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Authority for California Cities Excess Liability
Litigation Review and Update
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JURY VERDICT

Loggervale, et al. v. County of Alameda	3/1/2023
[violation of civil rights under Sec. 1983; wrongful arrest and detention]	
Verdict	$8.25M total; $2.75M awarded to each of three plaintiffs against two deputies
Venue	U.S. District Court for the Northern District of California; Judge Alsup
Facts:	Two deputy sheriff's received information from multiple sources that vehicle burglaries were taking place outside a Starbucks in the mornings by two black or hispanic males driving a silver vehicle. On 9/20/2019, at 6:35am, the deputies observed a grey vehicle parked in a handicap parking space with people inside it. Deputies observed the people for several minutes and they did not exit the vehicle. Deputies approached to investigate and upon approach determined that the vehicle had a disabled placard in the front window. One deputy spoke with the driver who turned out to be a black female. The woman was initially compliant but then refused to provide her ID. The two other occupants, two black teenage girls, become loud and belligerent. They yelled at deputies, began recording the incident, exited the vehicle despite instructions to stay in the vehicle and to get back into the vehicle. One girl hit a deputy with her car door as she opened it. Deputies handcuffed the two girls who continued to resist and kick the door of the patrol vehicle as they were placed inside. The driver was cuffed and placed in a separate vehicle. Both girls refused to provide IDs but told the deputies that their IDs were in the vehicle. Deputies performed a search for the IDs, found them, and clear. The driver's ID was found in her person. All three plaintiffs were released once cleared. The two girls were the teenage daughters of the driver, who was a local CPA. The older girl was a student at Cal Berkeley, and the family was just pulling in from a trip to Las Vegas. The three women was unconnected to any of the suspected vehicle burglaries.
Plaintiffs' Attorney	Joseph May, Esq.; Brian Gearinger, Esq.; Craig Peters, Esq. (Trial Counsel)
Settlement Efforts	Last demand prior to trial was $1,050,000 for the plaintiffs with attorney fees undisclosed and to be based on motion; County's last offer was $750K all inclusive

DUTY TO PRESERVE EVIDENCE

Victor Valley Union High School Dist. v. Super. Ct. (Docket No. E078673; 4th D.C.A.)	12/22/22
[Safe Harbor Provision § 2023.030(f); discovery sanctions against school district reviewed for abuse of discretion]	
Issue:	Whether a school district had a duty to preserve video evidence of a student assault even before any litigation is reasonably foreseeable.
Summary Rule:	A public entity need not presume that litigation will result for every civil wrong and therefore is protected from sanctions when video of an incident is negligently deleted. Litigation is "probable" when it is "contemplated by the plaintiff," not simply when knowledge of an incident is received by a defendant.
Facts:	John Doe sued the school district for negligence and other causes of action arising from an alleged sexual assault on Doe while he was a high school student. John Does was sexually assaulted in a bathroom by two other students. During discovery, plaintiffs learned video that captured some of the events surrounding the alleged sexual assault had existed but had been erased in the normal course of school operations. Plaintiffs moved the superior court for terminating sanctions or, in the alternative, evidentiary and issue sanctions against the district under § 2023.030. The trial court concluded the erasure of the video was the result of negligence, and not intentional wrongdoing, and denied the request for terminating sanctions. However, the court granted the request for evidentiary, issue, and monetary sanctions because it concluded that, even before the lawsuit was filed, the district should have reasonably anticipated the alleged sexual assault would result in litigation and, therefore, the district was under a duty to preserve all relevant evidence including the video. On appeal in the Court of Appeal's original jurisdiction, the district argued the trial court applied the wrong legal standard when it ruled the district had the duty to preserve the video before it was erased and, therefore, that the district was not shielded from sanctions by the safe-harbor provision of section 2023.030(f).
Ruling:	On appeal, the court concluded that the record did not support the trial court's ruling that, at the time the video was erased, the district was on notice that litigation about Doe's alleged sexual assault was reasonably foreseeable. The court granted the district's petition and directed the trial court to vacate its sanctions order and reconsider its ruling. [Holding: The safe harbor provision of § 2023.030(f) shields a party from sanctions for the spoliations of e-evidence only if the evidence was altered or destroyed when the party was not under a duty to preserve the evidence, and the duty to preserve relevant evidence is

	triggered <u>when the party is objectively on notice that litigation is reasonably foreseeable</u> (i.e. probable and likely to arise from an incident or dispute and not a mere possibility).

SOCIAL SERVICES/CHILD CUSTODY

Casey N. v. County of Orange (Docket no. G059917; 4th D.C.A.)	12/23/22
[dependency proceeding; civil rights; Title 42 § 1983; qualified immunity; *Monell*]	
Issue:	*Whether the judgment against the County employees should be reversed because it was not supported by substantial evidence (the jury had previously found the defendants had deliberately or with reckless disregard fabricated or misrepresented evidence or omitted known exculpatory evidence?*
Summary Rule:	**The jury verdict was supported by ample evidence establishing the social workers presented deceptive evidence, lied to the Court, hid exculpatory evidence, and that the County has a policy and practice of failing to train social workers' on these issues which had been raised in another case and been the source of liability.**
Facts:	The daughter of Casey N. and Scott P. alleged that Scott had sexually abused her numerous times and in numerous ways. Casey N. reported the abuse to County social workers. One social worked believed the abuse took placed but was replaced by another social worker who adamantly denied that the abuse took place and accused Casey N. of emotionally abusing the daughter to influence the custody determination in the dissolution action. The daughter was removed from Casey N. and placed in foster care. Casey N. sued the County and two social workers for violating her civil rights in connection with the removal of her daughter. A jury trial was held in 2020, finding in Casey N.'s favor and awarding damages (the two phases of the trial are discussed below). <u>*Phase 1 Facts (employee/County liability)*:</u> The jury found two social workers liable under USC § 1983 for making false representations to the Court about the alleged emotional abuse and withholding from the Court evidence of the sexual abuse. Casey N. sued the employees and County under § 1983 for violating her constitutional right to familial association by deceiving the juvenile court into removing the minor from custody. <u>Phase 2 (*Monell*):</u> The jury found the County liable under *Monell* and awarded $1,248,000 in compensatory damages plus $5,700 in punitive damages against both social workers.
Ruling:	The Court of Appeal affirmed a jury verdict in favor of Casey N and which awarded compensatory damages (against County) and punitive damages (against the individual social workers).

	Affirmed: (1) the trial court did not err by failing to determine the materiality of allegedly fabricated or misrepresented evidence or omitted exculpatory evidence before giving the case to the jury for deliberation; (2) the jury's verdict against the employees was supported by substantial evidence; (3) the employees were not entitled to qualified immunity; and (4) the jury's verdict against the County under *Monell* was supported by substantial evidence.
In re M.C.	2/6/23
[Solano County social services; clear and convincing evidence; abuse of discretion]	
Issue:	*Whether the County's social services dept. established by clear and convincing evidence that placing Minor with Father "would be detrimental to the safety, protection, or physical or emotional well-being of the child." Also, whether the juvenile court abused its discretion by ordering Father to engage in reunification services recommended by the dept.*
Summary Rule:	***One parent cannot be judged to present a danger to his/her child without clear and convincing evidence of harmful conduct by that same parent. It is not enough to determine that a father should have known that the mother was engaging in drug use.***
Facts:	Mother gave birth to Minor's half-brother and tested positive for drugs at the hospital, triggering a referral to the Solano County Social Services Department. Mother abandoned the newborn at the hospital and eloped with another man. Three-year-old Minor's whereabouts were unknown. The Department contacted Father, a truck driver, then in Michigan. Father explained that Mother left Minor in the care of a friend while she went to give birth to the infant. The Department confirmed that Minor was safe in the friend's custody. Father had cared for Minor for several months in 2019 when Mother was using methamphetamines and alcohol. Mother "got sober" in 2020. The Department filed a petition alleging Minor was at substantial risk of serious harm due to Mother's ongoing substance abuse and that Father knew or should have known Mother was continuing to use drugs but left Minor with her "without a safety plan." Father entered a denial.
Ruling:	The court of appeal affirmed orders regarding detention and jurisdiction but reversed the disposition order. The Department must establish by clear and convincing evidence that placing Minor with Father "would be detrimental to the safety, protection, or physical or emotional well-being of the child," The record lacked substantial evidence to support such a finding. The juvenile court also abused its discretion by ordering Father to engage in recommended reunification services—substance abuse testing, completion of a parenting class, and participation in a parent-partner program. The record lacks any evidence that Father uses or abuses narcotics or alcohol. Father co-parented three children of his prior marriage, all now adults.

PUBLIC EMPLOYEE RIGHTS AND TERMINATION

Jesse Griego v. City of Barstow (Docket no. B322638; 2nd D.C.A.)	1/3/23
[administrative decisions/abuse of discretion; disciplinary actions/penalties/terminations of agency employees; *Miller v. Eisenhower*; *Byrd v. Savage*; *Skelly v. State Personnel Bd.*]	
Issue:	Whether the trial court erred when it remanded Plaintiff's case to the City with instructions to reconsider Plaintiff's discipline.
Summary Rule:	**The Superior Court may only overturn a municipal decision where the City abused its discretion which is construed as board. Here, the City utilized its discretion to terminate based on the allegations against Griego. Its "use" of discretion did not amount to "abuse" of discretion so remand was not warranted.**
Facts:	Plaintiff was a captain in the Barstow Fire Protection District from 1997 to 2018. In 2017, Griego was reprimanded from coaching a youth sports team while on-duty. Griego was also accused of having an inappropriate relationship with a female high school student. Griego was also charged with criminal possession of a weapon in one incident outside his home and later was the subject of a TRO filed by his ex-wife in response to which he falsely claimed that he possessed no weapons. The City of Barstow fired him for criminal and perjurious acts, for willful refusal to comply with official orders, and for setting a poor professional example for his subordinates, as well as for other charges no longer at issue. Plaintiff appealed through nonbinding advisory arbitration. Plaintiff filed a petition for writ of administrative mandate in the superior court. The superior court, exercising its independent judgment as to the City's findings of misconduct, granted the writ in part and denied it in part. The Court held that the City abused its discretion in terminating Griego based on the three sustained allegations and remanded the City to redetermine Griego's discipline.
Ruling:	The Appellate Court reversed trial court and affirmed City's decision to terminate. The court held that the evidence demonstrated a lack of credibility, reliability, and trustworthiness and were a reasonable basis for the City's decision to sustain termination. Judgment and costs were awarded to the City.
Brian Bresnahan v. City of St. Peters [US Court of Appeals for the Eighth Circuit; No. 21-3910]	1/19/23
[First Amendment; policy department; Black Lives Matter]	
Issue:	Whether the City's chief of police and city administrator are liable under § 1983 for violating plaintiff's First Amendment rights when he was terminated for posting content to a message group.
Summary Rule:	**Where off-duty speech involving a matter of public concern is mixed with work-related speech in a messaging group amongst coworkers, an employee states a viable claim when he is terminated for posting speech deemed offensive in that group and related to the main subject.**

Facts:	Plaintiff alleged that Police officers in the St. Peters Police Department created a text messaging group to update each other about local Black Lives Matter (BLM) protests. Although the text group was intended for official purposes, specifically for officers to share up-to-date information about local BLM protests, they also shared "unrelated" content. Plaintiff sent the group a video from an animated sitcom called "Paradise PD." It showed a black police officer who accidentally shot himself with a media headline stating, "another innocent black man shot by a cop." According to Plaintiff, the video was satire and a parody of the BLM protests. The next morning, the Police Chief berated Plaintiff, ordered him to resign, and told him that if he refused, Plaintiff would open an investigation and recommend to City Administrator that Plaintiff be fired. Plaintiff resigned and filed a lawsuit under Section 1983, alleging that he was retaliated against for exercising his First Amendment right to free speech. Defendants moved to dismiss, and the district court granted their motion on the argument that the complaint filed to include the context and details of the allegedly protected speech and therefore plaintiff had failed to state a claim.
Ruling:	The Eighth Circuit reversed and remanded. The court reasoned that based on the allegations in the complaint, the group text was used to send both work-related and unrelated messages, and Plaintiff's video was such an unrelated message which arguably commented upon matters of public concern and therefore could have been protected speech. The court explained that while Plaintiff has met the threshold showing required to advance his First Amendment claim, the court expressed no opinion on the merits of that claim.

HECK V. HUMPHREY DEFENSE TO CIVIL CLAIMS

Francisco Duarte, et al., v. City of Stockton, et al., No. 21-16929 (9th Cir. 2023)	2/16/23
[42 U.S.C. § 1983; *Heck v. Humphrey*; definition of 'persons' when filing under § 1983]	
Issue:	*(1)Whether plaintiff's false arrest and excessive force claims were barred by Heck v. Humphrey; and (2) whether the district court's rejection of plaintiff's municipal liability claims (as improperly filed against defendants who were not 'persons') was proper.*
Summary Rule:	***Heck*** **does not apply in a case where criminal charges are dismissed following a "no contest" plea which is held in abeyance and ultimately dismissed**.
Facts:	Plaintiff Duarte was standing with a group of friends in the vicinity of Stockton PD officers who were taking another person into custody. Officers told Duarte to back up, which he may not have heard, and then took him to the ground, attempted to handcuff him, stuck him multiple times with a baton breaking a bone, and then finalized the arrest. After he was criminally charged, Plaintiff pled "no contest" or "nolo contendere" to willfully resisting, obstructing, and delaying a peace officer in violation of section 148(a)(1) of the California Penal Code. Although Plaintiff entered the equivalent of a guilty plea, the state court never

	entered an order finding him guilty of the charge to which he pleaded. Instead, the court ordered that its acceptance of Plaintiff's plea would be "held in abeyance," pending his completion of ten hours of community service and obedience of all laws. After the six months of abeyance elapsed, the charges against Plaintiff were "dismissed" in the "interest of justice" on the prosecutor's motion. Plaintiff brought an action pursuant to 42 U.S.C. Section 1983 for claims of excessive force and false arrest against the officers. The district court held that Plaintiff's false arrest and excessive force claims were barred by *Heck v. Humphrey* based on the "no contest" plea.
Ruling:	The Ninth Circuit reversed the district court's dismissal of Plaintiff's false arrest and municipal liability claims, as well as the district court's adverse summary judgment on Plaintiff's excessive force claim, and remanded for further proceedings. The panel held that the *Heck* bar does not apply in a situation where criminal charges are dismissed after entry of a plea that was held in abeyance pending the defendant's compliance with certain conditions. The panel further held that the district court erred in dismissing Plaintiff's municipal liability claims against the City of Stockton and Stockton Police Department. Longstanding precedent establishes that both California municipalities and police departments are **"persons"** amenable to suit under Section 1983.