No. S241825

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

VINCENT E. SCHOLES

Plaintiff and Appellant,

vs.

LAMBIRTH TRUCKING COMPANY,

Defendant and Respondent.

After a Published Decision by the Court of Appeal,
Third Appellate District, No. C070770
Colusa County Superior Court No. CV23759

ANSWER TO AMICUS CURIAE BRIEF OF PACIFIC GAS AND ELECTRIC COMPANY

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INTRODUCTION

Amicus curiae, Pacific Gas and Electric Company ("PG&E"), argues that Civil Code section 3346 does not authorize recovery of multiple damages for fire damage to trees because, according to PG&E, the Legislature in 1931 eliminated the "multiplier for fire damage to trees." (PG&E Amicus 13.) But Civil Code section 3346 has always been the *only* multiplier specific to trees, and the Legislature has never repealed it. By its terms, Civil Code section 3346 applies to any wrongful injury to trees, including fire damage. The Fire Liability Law of 1931, as codified in Health & Safety Code sections 13007 and 13008, did not create an implied exception to Civil Code section 3346 for fire damage to trees. On the contrary, the Legislature has continued to allow recovery for "damages" caused by fire. (Health & Saf. Code, § 13007, 13008.) Absent any contrary indication, the Legislature must be presumed to have meant the word "damages" to include all forms of recoverable damages authorized by the Civil Code, including compensatory damages (Civ. Code, § 3333), exemplary damages (Civ. Code, § 3294), and multiple damages for wrongful injuries to trees. (Civ. Code, § 3346.)

Nor is PG&E correct in arguing that the scope of Civil Code section 3346 is limited to timber appropriation, cutting down trees, or personally entering another's property and causing harm to the trees there. Although timber appropriation may have been the original target of the law, its broad language authorizes multiple damages for any wrongful injuries to trees committed by trespass. As this Court has ruled, when the Legislature addresses a specific problem by passing a statute with general terms, "the particular impetus for the enactment does not limit its scope." (*Los Angeles Unified School Dist. v. Garcia* (2013) 58 Cal.4th 175, 192.) Moreover, the

Legislature need not have contemplated a particular application of the law if the plain language of the statute covers it.

For the reasons described below, PG&E's other arguments do not support the Court of Appeal's judgment either. Accordingly, the judgment should be reversed.

ARGUMENT

I. The Fire Liability Law of 1931, as Codified in Health & Safety Code Sections 13007 and 13008, Did Not Repeal Any "Multiplier for Injury to Trees from Fire"

PG&E argues that the Legislature "repealed the multiplier for injury to trees from fire" when it enacted the Fire Liability Law in 1931. (PG&E Amicus at 19.) But there has *never been* a "multiplier for injury to trees from fire" as PG&E claims. (*Ibid.*) Before 1931, there were two different types of multipliers: (1) Civil Code section 3346a and Political Code section 3344 allowed triple damages for *any* type of injury negligently caused by fire—not just injury to trees (OBOM 13-14); and (2) Code of Civil Procedure section 733 and Civil Code section 3346 allowed triple damages for wrongful injuries to timber, trees, or underwood—not just those caused by fire. (OBOM 14-15.) Thus, one multiplier applied to fire damage generally (not just trees), and the other applied to any wrongful injuries to timber, trees, or underwood (not just injuries caused by fires). Neither one was a "multiplier for injury to trees from fire." (PG&E Amicus at 19.)

In 1931, the Legislature repealed the former, but not the latter. (OBOM 15.) In other words, the Legislature eliminated the multiplier that had previously applied to *all* types of injury from fire, but retained the multiplier for wrongful injury to trees. Under current law, for example, a

plaintiff could no longer recover triple damages for fire damage to a home, structure, or other improvement on her property, or for personal injury caused by the fire. But the 1931 Legislature left in place the multiplier for wrongful injuries to trees, and created no new exception to Civil Code section 3346 for injuries caused by fire. Thus, the Legislature did not "repeal[] the multiplier for injury to trees from fire" as PG&E claims. (PG&E Amicus 19.)

Contrary to PG&E's brief, plaintiff's interpretation would not "render meaningless the Legislature's express decision to end the damage multiplier for fire." (PG&E Amicus 39.) Again, plaintiff does not dispute that the Legislature in 1931 eliminated the right to recover multiple damages for fire damage to property *other than* trees, timber, or underwood. (RBOM 15.) Thus, the 1931 legislation unquestionably had a meaningful effect on the recoverable damages for a fire. However, it did not create an implied "fire exception" to Civil Code section 3346, which continues to authorize multiple damages for injuries to trees from any wrongful cause.

II. Health & Safety Code Sections 13007 and 13008 Do Not Displace Other Pre-Existing Statutes Permitting Recovery of Multiple or Punitive Damages in Specified Circumstances

PG&E asserts that the Fire Liability Law of 1931, as codified in Health & Safety Code sections 13007 and 13008, forbids recovery of anything more "actual damages" from a fire. (PG&E Amicus at pp. 20, 22.) As Scholes has demonstrated, however, these provisions merely codified common law principles governing *liability* for damages from fire. They do not have anything to say about the *measure* of damages, nor do they use the term "actual damages." (OBOM at 25-26; RBOM at 9-10 & fn. 2.) The mere fact that the Legislature codified common law principles on liability

for "damages" to property from fire (Health & Saf. Code, §§ 13007, 13008) does not demonstrate any intention to preclude the operation of other generally applicable statutes governing the measure of damages, such as Civil Code sections 3333, 3346, and 3294. (RBOM 9, fn. 2.)

PG&E does not provide any convincing explanation why its argument would not also preclude the recovery of punitive damages under Civil Code section 3294, even for intentional acts of arson. (OBOM 28.) If the Fire Liability Law was intended to limit a plaintiff's recovery to "actual damages" for all fire damage, as PG&E claims, then punitive damages would be prohibited as well—regardless of what Civil Code section 3294 otherwise says. Like multiple damages, punitive damages are not a form of "actual damages."

When the Legislature passed the Fire Liability Law in 1931 and codified it in 1953, it allowed recovery of "damages" caused by fire. (Health & Saf. Code, §§ 13007, 13008.) The word "damages" was then understood to mean compensatory damages as well as exemplary or penal damages, including multiple damages authorized by statute. Article 2 of the Civil Code (entitled "Damages for Wrongs"), authorized compensatory damages for torts (Civ. Code, § 3333); Article 3 of the Civil Code (entitled "Penal Damages") authorized civil penalties in additional to compensatory damages, including multiple damages for wrongful injuries to trees (Civ. Code, § 3346); and Civil Code section 3294 (entitled "Exemplary damages; when allowable; definitions") allowed the plaintiff "in addition to the actual damages" to "recover damages for the sake of example and by way of punishing the defendant." (Civ. Code, § 3294.)

By using the word "damages" without limitation in Health & Safety Code section 13007 and 13008, the Legislature must have intended to

permit recovery of all forms of "damages" authorized by other existing and generally applicable provisions of law. "In the absence of some suggestion in some expression of the Legislature to indicate that ... it intended to subtract from the content of the word 'damages,' as elsewhere used in the Codes ..., it cannot be said that such a limitation was contemplated." (*Harp v. Pease* (1921) 52 Cal.App.744, 746.) Thus, the word "damages" as used in these provisions includes both the "exemplary damages" authorized by Civil Code section 3294 and the "penal damages" authorized by Article 3 of the Civil Code, which include the multiple damages allowed by Civil Code section 3346.

III. Civil Code Section 3346 is Not Limited to Timber Appropriation, Cutting Down Trees, or Personally Entering Another's Property and Causing Damage to Trees

PG&E asserts that Civil Code section 3346 is limited to "those who personally enter onto another's property and cause damage to the trees there." (PG&E Amicus 14, 27.) PG&E also describes Civil Code section 3346 as "governing damages for cutting down trees." (*Id.* at p. 26.) According to PG&E, its intent was "to deter timber appropriation, not to deter fires." (*Id.* at 31.) PG&E also notes that the statute "makes no reference to fire damage." (*Id.* at p. 32.)

But nothing in the plain language of the statute says anything about personally entering onto another's property and cutting down or causing damage to the trees there. The statute speaks more broadly in terms of any "*wrongful injuries* to timber, trees, or underwood, *or removal thereof.*" (Civ. Code, § 3346, subd. (a), emphasis added.) Thus, the plain meaning of the statute is not limited to cutting down or removing trees—it covers any type of wrongful injury to trees. Moreover, PG&E does not seriously

dispute that "[u]nder any reasonable interpretation, fire damage constitutes an 'injur[y]' to a tree." (*Kelly v. CB&I Constructors, Inc.* (2009) 179 Cal.App.4th 442, 462.)

The mere fact that the immediate purpose of the statute may have been to deter timber appropriation does not mean its scope is confined to this narrow application. As this Court has stated: "When, as here, the Legislature has chosen to address a specific problem by enacting a statute with general terms, the particular impetus for the enactment does not limit its scope." (*Los Angeles Unified School Dist. v. Garcia* (2013) 58 Cal.4th 175, 192, citing *Khajavi v. Feather River Anesthesia Medical Group* (2000) 84 Cal.App.4th 32, 51; *Barr v. United States* (1945) 324 U.S. 83, 90 [when lawmakers choose broad statutory language, "it is unimportant that the particular application may not have been contemplated"]; see also *Souza v. Lauppe* (1997) 59 Cal.App.4th 865, 500 [fact that enacting Legislature did not have particular application of statute in mind was immaterial where it was "compelled by the plain meaning of its words"].) Although PG&E claims that "courts have repeatedly rejected similar arguments" (PG&E Amicus 14), it cites no contrary authority.

PG&E also argues "[t]he Code Commissioners' Notes confirm that the section addressed injury to trees from trespass, not from fire." (PG&E Amicus 17.) But the note PG&E quotes was merely summarizing an 1856 case from this Court on the measure of damages for cutting down trees. It stated: "The damages for cutting down growing trees are not measured by the value of the trees for firewood, but the injury done to the land by destroying them." (PG&E RJN 79, citing *Chipman v. Hibberd* (1856) 6 Cal. 162.) The Commissioners' Note did not suggest that the substantive scope of the statute was *limited* to cutting down trees.

IV. When the Legislature Repealed, Amended, and Reenacted Civil Code Section 3346 in 1957, It Would Have Understood That a "Trespass" Includes Indirect Invasions of Property

Directly contradicting the position taken by Lambirth (ABOM 52), PG&E asserts that the Legislature in 1957 could not have understood the word "trespass" as used in Civil Code section 3346 to include fire damage. PG&E argues that before the 1996 holding of *Elton v. Anheuser-Busch Beverage Group, Inc.* (1996) 50 Cal.App.4th 1301, "the California courts recognized claims for fire damage as claims for *negligence*, not trespass." (PG&E Amicus 36.)

As Lambirth has conceded, however, "this court first recognized that an intentionally set fire which traveled to another's property could constitute a trespass in 1887." (ABOM 52, citing *Gale v. McDaniel* (1887) 72 Cal. 334.) Lambirth also acknowledges that in 1928, "this court held that 'trespasses may be committed by consequential and indirect injuries as well as by direct and forcible injuries." (ABOM 52, citing *Coley v. Hecker* (1928) 206 Cal. 22, 29.) Thus, by Lambirth's own admission, the Legislature would have understood "that courts had the authority to apply the trespass doctrine to fires long before the *Elton v. Anheuser Busch* decision." (ABOM 52.) "The disappearance of the earlier distinction between direct and indirect harm suggests that any barriers to the inclusion of the negligent spread of fire into the ordinary meaning of trespass had vanished by 1957." (*United States v. Sierra Pacific Industries* (E.D. Cal. 2012) 879 F. Supp. 2d 1096, 1115.)

Again, the Legislature need not have specifically contemplated the statute's applicability to fire damage. (*Barr*, *supra*, 324 U.S. at p. 90.) The state of the law in 1957 was such that the Legislature must be presumed to

have known "trespasses may be committed by consequential and indirect injuries as well as by direct and forcible injuries." (*Coley, supra*, 206 Cal. at p. 29.) By using the word "trespass" in the amended statute, as that term would have been understood in 1957, the Legislature manifested its general intent to apply the law to indirect as well as direct invasions of property.

V. Civil Code Section 3346 Should Be Liberally Construed, Not Strictly Construed

PG&E argues that Civil Code section 3346 should be strictly construed because it is a penal statute. (PG&E Amicus at pp. 29-30.) But the "rule of strict construction of penal statutes 'has generally been applied in this state to criminal statutes, rather than statutes which prescribe only civil monetary penalties.'" (*Smith v. Superior Court* (2006) 39 Cal.4th 77, 92, quoting *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 312; accord *Pineda v. Williams-Sonoma Stores, Inc.* (2011) 51 Cal.4th 524, 532, fn. 8.) Thus, the rule does not apply to Civil Code section 3346.

"Indeed, the opposite is true: '[S]tatutes which prescribe only civil monetary penalties[]' [citation] ... 'for the protection of the public are ... broadly construed in favor of that protective purpose.'" (*Pacific Gas and Electric Co. v. Public Utilities Commission* (2015) 237 Cal.App.4th 812, 844, quoting *Smith, supra*, 39 Cal.4th at p. 92.) Thus, Civil Code section 3346 should be broadly construed, as the Civil Code itself mandates. (Civ. Code, § 4.)

VI. Civil Code Section 3346 is the Later-Enacted and More Specific Statute

PG&E also asserts that to the extent there is a conflict between Civil Code section 3346 and Health and Safety Code sections 13007 and 13008,

the Health and Safety Code provisions should prevail because they are the later-enacted and more specific statutes. (PG&E Amicus at pp. 26-27, 31.)

As PG&E concedes, however, Civil Code section 3346 was repealed, amended, and reenacted in 1957, *after* passage of the 1931 Fire Liability Law and its 1953 codification in Health & Safety Code sections 13007-13008. (OBOM at pp. 15-16.) Thus, Civil Code section 3346 is the later-enacted statute. PG&E claims otherwise by arguing that the 1957 Legislature reenacted Civil Code section 3346 "without changes to the material wording." (PG&E Amicus at p. 31, citing *Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 311.) But the 1957 legislation *did* make material changes to both the wording and substance of the statute. Not only did it add a whole new double damages provision, but it also added the five-year statute of limitations. (OBOM at pp. 16-17.) Because the 1957 legislation completely repealed, amended, and reenacted Civil Code section 3346 with material changes to both its wording and substance, it should be treated as the later-enacted statute.

Civil Code section 3346 is also the more specific of the two. Section 3346 addresses only a very specific type of property damage: "injuries to timber, trees, or underwood on the land of another." (Civ. Code, § 3346, subd. (a).) By contrast, the Health & Safety Code provisions more broadly address *any* type of "damages to the property caused by fire," including damage to structures and other improvements. (Health & Saf. Code, §§ 13007, 13008.) Thus, Civil Code section 3346 concerns a more specific type of property damage.

CONCLUSION

The Court of Appeal's judgment should be reversed.

Dated: Jan. 29, 2018

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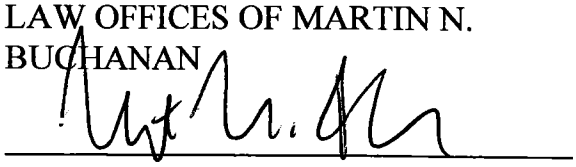

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CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.504(d) of the California Rules of Court, I certify that the foregoing Answer to Amicus Curiae Brief of Pacific Gas and Electric Company was produced on a computer in 13-point type. The word count, including footnotes, as calculated by the word processing program used to generate the brief is 2,548 words, exclusive of the matters that may be omitted under subdivision (c)(3).

Dated: Jan. 29, 2018

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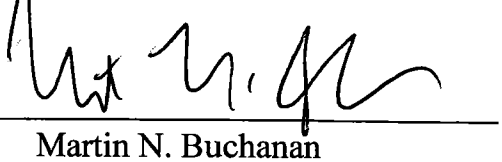

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CERTIFICATE OF SERVICE

I, Martin N. Buchanan, am employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 655 W. Broadway, Suite 1700, San Diego, California 92101. On Jan. 29, 2018, I served the **ANSWER TO AMICUS CURIAE BRIEF OF PACIFIC GAS AND ELECTRIC COMPANY** on each of the following individuals via first-class priority mail:

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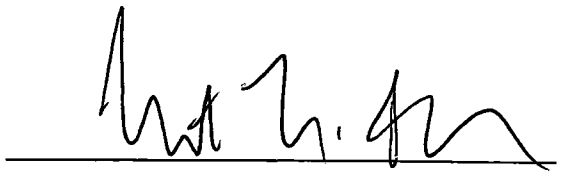

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