Last of all, while *Howell* did not make the point, the 1971 amendments removed the anomaly of vicarious liability in the context of what section 13009 described as a statutorily created "debt" to a public agency that was collectible in the same manner

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[17] Archer, *Wildfire Victims Blast FEMA And Calif. Claims Against PG&E* (Feb. 20, 2020) Law360 <https://www.law360.com/energy/articles/1245793> [as of Apr. 15, 2020]; see Hepler et al., *PG&E Struggles to Find a Way Out of Bankruptcy* (Nov. 19, 2019) N.Y. Times <https://nyti.ms/2O1eFuW> [as of Apr. 15, 2020] [federal, state and local agencies said that out of a proposed $25.5 billion settlement fund for all claims, PG&E owed them some $7.5 billion for fighting fires].

as an obligation *under a contract*.[18] The law of contracts does not contemplate vicarious liability in the tort sense. Nor does it have the policy objective of promoting full compensation to victims of wrongdoing by spreading the risk. The closest that contract law comes to liability for the unauthorized and unratified conduct of another person is the rule of ostensible agency. But an ostensible agency is one that follows from circumstances created by the defendant upon which the claimant reasonably relied in dealing with the ostensible agent. (*Hutcheson v. Eskaton FountainWood Lodge* (2017) 17 Cal.App.5th 937, 958; Civ. Code §§ 2300, 2317.) That is not the situation here.

In sum, the Legislature had several reasons to distinguish between compensation for fire victims and expense reimbursement to taxpayer-funded public agencies when it amended section 13009 in 1971. Following the effective removal of critical language that supported vicarious liability under the original version of the statute, section 13009 as now worded does not allow public

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[18] *People v. Wilson* (1966) 240 Cal.App.2d 574, 577 [section 13009 imposes a contractual liability governed by a statute of limitations relating to contract]; cf. *People v. Zegras* (1946) 29 Cal.2d 67, 68-69 [venue is the same whether the statutory obligation "is classified as one sounding in tort, or a quasicontract, or a liability in the nature of a penalty"]; but see *Howell*, *supra*, 18 Cal.App.5th at pp. 199-200 [section 13009 does not "create a contract" that supports a reciprocal right to recover attorney fees]; *Department of Forestry & Fire Protection v. LeBrock* (2002) 96 Cal.App.4th 1137, 1141 [same]; *Globe Indem. Co. v. State of California* (1974) 43 Cal.App.3d 745, 749 [section 13009 "does not constitute a declaration that the recovery sounds in contract instead of tort"].

agencies to recover their fire suppression costs from a person based on respondeat superior.

E. In *Howell*, the Third District adhered to well-established rules of statutory construction.

In reaching its result, the *Howell* court adhered to well-established rules of statutory interpretation. In construing legislation, a court looks first to the statute's language and structure. (*San Diegans for Open Government v. Public Facilities Financing Authority of City of San* Diego (2019) 8 Cal.5th 733, 748.) The language at issue here establishes that liability to fire victims for damages under section 13007 and liability to public agencies for suppression costs under section 13009 are different. Unlike section 13007, there is nothing in the wording of section 13009 to authorize use of respondeat superior to support a public agency's claim to recover suppression costs based on a theory of vicarious liability.

Even if the Court goes behind this initial determination, it " 'is ordinarily to be presumed that the Legislature by deleting an express provision of a statute intended a substantial change in the law.' " (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 55.) Courts do not presume the Legislature performs idle acts. (*Shoemaker v. Myers* (1990) 52 Cal.3d 1, 22.) " '[W]here a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative

intent existed with reference to the different statutes.' " (*In re Jennings* (2004) 34 Cal.4th 254, 273 (*In re Jennings*).)

Howell properly adhered to these fundamental rules of construction by focusing on the history of the statutory scheme and rejecting CalFire's argument that the words " 'personally or through another' " were mere surplusage, the absence of which in the post-1971 version of section 13009 could be ignored. (*Howell*, *supra*, 18 Cal.App.5th at p. 179.) As the *Howell* court correctly reasoned, the continued presence of the language in section 13007 to identify who could be liable to pay compensation to fire victims ("a similar statute on a related subject") and its effective *removal* from section 13009 were "significant in ascertaining legislative intent from the statutes' language." (*Howell*, at p. 179; see *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 725 [" 'when the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded' "].)

Contrary to what CalFire has argued, the effective removal of the words "personally or through another" from section 13009's description of who could be responsible for fire suppression costs was not "silence" by the Legislature on that point. (Return 47.) Quite the opposite, it spoke loudly and affirmatively that there was a change in the law.

As the *Howell* court observed, section 13009 did not incorporate all aspects of the common law of negligence, such as the potential for liability on theories like negligent hiring, supervision, management and use of property—or respondeat

superior.[19] (*Howell*, *supra*, 18 Cal.App.5th at pp. 175-176, 179-180, 182.) The court explained that the word " 'negligently' " in the first sentence of the statute "is an adverb modifying three potential verb phrases: (1) sets a fire, (2) allows a fire to be set, or (3) allows a fire kindled or attended by him or her to escape." (*Id*. at p. 179.) Other theories of recovery that CalFire argued were covered by the statute—such as vicarious liability for its costs—are "simply too attenuated a construction to be plausible." (*Id*. at pp. 179-180.)

Nor did section 13009 contemplate the common law's "substantial factor" test for causation, under which any wrongful conduct by a person that contributed to a loss could be sufficient for liability. For example, in *City of Los Angeles v. Shpegel-Dimsey, Inc.* (1988) 198 Cal.App.3d 1009, 1018-1023 (*Shpegel-Dimsey*), the Court of Appeal recognized that what would ordinarily be considered negligence by an owner that contributed to the spread of a fire to another's property did not, by itself, justify a public agency's recovery under section 13009. The court held that despite its notice of hazards on its property that foreseeably advanced a fire's progress, the owner was not liable for the agency's suppression costs partly because it was not responsible for starting or attending the blaze, which is what the statutory language required at the time.[20] (See *Shpegel-Dimsey*, at pp. 1019-1020.)

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[19] The Second District did not disagree with this portion of the *Howell* decision, despite CalFire's urging to do so. (See Return 69-74.)

[20] Addressing this limitation on the recovery of suppression costs, the Legislature had already amended section 13009 in 1987 by adding subdivisions (a)(2) and (3). (*Shpegel-Dimsey*, *supra*, 198 (continued...)

Eliminating vicarious liability under section 13009 reflects yet one more departure from the common law to fashion the purely statutory authority to recover fire suppression costs. What this Court recently observed in the context of competing fire liability statutes is also apt here: "The relative bustle of legislative action in this domain showcases an evolving story of balancing competing considerations—which includes creating the right incentives for large entities and individuals while recognizing the possibility of limits on available resources for compensation." (*Scholes*, *supra*, 8 Cal.5th at p. 1117.) As *Howell* had earlier observed, it was not "incongruous that the Legislature may have afforded a longer reach in recovery efforts to an owner whose property was *damaged* than it afforded those who expended funds *fighting or investigating* the fire." (*Howell*, *supra*, 18 Cal.App.5th at p. 179, emphases added.) As this Court reasoned in *Scholes*, "[t]he Legislature can further calibrate this framework if it decides that" *Howell* reached the wrong result. (*Scholes*, at p. 1117.) Although the Legislature has, in the past, been responsive and made changes to "correct" court opinions with which it disagreed, it has not to date responded to the 2017 *Howell* decision.

Cal.App.3d at p. 1019, fn. 2; Stats. 1987, ch. 1127, §1, p. 3846; see p. 64, *post*.) These amendments expanded the occasions for liability by making property owners and certain other persons responsible for suppression costs when they fail to correct a fire hazard after receiving a public agency's notice of violation respecting the hazard. Without such formal notice, negligently allowing a fire hazard to exist on one's property may still not be enough to trigger liability under section 13009.

Finally, as we explain in the next section, *Howell's* interpretation of the amendments to section 13009 in 1971 did not relieve corporations as a class from the potential for liability for fire suppression costs under the statute. Corporations remain directly responsible for their own negligent actions and inactions. The adjustment to the balance of competing interests the Legislature made in 1971 merely lifted the potentially bankrupting, quasi-contractual debt of reimbursing a public agency for the expense of providing a basic governmental service from employers and others that the law presumes *are not personally culpable*. By eliminating vicarious liability for suppression costs, the Legislature adhered to the general rule that liability *should follow fault*.

II. The Second District rejected the result and reasoning of *Howell* based on false premises concerning the nature and extent of a corporation's liability.

A. The Second District mistakenly concluded that, under *Howell*, corporations could never be liable for fire suppression costs.

The Second District here took a different approach to the question of vicarious liability than the Third District took in *Howell*. Starting from the "legal fiction[ ]" that corporations are people, with rights and responsibilities of natural persons, the Second District observed that corporations "'"*necessarily* act through agents."'" (*PCCC*, *supra*, 42 Cal.App.5th at p. 151, emphasis added.) It cited *Tunkl v. Regents of University of Cal.*

(1963) 60 Cal.2d 92, 103 (*Tunkl*), for the proposition that the law draws " 'no distinction' " between a corporation's own liability and vicarious liability based on the conduct of its agents. (*PCCC*, at p. 151.) From there, the court found it was an easy jump to the conclusion that *Howell* was wrongly decided, and that PCCC can be held vicariously liable for the fire suppression costs that CalFire incurred. (*Id*. at pp. 152, 156-157, 163.)

In doing so, however, the Second District misstated the holding of *Howell*. It wrote: "The *Howell* majority concluded that corporations cannot be held liable for the costs of suppressing and investigating fires their agents or employees negligently set, allow to be set, or allow to escape." (*PCCC*, *supra*, 42 Cal.App.5th at p. 152.) This statement is incorrect in two respects.

First, *Howell's* holding that vicarious liability does not exist under section 13009 was not limited to corporations. The reasoning and result applied to *all persons*, natural or otherwise, who might be deemed to have had an agent or employee for the purpose of respondeat superior under ordinary negligence law. (See *Howell*, *supra*, 18 Cal.App.5th at pp. 177, 182.)

Second, contrary to what the Second District believed, *Howell* did not hold that section 13009 cannot apply to corporations. What *Howell* held was that no "person" as defined by section 19, which includes but is not limited to corporations, can be held responsible to pay such costs solely on a theory of respondeat superior. (*Howell*, *supra*, 18 Cal.App.5th at pp. 175-177, 182.) Nothing in *Howell* precludes a corporation's *direct* liability.

Indeed, the Second District's holding presupposes that a corporation's liability in *any* context is *always and necessarily* "vicarious," simply because a corporation (or similar entity) must act through individuals.[21] (*PCCC*, *supra*, 42 Cal.App.5th at p. 155.) "Corporations are never direct actors," the decision says; "[t]he *Howell* majority's assertion that sections 13009 and 13009.1 permit corporate liability when corporations are 'direct actors' is a legal impossibility." (*Id.* at p. 163.)

Not true.

B. A corporation remains *directly liable* under section 13009 for the expense of suppressing fires caused by the authorized or ratified acts of its agents or employees, or by its failures to act.

Witkin explains the difference between direct and vicarious liability based on the conduct of an agent or employee. "The liability of the principal for torts of the agent or employee *is not* always based on the doctrine of respondeat superior [citation]. It may result from the principal's direction or authorization to perform a tortious act, *the principal being liable for his or her own wrong*." (3 Witkin, Summary of Cal. Law (11th ed. 2017) Agency and Employment, § 173, p. 226, emphases added.) The authorized acts of the agent or employee are legally those of the employer

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[21] Contrary to what the dissenting justice in *Howell* insinuated, to say that corporate employers "must act vicariously through their agents" is not the same as saying that the employers' liability for what the agents do is always "vicarious." (*Howell*, *supra*, 18 Cal.App.5th at p. 206 [dis. opn of Robie, J.].)

itself. (Civ. Code, § 2339.) Alternatively, the employer may become directly responsible for the conduct of an agent or employee because it ratifies the conduct. (3 Witkin, Summary of Cal. Law, *supra*, Agency and Employment, § 174, pp. 226-227; Civ. Code, § 2339; see Civ. Code, § 3294, subd. (b) [defining when an employer is directly liable for punitive damages based on the conduct of an agent or employee].)

Accordingly, a corporation *can be* found directly to blame and therefore directly liable for the negligent acts of its agents and employees. A corporation *may also* be directly liable for its negligent *failures* to act. Section 13009, in fact, identifies circumstances where official notice to a property owner of a fire hazard that goes uncorrected can give rise to liability for subsequent fire suppression costs. (§ 13009, subds. (a)(2), (3).) That is a direct liability based on a failure to act that applies to all persons, including corporations.[22]

For example, in *Southern Pacific*, *supra*, 139 Cal.App.3d at pages 638-640, the court upheld a railroad company's liability for suppression costs when sparks or particles emitted by the

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[22] Indeed, beyond the prospect of direct civil liability, a corporation may also be *criminally* liable for what it fails to do through its agents and employees. According to recent reports, the Pacific Gas & Electric Company has struck a deal with local prosecutors to plead guilty to multiple criminal charges, including involuntary manslaughter, arising from its failure to maintain power line that sparked the deadly Camp Fire. (See Penn & Eavis, *PG&E Will Plead Guilty to Involuntary Manslaughter in Camp Fire* (Mar. 23, 2020) N.Y. Times <https://nyti.ms/3aeFaFY> [as of April 2020].)

authorized operation of its train must have started a fire that spread to adjoining lands. That was something for which the railroad itself was directly responsible—there was no intervening conduct by any other person to trigger the blaze.[23]

Likewise, in *County of Ventura*, *supra*, 85 Cal.App.2d at pages 531-533, the court held a utility company was liable for suppression costs because its failure to maintain its power lines allowed a natural weather event to start a fire. The predicate for liability was a "negligent acquiescence in, or failure to prevent known conditions, circumstances, or conduct which might reasonably be expected to result *in the starting of a fire*." (*Id*. at p. 532, emphasis added; see *Gorgi v. Pacific Gas & Elec. Co*. (1968) 266 Cal.App.2d 355, 361 [negligent maintenance of power pole started a "pole-top fire"].)

By contrast, an employer's vicarious liability on a theory of respondeat superior proceeds from the assumption that the agent or employee *alone* is at fault. (3 Witkin, Summary of Cal. Law, *supra*, Agency and Employment, § 175, p. 227; *id*. at § 177, p. 230 ["The liability of an *innocent*, nonparticipating principal under the respondeat superior doctrine is based on the wrongful conduct of the agent" (emphasis added)]; see Civ. Code, § 2338; *Chee v. Amanda Goldt Property Management* (2006) 143 Cal.App.4th 1360, 1375 [vicarious liability means that the act or omission of one person is imputed by operation of law to another]; *Lathrop*,

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[23] Section 4435 of the Public Resources Code provided that if a fire originated from the operation of a train, then "the occurrence of the fire is prima facie evidence of negligence in the maintenance, operation, or use of" the train.

supra, 114 Cal.App.4th at p. 1423; *Wise*, *supra*, 83 Cal.App.4th at p. 1305.)

Indeed, the conduct for which the innocent employer becomes vicariously liable under the rule of respondeat superior may be unauthorized and even contrary to the employer's instructions. (*Clark Equipment Co. v. Wheat* (1979) 92 Cal.App.3d 503, 520; 3 Witkin, Summary of Cal. Law, *supra*, Agency and Employment, § 175, p. 227.) Nevertheless, the employer is held vicariously liable as a matter of policy to (among other things) give greater assurance of compensation for the victim.

CalFire has argued that vicarious liability under section 13009 is essential to another policy objective—incentivizing fire prevention. (Return 15, 41, 75; cf. *County of Ventura, supra*, 85 Cal.App.2d at pp. 539-540 [the Legislature could reasonably conclude that making persons responsible for suppression costs would motivate precautions to prevent liability].) But if the person to be "incentivized" has done nothing wrong by its action or inaction, then it is doubtful how much influence a potentially crippling financial liability could have. The *Southern Pacific* and *County of Ventura* decisions did not find responsibility to pay fire suppression costs based on the rule of respondeat superior—they did not even discuss this possibility. Nor, so far as we are aware, has any reported California decision done so since section 13009 was amended in 1971, until *Howell* and the Second District's decision now under review.

The Second District conflated direct and vicarious liability by relying on out-of-context and misapplied portions of *Tunkl*,

supra, 60 Cal.2d 92. (*PCCC*, *supra*, 42 Cal.App.5th at p. 151.) At issue in *Tunkl* was the enforceability of a patient's release of a hospital from liability for future negligence that was required as a condition for admission. (*Tunkl*, at p. 94.) The Court held the exculpatory provision in the release affected the public interest and was, in consequence, invalid under Civil Code section 1668. (*Ibid*.)

The hospital had attempted to distinguish between a release of its "own" liability for its future negligence, which might be unenforceable, and a release of its vicarious liability for the future negligence of its agents. (*Tunkl*, *supra*, 60 Cal.2d at p. 103.) This Court rejected such a distinction, using the language that the Second District quotes (in part) in its decision: "A legion of decisions involving contracts between common carriers and their customers, public utilities and their customers, bailees and bailors, and the like, have drawn no distinction between the corporation's 'own' liability and vicarious liability resulting from negligence of agents." (*Ibid*.) The *Tunkl* court said it saw no reason to initiate "so far-reaching a distinction *now*." (*Ibid*., emphasis added.)

This case does not involve the enforceability of an agreement affecting the public interest, so *Tunkl's* holding does not apply. Nor did anything this Court said in *Tunkl* preclude a distinction between a corporation's direct liability and its vicarious liability in other circumstances, including the statutory scheme at issue here. As *Howell* observed, any liability for public expenditures is strictly a creature of statute. (*Howell*, *supra*, 18 Cal.App.5th at p. 176.) *Tunkl* did not address whether vicarious liability for an agent or

employee's negligence was different, in circumstances like those here, from direct negligence by the employer itself. In contrast, *Howell* held the Legislature reasonably recognized such a distinction in 1971 when it effectively removed the words "personally or through another" from the operative language of section 13009 to describe who could be responsible to reimburse a public agency for its fire suppression costs.

C. The legislative history of section 13009 supports the Third District's decision in *Howell*, not the Second District's decision here.

Reaching back to former Political Code section 3344 and former Civil Code section 3346a,[24] both of which used the word "person" with no qualifying language, the Second District said those earlier statutes served as the basis for imposing vicarious liability for property and personal damage on a corporate defendant in *Haverstick v. Southern Pac. Co.* (1934) 1 Cal.App.2d 605, 606, 614-615 (*Haverstick*). (*PCCC*, *supra*, 42 Cal.App.5th at pp. 156-160.) "We presume the Legislature was aware of the *Haverstick* court's interpretation of [those statutes], and that it

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[24] Former Political Code section 3344 and former Civil Code section 3346a provided in identical language: "Every person negligently setting fire to his own woods, or negligently suffering any fire to extend beyond his own land, is liable in treble damages to the party injured." (See pp. 55-56, 59, *post*.) These statutes were repealed by sections 5 and 6 of the 1931 Fire Liability Law. (Stats. 1931, ch. 790, §§ 5-6, p. 1644; see p. 60, *post*.) As we observed above, sections 1 through 3 of the 1931 Fire Liability Law were codified in 1953 as sections 13007, 13008, and 13009. (See *ante*, pp. 21-23; p. 61, *post*.)

intended that the same interpretation apply to the substantially similar language in the [1931] Fire Liability Law and section 13008." (*PCCC*, at p. 159.)

One glaring problem with this assertion is that *Haverstick* was decided more than three years *after* the 1931 Fire Liability Law went into effect. The Legislature could not have known in 1931 how an appellate court would decide *Haverstick* in 1934.

Significantly, the Second District's analysis also includes the unexplained assumption that the narrower language at the beginning of section 13008—"Any person"—supports vicarious liability in a way comparable to the more broadly worded section 13007—"Any person who personally or through another." (See *PCCC*, *supra*, 42 Cal.App.5th at pp. 159-160.) That is unwarranted. Section 13008 imposes an *affirmative duty* on an owner to exercise due diligence to control a fire on its property (whatever the fire's origin) to prevent its escape to the property of another. The owner is *directly liable* for a breach of that duty by its *failure to act*. We cannot conceive of circumstances in which the rule of respondeat superior would ever be in play under section 13008.

Another problem is that *Haverstick* and the *pre-1931* fire-related statutes on which it relied concerned compensation to fire damage victims, not the recovery of fire suppression costs.[25] The *Haverstick* court did not consider a person's direct or vicarious

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[25] The fire in *Haverstick* occurred on May 19, 1931. (*Haverstick*, *supra*, 1 Cal.App.2d at p. 606.) The Fire Liability Law did not go into effect until August 14, 1931. (Stats. 1931, ch. 790, p. 1644; *Haverstick*, at pp. 614-615; see p. 60, *post*.)

responsibility to reimburse a public agency for the expense of providing a public service funded through taxpayer dollars.

What we do know is that *prior to* the 1934 *Haverstick* decision, the Legislature had departed from the language in the preexisting statutes by qualifying the word "person" in section 1 of the 1931 Fire Liability Law with the phrase "who . . . [¶] . . . [p]ersonally or through another." (Stats. 1931, ch. 790, § 1, p. 1644; see p. 60, *post*.) It is still there in section 13007 as the largely verbatim successor to section 1. But the phrase was removed from section 13009 in 1971 when the Legislature sought to clarify who could be responsible for fire suppression costs, and it is neither expressed nor implied in the statute as it exists today. (Stats. 1971, ch. 1202, § 1, p. 2297; see p. 62, *post*.)

The Second District's decision responds to this change by treating the words " 'personally or through another' " in Health and Safety Code section 13007 as mere surplusage, the existence or absence of which says nothing about legislative intent. (*PCCC*, *supra*, 42 Cal.App.5th at p. 162 ["That may be true"].) This is contrary to the requirement that courts should give meaning to words the Legislature has used, not disregard them. (Code Civ. Proc., § 1858; *People v. Hudson* (2006) 38 Cal.4th 1002, 1010 ["interpretations that render statutory terms meaningless as surplusage are to be avoided"].)

The Second District also observed that the 1971 legislative history referred simply to "a person" when describing who could be liable under section 13009 for fire suppression costs before the amendments to the statute, as well as after, and omitted any

reference to the qualifying words "personally or through another." (*PCCC*, *supra*, 42 Cal.App.5th at pp. 161-162; MJN, exh. A, pp. 12-13.) The court concluded from this that the Legislature intended no change in the law on vicarious liability for such costs, despite the changes to section 13009's operative language. (*PCCC*, at pp. 161-162.)

That is too thin a reed to support such an inference, especially when the plain language of the amended section 13009 is considered in context with section 13007. It was correct to say that "a person" (corporate or natural) *could* be liable for fire suppression costs both before and after the 1971 amendments. Indeed, before 1971, any person liable to pay damages to a fire victim under section 13007 was *ipso facto* also responsible for suppression costs. This included an employer sued under section 13007 on a theory of respondeat superior. (See *Howell*, *supra*, 18 Cal.App.5th at p. 178.)

But after 1971 that was no longer true. Not only did the Legislature limit the types of fires covered by section 13009 to those (1) that escaped onto a "forest, range or nonresidential grass-covered land" and (2) that the person to be charged was responsible for starting (see *ante*, pp. 24-26), but it also removed the language that would continue to allow vicarious liability claims to be made under section 13007 (*Howell*, *supra*, 18 Cal.App.5th at pp. 178-179). The reasonable conclusion is that the Legislature in 1971 intended that the reach of section 13009 should be narrower than that of section 13007—with section 13009 applying only to those

persons who were *directly* responsible for the fire. (*Id.* at pp. 175, 179-181.)

Nevertheless, the Second District justified its contrary result by saying that interpreting " 'person' " to allow vicarious liability would be "consistent with longstanding common law and statutory rules," including a presumption against legislative changes to the common law. (*PCCC*, *supra*, 42 Cal.App.5th at pp. 155-156.) But those general rules shed no light on what the Legislature intended when it amended section 13009, the statutorily created basis for liability. *Howell* correctly noted that the express basis for vicarious liability before 1971 was the language "personally or through another" found in the statute. (*Howell*, *supra*, 18 Cal.App.5th at p. 178.) The usual rules concerning statutory changes to the common law simply did not apply. More to the point was the principle that the Legislature's use of different language in statutes that address related matters is significant to show that it had a different intent with respect to each. (*In re Jennings*, *supra*, 34 Cal.4th at p. 273.)

The Second District agreed with *Howell* that the Legislature contemplated vicarious liability for damage to another from a fire under section 13007, which used the words any person who "personally or through another." (*PCCC*, *supra*, 42 Cal.App.5th at pp. 158-159, 161.) But the court failed to explain why the Legislature would have effectively *removed* the quoted phrase from section 13009 in 1971 *without* intending some change in the liability for the expense of fighting the fire. It defies basic rules of statutory interpretation to suggest that the Legislature intended

such an obvious change in the statutory language to have no significance whatsoever.

Elsewhere in its opinion, the Second District concluded that interpreting " 'person' " in section 13009 to permit vicarious corporate liability would also be consistent with the word's interpretation in sections 13000 and 13001. (*PCCC*, *supra*, 42 Cal.App.5th at p. 155.) Those are *criminal* statutes that subject the defendant to a maximum fine of $1,000 and a term of imprisonment. *Golden v. Conway* (1976) 55 Cal.App.3d 948, 963 (*Golden*), which the court cited, did not say why it believed those criminal provisions applied to the civil dispute in that case.[26]

Indeed, it would be inappropriate to rely on a criminal statute to create civil liability *vicariously*. " 'The civil doctrine that a principal is bound by the acts of his agent within the scope of the agent's authority . . . has no application to criminal law since in order to render a person criminally liable it is essential that he have the requisite criminal intent . . . .' "[27] (*In re Marley* (1946) 29 Cal.2d 525, 527-528; see 1 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) Introduction to Crimes, § 115, pp. 191-192 ["The tort

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[26] *Golden* involved competing fire damage claims by a landlord and a tenant, for which vicarious liability would have existed under section 13007 (though the opinion did not refer to that statute). (*Golden*, *supra*, 55 Cal.App.3d at pp. 951-953.) Recovery of fire suppression costs was not an issue in *Golden*.

[27] There is an exception for "strict liability" offenses that require no mens rea. (See *People v. Hernandez* (1964) 61 Cal.2d 529, 532-533; *People v. Vogel* (1956) 46 Cal.2d 798, 801, fn. 2; 1 Witkin & Epstein, Cal. Criminal Law, *supra*, Introduction to Crimes, § 116, p. 192.) However, the crimes described at sections 13000 and 13001 do have a mens rea requirement: at least negligence.

doctrine of respondeat superior [citation] has no application to crimes requiring criminal intent"]; Pen. Code, § 20 ["In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence"].)

Finally, the Second District insisted the 1971 amendments to section 13009 had a "narrow" purpose to address " 'a very specific problem': recovery of costs for fighting fires that do not escape a landowner's property," and the court observed there was no mention in the legislative history of a purpose to change the rule of vicarious liability. (*PCCC*, *supra*, 42 Cal.App.5th at pp. 160-161.) As we have shown, that is not correct; the amendments enacted had multiple effects. (See *ante*, pp. 24-26; MJN, exh. A, pp. 13-14.) Moreover, the mere fact that "legislative history materials do not reflect discussion on a *particular* topic does not necessarily mean the Legislature did not intend to change the law." (*Hayes v. Temecula Valley Unified School Dist.* (2018) 21 Cal.App.5th 735, 753, emphasis added.) There is no need to find an express statement of a legislative goal in the legislative history when, as here, the Legislature's purpose can be discerned from what it did. (*Ibid.*)

In sum, the Second District started from the false premise that the liability of corporations under section 13009 must always be vicarious, never direct, so that *Howell*'s decision amounted to a grant of corporate immunity. Having mischaracterized *Howell*'s holding in this way, the Second District then misconstrued the effect of the Legislature's changes to section 13009 in 1971. *Howell* correctly interpreted the 1971 amendments to eliminate vicarious

liability on the principle of respondeat superior as a basis for a public agency to recover its fire suppression costs.

CONCLUSION

For the foregoing reasons, the Court should reverse the judgment of the Court of Appeal, approve the Third District's holding in *Howell* that section 13009 does not allow vicarious liability for fire suppression costs, and remand this case for further proceedings consistent with its opinion.

April 22, 2020

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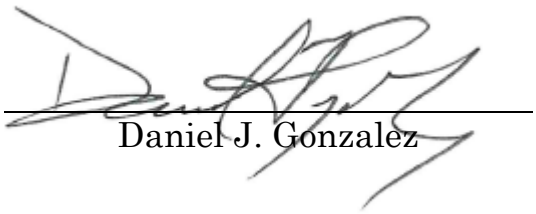
CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rules 8.204(c)(1), 8.520(b)(1).)

The text of this petition consists of 10,731 words as counted by the Microsoft Word version 2016 word processing program used to generate the petition.

Dated: April 22, 2020



Daniel J. Gonzalez

ATTACHMENTS TO OPENING BRIEF ON THE MERITS

Historical California Statutes Concerning
Recovery of Fire Suppression Costs

[Attached pursuant to Cal. Rules of Court, rule 8.520(h)]

THE

POLITICAL CODE

OF THE

STATE OF CALIFORNIA.

PUBLISHED UNDER AUTHORITY OF LAW, BY

CREED HAYMOND,
JOHN C. BURCH,
JOHN H. McKUNE,
} COMMISSIONERS TO REVISE THE LAWS.

In Two Volumes.

VOL. I.

SACRAMENTO:
T. A. SPRINGER, STATE PRINTER.
1872.

Secretary to keep record, and certificate to be proof.

3341. The Secretary of the fire department or fire company must keep a record of all certificates of exemption or active membership, the date thereof, and to whom issued, and when no seal is provided similar entries of certificates issued to obtain County Clerk's certificates. Every such certificate is primary evidence of the facts therein stated.

Duties of Chief of Fire Department.

3342. The Chief of every fire department must inquire into the cause of every fire occurring in the city or town of which he is the Chief, and keep a record thereof; he must aid in the enforcement of all fire ordinances duly enacted, examine buildings in process of erection, report violations of ordinances relating to prevention or extinguishment of fires, and when directed by the proper authorities institute prosecutions therefor, and perform such other duties as may be by proper authority imposed upon him. His compensation must be fixed and paid by the city or town authorities.

Chief to attend fires and preserve property.

3343. Every Chief of a fire department must attend all fires with his badge of office conspicuously displayed, must prevent injury to, take charge of, and preserve all property rescued from fires, and return the same to the owner thereof on the payment of the expenses incurred in saving and keeping the same, the amount thereof, when not agreed to, to be fixed by the Police or County Judge.

Setting woods on fire.

3344. Every person negligently setting fire to his own woods, or negligently suffering any fire to extend beyond his own land, is liable in treble damages to the party injured.

Extinguishing fire in woods.

3345. Whenever the woods are on fire any Justice of the Peace, Constable, or Road Overseer of the township or district where the fire exists, may order as many of the inhabitants liable to road poll tax,

SEC. 2. The controller is hereby directed to draw his warrants for the amount herein made payable upon proper demands approved by the board of state capitol commissioners and audited by the state board of examiners, and the treasurer is directed to pay the same.

SEC. 3. This act shall take effect immediately.

CHAPTER CCLXIII.

An act making an appropriation of three thousand nine hundred and seven dollars and fifty cents to be used by the board of trustees of the Whittier State School, at Whittier, California, for the purpose of purchasing five inches of water from the East Whittier ditch to be used at said school.

[Approved March 18, 1905.]

The people of the State of California, represented in senate and assembly, do enact as follows:

Whittier State School, purchase of water.

SECTION 1. The sum of three thousand nine hundred and seven dollars and fifty cents ($3907.50), or so much thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to be paid to the board of trustees of the Whittier State School, at Whittier, California, to be by them expended for the purpose of purchasing five inches of water from the East Whittier ditch to be used at said school.

SEC. 2. The state controller is hereby authorized and directed to draw his warrant in favor of said board of trustees, for the amount herein made payable, and the state treasurer is hereby directed to pay the same.

SEC. 3. This act shall take effect immediately.

CHAPTER CCLXIV.

An act to provide for the regulation of fires on, and the protection and management of, public and private forest lands within the State of California, creating a state board of forestry and certain officers subordinate to said board, prescribing the duties of such officers, creating a forestry fund, and appropriating the moneys in said fund, and defining and providing for the punishment of certain offenses for violations of the provisions of this act, and making an appropriation therefor.

[Approved March 18, 1905.]

The people of the State of California, represented in senate and assembly, do enact as follows:

State board of forestry.

SECTION 1. *State board of forestry.*—There shall be a state board of forestry, consisting of the governor, secretary of state, attorney-general and state forester, which shall supervise all matters of state forest policy and management and convene upon the call of the governor or of its secretary.

any person or persons to burn brush, stumps, logs, fallen timber, fallows, grass or forest-covered land, or blast wood with dynamite, powder or other explosives, or set off fireworks of any kind in forest or brush-covered land, either their own or the property of another, without written permission of and under the direction or supervision of a fire warden in that district; these restrictions not to apply to the ordinary use of fire or blasts in logging redwood, nor in cases where back fires are set in good faith to stop an existing fire. Violation of these provisions shall be a misdemeanor, punishable, upon conviction, by a fine of not less than fifty dollars, nor more than one thousand dollars, or imprisonment not less than thirty days nor more than one year, or both such fines and imprisonment.

Engines in forest lands.

SEC. 17. *Engines in forest land.*—Logging locomotives, donkey or threshing engines, and other engines and boilers operated in, through or near forests, brush or grass land, which do not burn oil as fuel, shall be provided with appliances to prevent the escape of fire and sparks from the smoke-stacks thereof, and with devices to prevent the escape of fire from ashpans and fireboxes. Failure to comply with these requirements shall be a misdemeanor, punishable, upon conviction, by a fine of not less than one hundred dollars nor more than five hundred dollars, and any person violating any provision of this section shall be liable to a penalty of not less than fifty dollars nor more than one hundred dollars, for every such violation, or imprisonment for not less than thirty days nor more than three months, or both such fine and imprisonment.

Penalty.

Liable in civil actions.

SEC. 18. *Civil liability for forest fires.*—In addition to the penalties provided in sections 14, 15, 16 and 17 of this act, the United States, state, county, or private owners, whose property is injured or destroyed by such fires, may recover, in a civil action, double the amount of damages suffered if the fires occurred through willfulness, malice or negligence; but if such fires were caused or escaped accidentally or unavoidably, civil action shall lie only for the actual damage sustained as determined by the value of the property injured or destroyed, and the detriment to the land and vegetation thereof. The presumption of willfulness, malice or neglect shall be overcome, *provided* that the precautions set forth in section 17 are observed; *or, provided,* under section 16, fires are set during the "dry season" with written permission of and under the direction of the district fire warden. Persons or corporations causing fires by violations of sections 14, 15, 16 and 17 of this act shall be liable to the state or county in action for debt, to the full amount of all expenses incurred by the state or county in fighting such fires.

Clearing of brush, etc., along county roads.

SEC. 19. *Clearing along county roads and land after lumbering.*—Counties, along the county roads, in forest or brush land, shall, when so directed by the state forester, and in a manner and to an extent prescribed by him, cut and remove

SEC. 3. Section thirty-one hundred and ninety-seven of said code is hereby amended to read as follows:

3197. An unconditional promise, in writing, to accept a bill of exchange, is a sufficient acceptance thereof, in favor of every person who upon the faith thereof has taken the bill for value. Bills of exchange, promise to accept, effect of.

SEC. 4. Section thirty-two hundred and thirty-five of said code is hereby amended to read as follows:

3235. Damages are allowed under the last section upon bills drawn upon any person: Foreign bills of exchange, rate of damages.

1. If drawn upon a person in this state, two dollars upon each one hundred dollars of the principal sum specified in the bill;

2. If drawn upon a person out of this state, five dollars upon each one hundred dollars of the principal sum specified in the bill;

3. If drawn upon a person in any place in a foreign country, fifteen dollars upon each one hundred dollars of the principal sum specified in the bill.

CHAPTER CDLXIII.

An act to amend section thirty-two hundred and ninety-four of the Civil Code, relating to exemplary damages.

[Approved March 21, 1905.]

The people of the State of California, represented in senate and assembly, do enact as follows:

SECTION 1. Section thirty-two hundred and ninety-four of the Civil Code is hereby amended to read as follows:

3294. In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, express or implied, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant. Exemplary damages, in what cases allowed.

CHAPTER CDLXIV.

An act to add a new section to the Civil Code, to be numbered thirty-three hundred and forty-six a, relating to damages for negligently firing woods.

[Approved March 21, 1905.]

The people of the State of California, represented in senate and assembly, do enact as follows:

SECTION 1. A new section is hereby added to the Civil Code, to be numbered thirty-three hundred and forty-six *a*, and to read as follows:

3346*a*. Every person negligently setting fire to his own woods, or negligently suffering any fire to extend beyond his own land, is liable in treble damages to the party injured. Damages for firing woods.

CHAPTER 790.

An act defining the civil liability for failure to control fire.

[Approved by the Governor June 12, 1931 In effect August 14, 1931.]

The people of the State of California do enact as follows:

Liability for damage by fire

SECTION 1. Any person who:

(1) Personally or through another, and

(2) Wilfully, negligently, or in violation of law, commits any of the following acts:

(1) Sets fire to,

(2) Allows fire to be set to,

(3) Allows a fire kindled or attended by him to escape to the property, whether privately or public owned, of another, is liable to the owner of such property for the damages thereto caused by such fire.

Same

SEC. 2. Any person who allows any fire burning upon his property to escape to the property, whether privately or publicly owned, of another, without exercising due diligence to control such fire, is liable to the owner of such property for the damages thereto caused by such fire.

Expenses of fighting fires

SEC. 3. The expenses of fighting such fires shall be a charge against any person made liable by this act for damages caused thereby. Such charge shall constitute a debt of the person charged and shall be collectible by the party, or by the federal, state, county, or private agency incurring such expenses in the same manner as in the case of an obligation under a contract, expressed or implied.

Saving clauses

SEC. 4. This act shall not apply to or affect any existing rights, duties or causes of action, nor shall it apply to or affect any rights, duties or causes of action accruing prior to the date this act takes effect.

Repeal

SEC. 5. Section 3344 of the Political Code is hereby repealed.

Repeal

SEC. 6. Section 3346a of the Civil Code is hereby repealed.

CHAPTER 791.

Stats. 1915, p. 1404, amended

An act to amend the title and sections 3, 6, 8, 15, 16 and 18 of, and to add a new section to be numbered 20a to, an act entitled "An act to protect the natural resources of petroleum and gas from waste and destruction; relating to the creating of a division in the department of natural resources for the prevention of such waste and destruction: providing for the appointment of a state oil and gas supervisor: prescribing his duties and powers; fixing his compensation: providing for the appointment of deputies and employees: providing for their duties and compensation; providing for the inspection of petroleum and gas

CHAPTER 48

An act to codify Chapter 790 of the Statutes of 1931 and Chapter 273 of the Statutes of 1935, relating to fire protection, by adding Sections 13007, 13008, 13009, 13010, and 13052.5 to the Health and Safety Code, and repealing Chapter 790 of the Statutes of 1931 and Chapter 273 of the Statutes of 1935.

In effect September 9, 1953

[Approved by Governor April 1, 1953. Filed with Secretary of State April 2, 1953.]

The people of the State of California do enact as follows:

SECTION 1. Section 13007 is added to the Health and Safety Code, to read:

Liability for fire damage

13007. Any person who personally or through another wilfully, negligently, or in violation of law, sets fire to, allows fire to be set to, or allows a fire kindled or attended by him to escape to, the property of another, whether privately or publicly owned, is liable to the owner of such property for any damages to the property caused by the fire.

SEC. 2. Section 13008 is added to said code, to read:

Same

13008. Any person who allows any fire burning upon his property to escape to the property of another, whether privately or publicly owned, without exercising due diligence to control such fire, is liable to the owner of such property for the damages to the property caused by the fire.

SEC. 3. Section 13009 is added to said code, to read:

Fire-fighting expenses a debt

13009. The expenses of fighting any fires mentioned in Sections 13007 and 13008 are a charge against any person made liable by those sections for damages caused by such fires. Such charge shall constitute a debt of such person, and is collectible by the person, or by the federal, state, county, or private agency, incurring such expenses in the same manner as in the case of an obligation under a contract, expressed or implied.

SEC. 4. Section 13010 is added to said code, to read:

Cause of action accruing prior to August 14, 1931

13010. Sections 13007, 13008, and 13009 of this code do not apply to nor affect any rights, duties, or causes of action in existence and accruing prior to August 14, 1931.

SEC. 5. Section 13052.5 is added to said code, to read:

Fire protection contracts

13052.5. The governing board of any county fire protection district may contract with any city contiguous to the district for the furnishing of fire protection to the district by such city, and the legislative body of any city may contract for the furnishing of fire protection to the district in such manner and to such extent as the legislative body may deem advisable

Privileges and immunities

All of the privileges and immunities from liability which surround the activities of any city fire fighting force or department when performing its functions within the territorial limits of the city shall apply to the activities of any city fire fighting force or department while furnishing fire protection outside the city under any contract with a county fire protection district pursuant to this section.

Repeal

SEC. 5. Chapter 790 of the Statutes of 1931 and Chapter 273 of the Statutes of 1935 are repealed.

SEC. 2. Section 38181 of the Agricultural Code is amended to read:

38181. Skim milk or nonfat milk is the product which results from the complete or partial removal of milk fat from milk. It shall contain not more than twenty-five hundredths of 1 percent of milk fat and not less than 9 percent of milk solids not fat, except that milk produced and marketed pursuant to Article 7 (commencing with Section 35921) of Chapter 2 of Part 2 of this division as skim milk shall contain not more than twenty-five hundredths of 1 percent of milk fat and not less than 8.5 percent of milk solids not fat.

SEC. 3. The provisions of this act shall become operative on January 1, 1972.

CHAPTER 1202

An act to amend Section 13009 of the Health and Safety Code, relating to fires.

[Approved by Governor October 21, 1971. Filed with Secretary of State October 21, 1971.]

The people of the State of California do enact as follows:

SECTION 1. Section 13009 of the Health and Safety Code is amended to read:

13009. Any person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him to escape onto any forest, range or nonresidential grass-covered land is liable for the expense of fighting the fire and such expense shall be a charge against that person. Such charge shall constitute a debt of such person, and is collectible by the person, or by the federal, state, county, public, or private agency, incurring such expenses in the same manner as in the case of an obligation under a contract, expressed or implied.

CHAPTER 1203

An act to amend Section 13010 of the Penal Code, relating to the Bureau of Criminal Statistics.

[Approved by Governor October 21, 1971. Filed with Secretary of State October 21, 1971.]

The people of the State of California do enact as follows:

SECTION 1. Section 13010 of the Penal Code is amended to read:

13010. It shall be the duty of the bureau:

(a) To collect data necessary for the work of the bureau, from all persons and agencies mentioned in Section 13020 and from any other appropriate source;

CHAPTER 668

An act to amend Section 13009 of the Health and Safety Code, relating to fire protection.

[Approved by Governor August 27, 1982. Filed with Secretary of State August 27, 1982.]

The people of the State of California do enact as follows:

SECTION 1. Section 13009 of the Health and Safety Code is amended to read:

13009. (a) Any person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him or her to escape onto any public or private property is liable for the fire suppression costs incurred in fighting the fire and for the cost of providing rescue or emergency medical services, and those costs shall be a charge against that person. The charge shall constitute a debt of that person, and is collectable by the person, or by the federal, state, county, public, or private agency, incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied.

(b) Any costs incurred by the Department of Forestry in suppressing any wildland fire originating or spreading from a prescribed burning operation conducted by the department pursuant to a contract entered into pursuant to Article 2 (commencing with Section 4475) of Chapter 7 of Part 2 of Division 4 of the Public Resources Code shall not be collectable from any party to the contract, including any private consultant or contractor who entered into an agreement with that party pursuant to subdivision (d) of Section 4475.5 of that code, as provided in subdivision (a), to the extent that those costs were not incurred as a result of a violation of any provision of the contract.

CHAPTER 669

An act to repeal Section 40517 of the Vehicle Code, relating to vehicles.

[Approved by Governor August 27, 1982. Filed with Secretary of State August 27, 1982.]

The people of the State of California do enact as follows:

SECTION 1. Section 40517 of the Vehicle Code is repealed.

CHAPTER 1127

An act to amend Sections 13009 and 13009.1 of the Health and Safety Code, relating to fires.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

The people of the State of California do enact as follows:

SECTION 1. Section 13009 of the Health and Safety Code is amended to read:

13009. (a) Any person (1) who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him or her to escape onto any public or private property, (2) other than a mortgagee, who, being in actual possession of a structure, fails or refuses to correct, within the time allotted for correction, despite having the right to do so, a fire hazard prohibited by law, for which a public agency properly has issued a notice of violation respecting the hazard, or (3) including a mortgagee, who, having an obligation under other provisions of law to correct a fire hazard prohibited by law, for which a public agency has properly issued a notice of violation respecting the hazard, fails or refuses to correct the hazard within the time allotted for correction, despite having the right to do so, is liable for the fire suppression costs incurred in fighting the fire and for the cost of providing rescue or emergency medical services, and those costs shall be a charge against that person. The charge shall constitute a debt of that person, and is collectible by the person, or by the federal, state, county, public, or private agency, incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied.

(b) Any costs incurred by the Department of Forestry in suppressing any wildland fire originating or spreading from a prescribed burning operation conducted by the department pursuant to a contract entered into pursuant to Article 2 (commencing with Section 4475) of Chapter 7 of Part 2 of Division 4 of the Public Resources Code shall not be collectible from any party to the contract, including any private consultant or contractor who entered into an agreement with that party pursuant to subdivision (d) of Section 4475.5 of the Public Resources Code, as provided in subdivision (a), to the extent that those costs were not incurred as a result of a violation of any provision of the contract.

(c) This section applies in all areas of the state, regardless of whether primarily wildlands, sparsely developed, or urban.

SEC. 2. Section 13009.1 of the Health and Safety Code is amended to read:

13009.1. (a) Any person (1) who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him or her to escape onto any public or private property,

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On April 22, 2020, I served true copies of the following document(s) described as **OPENING BRIEF ON THE MERITS** on the interested parties in this action as follows:

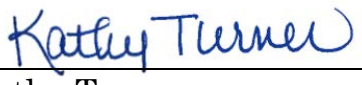
SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the trial court judge only at the address listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 22, 2020, at Burbank, California.



Kathy Turner

SERVICE LIST
Presbyterian Camp & Conf. Centers, Inc.
v. Superior Court of Santa Barbara
(Cal. Dept of Forestry & Fire Protection etc.)
SBSC Case No. 18CV02968 • COA 2/6 Case No. B297195
Cal. Supreme Court Case No. S259850

Individual / Counsel Served	Party Represented
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Individual / Counsel Served	Party Represented
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Hon. Thomas P. Anderle Santa Barbara County Superior Court Historic Anacapa Courthouse 1100 Anacapa Street, Dept. 3 Santa Barbara, California 93101-2099 (805) 882-4570	Trial Court Judge • 18CV02968 Hard Copy via U.S. Mail
Office of the Clerk California Court of Appeal Second Appellate District • Division Six 200 E. Santa Clara Street Ventura, California 93001-2793 (805) 641-4700	Case No. B297195 ***Electronic Copy*** via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)
Clerk of the Court Supreme Court of California 350 McAllister Street San Francisco, California 94102-3600 (415) 865-7000	***Electronic Filing*** via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PRESBYTERIAN CAMP AND CONFERENCE CENTERS v. S.C. (CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION)**
Case Number: **S259850**
Lower Court Case Number: **B297195**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **dgonzalez@horvitzlevy.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	2020-04-22 Opening Brief on the Merits (OBOM) [w Attachment] (PC&CC v. SCSB-Cal Forestry)

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

4/22/2020

Date

/s/Daniel Gonzalez

Signature

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