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Authority for California Cities Excess Liability
Litigation Review and Update
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EXCESSIVE FORCE

Villalobos v. City of Santa Maria **11/16/22**
(1) battery; (2) negligence – wrongful death; (3) negligent hiring, supervision, and training; and (4) violation of the Bane Act (Civ. Code, § 52.1).
Docket No.: B318061 (2nd D.C.A.)

Summary Rules: ***Summary Judge was appropriate where use of force resulting in fatality was justified under the circumstances.***

Ruling: *Question on Appeal: Whether the trial court erred in granting summary judgment, finding that the officers use of force was negligent or unreasonable.*

Second Appellate District affirmed finding that no reasonable trier of fact could find that the officers/City were negligent or that their conduct was not reasonable.

Facts: This case arises out of a police shooting that resulted in the death of decedent. Decedent's parents filed a complaint against police officers involved in the shooting (the officers) and their employer, the City. The four causes of action were: (1) battery; (2) negligence – wrongful death; (3) negligent hiring, supervision, and training; and (4) violation of the Bane Act. Decedent's father appealed from the judgment entered after the trial court granted Respondents' motion for summary judgment.

The court explained that the officers patiently waited approximately 40 minutes before resorting to less-than-lethal weapons. The negotiations with the decedent had been futile. He was armed with a deadly weapon, was behaving erratically, and was also suicidal. He presented an immediate threat of physical harm to himself. At any time, he could have used the knife to inflict a grievous injury upon himself. Instead of calming down, he appeared to be growing more agitated. There was no legitimate reason to continue a hopeless standoff that had disrupted the flow of traffic and was consuming police resources. Thus, because Plaintiff did not carry his burden "to make a *prima facie* showing of the existence of a triable issue of material fact" whether the officers' use of force was negligent or unreasonable the trial court properly granted Respondents' motion for summary judgment.

GENERAL CLAIMS

T.L. v. City Ambulance of Eureka **9/29/22**
[general duty of care; *Hernandez*; mental health holds, § 5585]
Docket No. A162508 (1st D.C.A.)

Summary Rules: ***A plaintiff's claims may survive summary judgment where the contributory negligence, or intentional conduct, of the plaintiff is the main cause of injury, where there is still a legitimate question on whether defendants actions contributed to the injury.***

Ruling: *Question on Appeal: Whether defendants had no duty to "prevent plaintiff from engaging in impulsive, reckless, irrational and self-harming conduct," relying on* Hernandez v. KWPH Enterprises (2004) 116 Cal.App.4th 170)*?*

Reversed. Court of appeal reinstates claims by a plaintiff, a psychiatric patient, who was injured when she jumped from a moving ambulance.

The defendants, like any other provider of medical services or medical support services, owe a general duty of care to those to whom they provide such services. While the professional standard of care does not, as a matter of law, require the use of restraints during the transport of any patient subject to a 5585 hold, the court should address T.L.'s claims that the gurney should have had shoulder harnesses and that the rear door of the ambulance should have been locked.

Facts: While T.L. was being transported by ambulance from a crisis stabilization unit to an inpatient psychiatric facility, she suddenly unbuckled the belts strapping her to the semi-reclined gurney and stepped out of the back of the moving ambulance, sustaining serious injuries. At the stabilization unit, she had been placed on a "section 5585" 72-hour mental health hold. (Welf. & Inst. Code 5585) However, she was calm and cooperative while at the unit, was never diagnosed as being a danger to herself, and was transported by ambulance to and from a local hospital for medical clearance, without incident. Her attending psychiatrist determined she was stable for transport to the in-patient facility.

The trial court rejected T.L.'s suit on summary judgment, finding that the defendants owed no duty to prevent her from engaging in impulsive, reckless, irrational, and self-harming conduct.

INVERSE CONDEMNATION

Today's IV, Inc. v. L.A. County Metropolitan Transportation Auth **10/5/22**
[inverse condemnation; nuisance]
Docket No.: B306197 (2nd D.C.A.)

Summary Rules: ***A public entity is no liable for inverse condemnation and/or nuisance where there is no proof of direct, substantial, damages which is peculiar to the property itself. Construction noise broadly heard in an area is no sufficient to meet the standard.***

Ruling: *Question on Appeal: Whether respondents (L.A. Co. Metro Transportation Authority and Regional Constructors) were "unreasonable" in their construction of an underground subway line in downtown L.A.—and liable under theories of nuisance and inverse condemnation.*

The Second Appellate District affirmed the trial court's ruling finding no liability in Plaintiff's civil complaint against Respondents Los Angeles County Metropolitan Transportation Authority and Regional Connector Constructors for their "unreasonable" construction of an underground subway line in downtown Los Angeles.

The court explained that the first two circumstances that justify an inverse condemnation claim are not applicable here, as Appellant does not contend that its property has been physically invaded or physically damaged. Thus, Appellant necessarily relies upon the intangible intrusion theory. To recover under this theory, Appellant must be able to establish its property suffered from an intangible intrusion burdening the property in a way that is direct, substantial, and peculiar to the property itself.

Facts: Appellant Today's IV filed a civil complaint against respondents Los Angeles County Metropolitan Transportation Authority and Regional Connector Constructors for their "unreasonable" construction of an underground subway line in downtown Los Angeles, which affected the

Westin Bonaventure Hotel and Suites (the Bonaventure), owned by Today's IV.

Today's IV alleged claims for nuisance and inverse condemnation due to 1) respondents' use of the cut-and-cover construction method instead of the tunnel boring machine method; 2) construction work during nights and weekends, which was particularly harmful to the Bonaventure's operation as a hotel; 3) violation of certain noise limits; and 4) interference with access to the Bonaventure. Today's IV alleged lost contracts, including a $3.3 million airline contract, and loss of business. It requested compensatory and punitive damages from Respondents.

The trial court found no liability and entered judgment in favor of Respondents.

LAND USE REGULATION

Sheetz v. County of El Dorado **10/19/22**
[land use regulation]

Issue: Whether the traffic impact mitigation fee (TIM fee) imposed by El Dorado County as a condition of issuing a building permit for the construction of a single-family residence on a property in Placerville is invalid under both the Mitigation Fee Act Gov. Code, § 66000 et seq.)1and the takings clause of the United States constitution, namely the special application of the "unconstitutional conditions doctrine" in the context of land-use exactions established in *Nollan v. California Coastal Comm'n*(1987) 483 U.S. 825 (*Nollan*) and *Dolan v. City of Tigard* (1994) 512 U.S. 374 (*Dolan*).

Ruling: Affirmed.

Facts: Plaintiff challenged a traffic impact mitigation fee imposed by defendant El Dorado County as a condition of issuing him a building permit for the construction of a single-family residence on his property in Placerville.

Notes: Sheetz appealed the judgment entered after the trial court sustained the County's demurrer without leave to amend and denied his verified petition for writ of mandate. To the Court of Appeal, he contended

reversal was required because the TIM fee was invalid under both the Mitigation Fee Act and the takings clause of the United States constitution, namely the special application of the "unconstitutional conditions doctrine" in the context of land-use exactions established in *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987) *and Dolan v. City of Tigard*, 512 U.S. 374 (1994).

SECTION 998 OFFERS

K.M. v. Grossmont Union High School Dist. **10/25/22**
[998 offers; Civil Code § 51.9, § 340.1; Assembly Bill No. 218; childhood sexual abuse;

Issue: *Whether plaintiffs were entitled to seek the newly available treble damages, and whether trial court erred by sustaining District's demurrers to their sexual harassment claims, refusing admission of certain evidence, and including Plaintiffs in the CACI 406 instruction to their prejudice.*

Ruling: Appeals court rejected each argument. The Court of Appeal concluded the treble damages provision in Code of Civil Procedure section 340.1 was neither retroactive, nor applicable to public school districts. The Court further concluded Plaintiffs did not establish they could pursue sexual harassment claims against the District under Civil Code section 51.9. The parties do not establish reversible error on the other asserted grounds, either. Therefore, the Court affirmed the trial court's judgment and post-judgment orders.

Facts: Plaintiffs sued the school district ("District") for negligence based on sexual abuse by their high school teacher. They also asserted sexual harassment claims under CA Civ Code section 51.9, to which District successfully demurred. District made section 998 offers, which Plaintiffs did not accept. The case proceeded to a jury trial, where the trial court excluded certain evidence and mistakenly included Plaintiffs in an oral jury instruction regarding apportionment of fault. Plaintiffs prevailed, and the jury assigned 60 percent of fault to the teacher, and 40 percent to the District, with resulting damage awards lower than the section 998 offers. The parties moved to tax each other's costs. The trial court ruled the offers were invalid, granted Plaintiffs' motion, and denied District's motion in pertinent part. Both parties appealed.

Plaintiffs sought a new trial, contending they were entitled to pursue treble damages, and that the trial court erred by sustaining the demurrers to their sexual harassment claims, excluding certain evidence, and giving the erroneous oral jury instruction.

The District argued the trial court wrongly determined its Code of Civil Procedure section 998 offers were invalid.

Trujillo v. City of L.A. **10/27/22**
[998 offer issue on appeal; dangerous condition/negligent maintenance of sidewalk – trial court]

Issue:	*Whether 998 offer automatically expires when a trial court orally grants the offeror's summary judgment motion.*
Ruling:	The Second Appellate District affirmed. The trial court properly concluded that City's 998 offer expired by the time plaintiff purported to accept it. Like any other contractual offer, a 998 is not accepted until that acceptance is communicated to the offeror. Here, because plaintiff did not communicate her acceptance of City's 998 offer until *after* the trial court orally granted MSJ to City, the acceptance wasn't effective, as there was no longer an operative 998 offer to accept.
Facts:	Plaintiff sued the City for negligence in maintaining the City-owned sidewalk in a dangerous condition. The City moved for summary judgment on the ground that the sidewalk was not a "dangerous condition." Although the hearing was not transcribed, the trial court concluded the hearing by orally granting the City's motion for summary judgment. Just four minutes after the summary judgment hearing concluded, Plaintiff's counsel sent the City an email purporting to accept the City's 998 offer. The City objected to Plaintiff's attempt to accept its 998 offer after the trial court had ruled on its summary judgment motion. The trial court entered judgment for the City, implicitly ruling that Plaintiff's acceptance of the City's 998 offer was inoperative. Plaintiff filed a timely notice of appeal of the May 7, 2021 judgment.
Notes:	Under the statute, offers are good for 30 days or until the start of trial, unless revoked.

4th AMENDMENT SEARCH

ANDRE VERDUN, ET AL V. CITY OF SAN DIEGO, ET AL **10/26/22**
[42 U.S.C. § 1983; class action; chalking tires; Fourth Amendment]

Issue: *Whether tire chalking constitutes a "search" under the Fourth Amendment or falls within the administrative search exception to the warrant requirement.*

Ruling: The Ninth Circuit affirmed the district court's summary judgment for Defendants and held that municipalities are not required to obtain warrants before chalking tires as part of enforcing time limits on city parking spots.

Facts: Plaintiffs brought a putative class action under 42 U.S.C. Section 1983 alleging that tire chalking violated the Fourth Amendment. The Ninth Circuit affirmed the district court's summary judgment for Defendants and held that municipalities are not required to obtain warrants before chalking tires as part of enforcing time limits on city parking spots. The panel held that even assuming the temporary dusting of chalk on a tire constitutes a Fourth Amendment "search," it falls within the administrative search exception to the warrant requirement. Complementing a broader program of traffic control, tire chalking is reasonable in its scope and manner of execution. It is not used for general crime control purposes. And its intrusion on personal liberty is de minimis at most.

COURT'S DESCRIPTION: Civil Rights. The panel affirmed the district court's summary judgment for defendants and held that municipalities are not required to obtain warrants before chalking tires as part of enforcing time limits on city parking spots. Plaintiffs brought a putative class action under 42 U.S.C. § 1983 alleging that tire chalking violated the Fourth Amendment. The panel held that even assuming the temporary dusting of chalk on a tire constitutes a Fourth Amendment "search," it falls within the administrative search exception to the warrant requirement. Complementing a broader program of traffic control, tire chalking is reasonable in its scope and manner of execution. It is not used for general crime control purposes. And its intrusion on personal liberty is de minimis at most. Dissenting, Judge Bumatay stated that the administrative search exception is still the exception. It is no doubt true that law enforcement, traffic enforcement, and almost any

other government function would be more efficient and more convenient if officers could skirt the Fourth Amendment. But neither the original understanding of the Fourth Amendment nor Supreme Court precedent permit a policy of indiscriminate searches for such an ordinary government enterprise. While chalking tires may not constitute the greatest affront to personal liberty, the court's duty is to safeguard against even "stealthy encroachments" on the Fourth Amendment. Thus, Judge Bumatay would not expand Fourth Amendment exceptions to accommodate the City's chalking program and would hold that it is unconstitutional

DISABILITY DISCRIMINATION

Price v. Victor Valley Union High School District **11/10/22**
[FEHA; Gov. Code § 12940 et seq.2; disability discrimination]
Docket no.: E076784 (4th D.C.A.)

Summary Rules: ***A triable issue of fact is raised where a temporary employee, with an undisclosed disability but who can perform the duties of a job, is not hired for a full-time position with the same duties because she disclosed a disability and failed a fitness-for-duty examination.***

Ruling: *Question on Appeal: Whether or not the trial court erroneously granted summary judgment to the District in that there are triable issues of fact concerning her first claim for disability discrimination.*

Appellate court determined there were triable issues of fact on plaintiff's first claim for disability discrimination, but disagreed as to the rest of her claims.

Facts: La Vonya Price worked intermittently as a part-time substitute special education aide at the District before applying for a full-time position. She received an offer for a full-time position that was contingent on passing a physical exam. When she failed the physical exam for not being "medically suitable for the position," the District rescinded the offer, terminated her as a substitute, and disqualified her from any future employment with the District.

Price sued the District for retaliation and various disability-related claims, but the trial court granted summary judgment to the District. Price

appealed, contending the trial court erroneously granted summary judgment to the District because there were triable issues of fact concerning all of her claims.

Notes: *Procedural History*:
Price first sued the District for seven claims under the Fair Employment and Housing Act (FEHA; Gov. Code § 12940 et seq.2). After the District's successful demurrers (which Price does not challenge on appeal), only five of Price's FEHA claims remained: (1) disability discrimination; (2) failure to accommodate a disability; (3) failure to engage in the interactive process; (4) retaliation; and (5) failure to prevent discrimination and retaliation. The trial court granted the District's motion for summary judgment and entered judgment for the District.

MANDATORY DUTY

Thompson v. County of Los Angeles **10/20/22**
[Government Code section 815.6; mandatory vs. discretionary duty; collateral contacts]
Docket No.: B307969 & B311569 (2nd D.C.A.)

Summary Rules: ***A mandatory duty to take specific action where a public entity has discretion on numerous courses of action, i.e. individuals to contract during an investigation.***

Ruling: *Question on Appeal: Whether the trial court properly found Thompson did not allege breach of a mandatory duty sufficient to overcome immunity?*

The court held that the trial court did not abuse its discretion by denying Plaintiff leave to amend. Plaintiff had the burden to establish a reasonable possibility she could amend the complaint to state a claim. She says the determination of whether the collateral contacts provision created a mandatory duty is a factual issue and she "can likely identify more" collateral contacts. However, the court explained that the collateral contacts provision gives social workers discretion to determine which contacts are necessary. As a matter of law, it does not create a mandatory duty.

Facts: Plaintiff sued the County for removing her son, J.G., from her care. The County demurred. The trial court sustained the demurrer without leave to

amend. It found the County was immune from suit and Plaintiff failed to allege a mandatory duty sufficient to overcome immunity. Plaintiff appealed and alleged a mandatory duty and, in the alternative, the court should have allowed her to amend her complaint. The court later denied Plaintiff's motion to tax expert witness fees.

[*The County must exercise discretion to determine what constitutes a "necessary" collateral contact. In other words, the County must make contacts, generally, but the decision to make contact with a particular person is discretionary. This is logical because the universe of people with "knowledge" of a child's "condition" is vast. It could include a child's parents, siblings, grandparents, aunts, uncles, cousins, school bus drivers, teachers, principals, school nurses, classmates, friends, friends' parents, neighbors, police officers, doctors, and dentists, to name a few. When the County decides whom to deem a necessary contact, it balances various interests: child safety, family preservation, and limited time and resources. This balancing requires the County to exercise discretion. The provision does not create a mandatory duty to contact particular individuals.]