



AGENDA

LEGEND: A - Action may be taken
I - Information
1 - Included
2 - Handout
3 - Separate
4 - Verbal

JPA: ACCEL CLAIMS COMMITTEE MEETING

DATE/TIME: Wednesday, September 27, 2023 at 10:00 AM

LOCATION: Teleconference

Link: <https://alliantinsurance.zoom.us/j/99711740783?pwd=czJCd1pUNmNTdENoK3daOGc0bDFWZz09>

Meeting ID: 997 1174 0783

Passcode: 909100

Dial: (669) 900-6833

In accordance with the requirements of the Brown Act, notice of this meeting must be posted in publicly accessible places, 72 hours in advance of the meeting, at the office of ACCEL's Secretary.

Per Government Code section 54954.2, persons requesting disability-related modifications or accommodations, including auxiliary aids or services in order to participate in the meeting, are requested to contact Alliant Insurance Services at (415) 403-1400, 24 hours in advance of the meeting. Access to some buildings may require routine provision of identification to building security. However, ACCEL does not require any member of the public to register his or her name, or to provide other information, as a condition to attendance at any public meeting and will not inquire of building security concerning information so provided. See Government Code section 54953.3.

- MEMBER** • **City of Anaheim**, 201 South Anaheim Blvd., Suite 503, Anaheim, CA 92805
LOCATIONS • **City of Bakersfield**, 1600 Truxtun Ave., 4th Floor, Bakersfield, CA 93301
VIA TELE - • **City of Ontario**, 200 North Cherry Ave., Ontario, CA 91764
CONFERENCE • **City of Santa Cruz**, 1200 Pacific Ave., Suite 290, Santa Cruz, CA 95060
• **City of Santa Monica**, 1685 Main Street, Room 131, Santa Monica, CA 90401

PAGE

A. CALL TO ORDER

B. CONSENT CALENDAR

2-6

- 1 **1. Approval of Minutes for the August 30, 2023 Claims Committee Meeting** (A)
The Committee will review these minutes and will take action to approve or give direction.

C. REPORTS

1. CLAIMS COMMITTEE'S REPORT

7-17

- 1 a) **Litigation Update** (I)
George Hills will provide the Committee a litigation update.
- 3 b) **CLOSED SESSION – Pursuant to Gov't Code 54956.95** (A)
Members will review the following Closed Session items and may take action or give direction.
- i. Committee Review – ACCEL Open Loss Run
 - ii. George Hills Estimated Loss Payments

RECONVENE - DISPOSITION OF CLOSED SESSION ITEMS

D. PUBLIC COMMENTS

- 4 *The public is invited at this point to address the Committee on issues of interest to them.* (I)

ADJOURNMENT



**MINUTES OF THE
ACCEL CLAIMS COMMITTEE MEETING
Wednesday, August 30, 2023 at 9:30 AM**

**LOCATION:
TELECONFERENCE**

Link: <https://alliantinsurance.zoom.us/j/94840690136?pwd=Vk1PUVBBSG96a0NndmRUbnFOTGRQZz09>

Meeting ID: 948 4069 0136

Passcode: 766364

Dial: (669) 900-6833

Item No. B.1
Claims Committee
September 27, 2023

MEMBERS PRESENT:

Tracey Matthews, City of Anaheim
Jena Covey, City of Bakersfield (*left at 10:44 AM*)
Numeya Williams, City of Ontario Alternate
Ross Brandon, City of Santa Cruz
Oles Gordeev, City of Santa Monica (*left at 10:48 AM*)

MEMBERS ABSENT:

None

GUESTS AND CONSULTANTS:

Betsy McClinton, City of Burbank
Ben Oram, George Hills Company
David Tratus, George Hills Company
Conor Boughey, Alliant Insurance Services
Lorissa Huey, Alliant Insurance Services

A. CALL TO ORDER

Tracey Matthews called the meeting to order at 9:31 AM.

B. CONSENT CALENDAR

B1. Approval of Minutes for the May 30, 2023 Claims Committee Meeting

A motion was made to approve the consent calendar.

MOTION: Jena Covey **SECOND:** Ross Brandon **MOTION CARRIED**



	Tracey Matthews	Jena Covey	Numeya Williams	Ross Brandon	Oles Gordeev
Aye	X	X	X	X	X
Nay					
Abstain					

C. REPORTS

C1. CLAIMS COMMITTEE'S REPORT

C1a. Election of Claims Committee Chair

Lorissa Huey reported that every year the Claims Committee annually elects a Committee Chair.

A motion was to elect Tracey Matthews, City of Anaheim as the Claims Committee Chair.

MOTION: Jena Covey **SECOND:** Oles Gordeev **MOTION CARRIED**

	Tracey Matthews	Jena Covey	Numeya Williams	Ross Brandon	Oles Gordeev
Aye		X	X	X	X
Nay					
Abstain	X				

C1b. ACCEL's Claims Auditor Renewal Contract

Lorissa Huey reminded the Claims Committee that at the June 2023 Board Meeting, direction was given to the Program Administrators to work with Rob Powers, ACCEL's Claims Auditor on a new renewal contract for a duration of three years at a flat rate. This Service Provider falls under the purview of the Claims Committee.

Included in the agenda packet, Rob provided a memo and draft new contract with the same terms and conditions.

A motion was made to make a recommendation to the Board at the October 2023 Board Meeting to enter into the new contract.



MOTION: Oles Gordeev **SECOND:** Jena Covey **MOTION CARRIED**

	Tracey Matthews	Jena Covey	Numeya Williams	Ross Brandon	Oles Gordeev
Aye	X	X	X	X	X
Nay					
Abstain					

C1c. Proposed Changes: ACCEL Claims Reporting and Handling Policy and Procedure

Alliant reported that an Excess Insurer on the ACCEL Excess Liability Program has added more criteria to its claims reporting requirements. Included in the agenda packet were proposed changes to the ACCEL Claims Reporting and Handling Policy and Procedure. ACCEL and its Members should comply with both ACCEL and Excess Insurer reporting requirements.

A motion was made to make a recommendation to the Board to adopt the proposed changes, subject to 1) changing from 30 days to 60 days for any claim with an assigned trial date, and 2) moving that statement at the bottom of the list in Section IV. 1. B.

MOTION: Ross Brandon **SECOND:** Oles Gordeev **MOTION CARRIED**

	Tracey Matthews	Jena Covey	Numeya Williams	Ross Brandon	Oles Gordeev
Aye	X	X	X	X	X
Nay					
Abstain					

C1d. Member Attorney Rates

Conor Boughey reported that ACCEL’s Claims Handling Policy and Procedure requires a Member to notify the Claims Committee (CC) when defense fees are in excess of \$400 per hour.

The City of Bakersfield has submitted a letter for 2023 because ACCEL has requested the city to submit a letter annually.

The City of Burbank has submitted a letter for the first time. Betsy McClinton, City of Burbank was present on the call to address any questions the CC had.



Direction was given to ACCEL to submit a letter to the City of Burbank stating it accepts the letter from the City as outlined in the agenda packet for FY 23-24 and request that it is filed annually. The ACCEL letter will be signed by the Program Administrators and the Claims Committee Chair carbon copied. The Committee also reviewed the City of Bakersfield’s letter and considers it received and filed.

C1e. Draft Service Provider Evaluations – Claims Administrators

Conor Boughey reported that the Board gave direction to the Claims Committee to create new metrics for the Claims Administrators Service Provider Evaluations. The Board decided to only conduct annual Service Provider Evaluations for the Claims Administrators, George Hills and Program Administrators, Alliant. There will be time allocated on the October Board Meeting’s agenda for the Board to complete.

Included in the agenda packet were two formats of an evaluation that the Committee may consider. The first one was drafted by the Program Administrators and had a list of questions with open forum for the answers. The second one was a sample Service Provider Evaluation that the City of Anaheim uses.

Direction was given to use the sample Service Provider Evaluation from the City of Anaheim because the Committee likes the idea of having a numerical value or a letter grade, and incorporate some of the questions from the open form format that the Program Administrators created. Also, to include the Scope of Work of George Hills’ contact when the October Board Meeting Agenda Packet is distributed.

C1f. CLOSED SESSION – Pursuant to Gov’t Code 54956.95

A motion was made to enter into Closed Session at 10:21 AM.

MOTION: Jena Covey **SECOND:** Oles Gordeev **MOTION CARRIED**

	Tracey Matthews	Jena Covey	Numeya Williams	Ross Brandon	Oles Gordeev
Aye	X	X	X	X	X
Nay					
Abstain					



A motion was made to come out of Closed Session at 10:56 AM

MOTION: Ross Brandon **SECOND:** Numeya Williams **MOTION CARRIED**

	Tracey Matthews	Jena Covey	Numeya Williams	Ross Brandon	Oles Gordeev
Aye	X		X	X	
Nay					
Abstain					

Conor Boughey reported out of closed session that there is nothing to report.

D. PUBLIC COMMENTS

ADJOURNMENT

The meeting was adjourned at 10:57 AM.

DRAFT



Item No. C.1.a
Claims Committee
September 27, 2023

LITIGATION UPDATE

ISSUE: At today's meeting, Ben Oram, ACCEL Litigation Manager will provide another update because the Committee requested these to be provided quarterly.

RECOMMENDATION: This is an information item, no action is necessary.

FISCAL IMPACT: No financial impact is expected.

BACKGROUND: The Program Administrators discussed services with ACCEL's Claims Chair, Tracey Matthews. As a result of that discussion, ACCEL requested that George Hills provide a quarterly or semiannual litigation update.

ACCEL has not previously received litigation updates as part of our litigation management services, but has received updates at strategic planning meetings.

The Litigation Update documents are posted on the ACCEL Website in the Members' Only section.

ATTACHMENT: Litigation Update from George Hills.

HAZARDOUS RECREATIONAL ACTIVITIES
&
DANGEROUS CONDITION OF PUBLIC PROPERTY

Carr v. City of Newport Beach

Docket: G061277 (Fourth Appellate District, Third Div.)

Opinion Date: August 29, 2023

Summary Rules:

- 1) **Gov. Code § 835:** Provides the basis for liability against a public entity for “dangerous conditions” on its property.
- 2) **Gov. Code § 831.7:** Immunity for public entities from liability if the plaintiff was injured while engaging in a “hazardous recreational activity.”
 - a. **Subd.(b):** Defines hazardous recreational activity” as one that creates a substantial risk or injury.
 - b. **Subd.(b)(2):** Defines “hazardous recreational activity” to include diving into water from places other than diving boards or platforms, or from places where diving is prohibited and reasonable warning is given.
- 3) **Disjunctive Clause:** The law is written in a way that offers to separate circumstances in which diving could be considered a hazardous activity, thus triggering immunity.
 - a. *Diving from any location other than a diving board or platform.*
 - b. *Diving from any place where diving is prohibited and reasonable warning has been given.*
- 4) **Gross Negligence Exception, Section 831.7, subd.(c):** An exception to immunity applies for acts of gross negligence by a public entity or employee that is the proximate cause of the injury.
- 5) **Known Dangerous Conditions:** A separate statutory exception exists if a public entity fails to guard or warn of a known dangerous condition that is not reasonably assumed to be inherently a part of the hazardous recreational activity.
- 6) **Immunity for Failure to Enforce the Law, Gov. Code § 818.2:** Public entities are generally immune from liability for injuries arising from a failure to enforce the law.

Facts:

At the core of this case is an incident that transpired on the afternoon of a holiday weekend at a location colloquially known as “Baby Beach,” situated within Newport Bay. The plaintiff, who had consumed several beers while kayaking earlier in the day, decided to dive into the water from a 20-inch-wide seawall, constructed in the 1930’s primarily for erosion control. Plaintiff struck the bottom of the shallow harbor, resulting in catastrophic spinal cord injury that rendered him quadriplegic.

Following the incident, the plaintiff filed a lawsuit against the City, asserting two causes of action: (1) dangerous condition on public property, as specified under Gov. Code § 835, and (2) failure to provide sufficient warning, pursuant to Gov. Code § 830.8. The complaint further alleged that the City was aware

that people had engaged in similar diving activities off of the seawall, thus regarding questions regarding the adequacy of warnings and signage.

Analysis and Holding

Upon review, the appeals court affirmed the lower court's summary judgment. The court appropriately applied the hazardous recreational activity immunity outlined in Gov. Code § 831.7, which effectively insulates public entities from liability in this case. The court also dismissed plaintiff's argument that the City was grossly negligent for not warning or blocking access to the groin/seawall, explaining that the risks involved were inherent to the hazardous recreational activity of diving, and the City was not grossly negligent by not taking further actions. The court emphasized that the City was immune from liability for failing to enforce laws such as local ordinances that may prohibit such activities. Despite plaintiff's contention that triable issues of fact existed, especially with regard to the City's prior knowledge of similar activities, the law clearly establishes that public entities are immune from liability for injuries stemming from hazardous recreational activities. Therefore, the appeals court upheld the City was immune from liability.

Tanner Altizer v. Coachella Valley Conservation Commission

Docket: E078037 (Fourth Appellate District, Second Div.)

Opinion Date: August 21, 2023

Summary Rules:

1. **Gov. Code § 831.7:** *This section immunizes public entities from liability for injuries “arising out of” hazardous recreational activities conducted on public property.*
 - a. **Sub(b)(1)-(3):** *Defines “hazardous recreational activity” in several ways, including activities that create a “substantial risk of injury.”*
 - b. **Subd.(b)(3):** *Specifically includes “off-road motorcycling” as a hazardous recreational activity.*
2. **Subdivision(c)(1)(A):** *Provides an exception to hazardous recreational activity immunity, known as the “failure-to-warn exception.” This does not apply if the injury was not at least partially due to the public entity's failure to warn or guard against some additional “dangerous condition.”*
3. **Section 830, Subd.(a):** *Defines what constitutes a “dangerous condition” as a condition that “creates a substantial risk of injury” when a property is used with due care.*
4. **Assumption of Risk:** *The court stated that whether an injury-producing risk is reasonably assumed as part of the activity depends on “what a reasonable participant would assume to be inherent in the activity.”*

Facts:

Plaintiff was riding his off-road motorcycle with a passenger, in an unoccupied desert area owned by the Coachella Valley Conservation (the Commission). The commission, a public entity, owns the 160-acre property in the Little Morongo Wash in Desert Hot Springs to preserve sensitive habitats. The property is intersected by several roads and trails, including an unpaved dirt portion of Ironwood Drive known as the Edison easement. About 30 feet from this easement is a dirt trail created by the installation of an underground pipeline. In 2014, to prevent vehicular traffic and illegal dumping, the Commission installed a cable fence consisting of 5/16” metal cable suspended 3.5 feet in the air, supported by posts every 15 feet.

Plaintiff, while riding at speeds of 20-25 miles per hour, did not notice the cable fence until he was approximately 10-15 feet away. Despite attempting to brake, he collided with the cable, sustaining serious

injuries that led to a two-month hospital stay. Plaintiff subsequently filed a negligence lawsuit against the Commission, alleging the creation of a dangerous condition of public property. The trial court granted summary judgment in favor of the Commission, and plaintiff appealed.

Analysis and Holding:

The court held that the Commission was immune from liability for plaintiff's injuries under § 831.7, which provides immunity to public entities for injuries resulting from "hazardous recreational activities" conducted on public property. The court found that off-road motorcycling, the activity in which plaintiff was engaged, fell under the broad definition of hazardous recreational activities as outlined under § 831.7, subdivision (b)(3). The court rejected plaintiff's argument that he was not engaged in a recreational activity at the time of the accident, stating that the statute focuses on the type of activity, not its purpose. Therefore, the court concluded that plaintiff was indeed participating in a hazardous recreational activity at the time of his injury.

Plaintiff also argued that an exception to immunity should apply in this case due to the Commission's failure to warn of a "dangerous condition" (the cable fence). The court disagreed, ruling that plaintiff was not using the property with "due care," and thus the exception did not apply. It held that the cable fence did not pose a substantial risk of danger to anyone using the property with due care and that plaintiff had assumed the inherent risks associated with off-road motorcycling, including the risk of colliding with fences. Therefore, the Commission had no duty to warn him. The court upheld the trial court's grant of summary judgment in favor of the Commission.

STATE CREATED DANGER – COVID 19

Patricia Polanco, et al v. Ralph Diaz, et al

Docket: 22-15496

Opinion Date: August 7, 2023

Judge: Friedland

Summary Rule:

A public entity may be held liable on a "state created danger" theory where the agency took affirmative steps which placed the plaintiff in more dangerous situation than otherwise would have existed. CDCR transferred known Covid-positive inmates to a prison with no covid-positive inmates and thereafter caused a substantial outbreak of Covid which lead to the death of a Correctional Sergeant from Covid-19.

Facts:

Areas of Law: Civil Procedure, Civil Rights, Constitutional Law, Health Law

High-level officials in the California prison system transferred 122 inmates from the California Institution for Men, where there was a widespread COVID-19 outbreak, to San Quentin State Prison, where there were no known cases of the virus. The transfer sparked an outbreak of COVID-19 at San Quentin that ultimately killed one prison guard and over twenty-five inmates. The guard's family members sued the prison officials, claiming that the officials violated the guard's due process rights. The officials moved to dismiss, arguing that they were entitled to qualified immunity. The district court denied the motion with respect to some of the officials, who then filed an interlocutory appeal.

Analysis and Holding:

The Ninth Circuit affirmed the district court's denial of Defendants' motion to dismiss. The panel held that based on the allegations in the complaint, Defendants were not entitled to qualified immunity. Plaintiffs sufficiently alleged a violation of the guard's substantive due process right to be free from a state-created danger, under which state actors may be liable for their roles in creating or exposing individuals to danger they otherwise would not have faced. The panel held that the unlawfulness of defendants' alleged actions was clearly established by the combination of two precedents: *L.W. v. Grubbs*, 974 F.2d 119 (9th Cir. 1992), which recognized a claim under the state-created danger doctrine arising out of a prison's disregard for the safety of a female employee who was raped after being required to work alone with an inmate known to be likely to commit a violent crime if placed alone with a woman; and *Pauluk v. Savage*, 836 F.3d 1117 (9th Cir. 2016).

CLAIMS FILING REQUIREMENTS / COMPLIANCE

A.S. (a minor) v. Palmdale School District

Docket: B318012 (Second Appellate District, Eighth Div.)

Opinion Date: August 28, 2023

Summary Rules:

1. **Gov. Code § 905:** *This section mandates that anyone seeking to recover monetary damages from a public entity must first file a claim with that entity.*
2. **Gov. Code § 910:** *Specifies the information that must be included in a claim, such as the amount claimed if it is less than \$10,000, the basis for computation, and whether the case would be a limited civil case if the amount exceeds \$10,000.*
3. **Gov. Code § 910.8:** *Requires that a public entity notify a claimant of the insufficiencies in their claim in certain circumstances.*
4. **Gov. Code § 911:** *Discusses the waiver by failure to give notice of insufficiency.*
5. **Gov. Code § 911.3:** *Discusses the waiver by failure to give notice of untimeliness*

Case Law:

- 1) ***Lowry v. Port San Luis Harbor Dist. (2020) 56 Cal.App.5th 211, 218:*** *Stated that a complaint is subject to a general demurrer if it fails to allege facts showing compliance with the claim requirement.*
- 2) ***Loehr v. Ventura County Community College Dist. (1983) 147 Cal.App.3d 1071, 1082:*** *Highlighted the essential elements of a claim as set forth in Government Code section 910.*
- 3) ***County of Los Angeles v. Superior Court (2008) 159 Cal.App.4th 353, 360:*** *Explained the substantial compliance test for Government Code section 910.*
- 4) ***Dilts v. Cantua Elementary School Dist. (1987) 189 Cal.App.3d 27, 37:*** *Established that the doctrine of substantial compliance cannot remedy the total omission of an essential element.*
- 5) ***Perez v. Golden Empire Transit Dist. (2012) 209 Cal.App.4th 1228, 1234:*** *Discussed the requirement for the public entity to advise the claimant of deficiencies or lose the right to assert noncompliance as a defense.*
- 6) ***Simms v. Bear Valley Community Healthcare Dist. (2022) 80 Cal.App.5th 391, 400–401:*** *Discussed the concept of a "claim as presented" and how it triggers a duty by the public entity.*
- 7) ***City of Stockton v. Superior Court (2007) 42 Cal.4th 730, 744–745:*** *Emphasized the primary purposes of the Government Claims Act.*
- 8) ***Olson v. Manhattan Beach Unified School Dist. (2017) 17 Cal.App.5th 1052, 1062:*** *Discussed what does not constitute a "claim as presented".*

- 9) *Santee v. Santa Clara County Office of Education (1990) 220 Cal.App.3d 702, 715–716*: Explained the required elements for an equitable estoppel.
- 10) *Hughes v. Board of Architectural Examiners (1998) 17 Cal.4th 763, 793*: Highlighted that the circumstances for an equitable estoppel against a public entity are "unusual".
- 11) *Steinhart v. County of Los Angeles (2010) 47 Cal.4th 1298, 1316*: Discussed the issue of estoppel when the claimant is represented by an attorney.

Facts:

In March 2019, an elementary teacher allegedly grabbed and twisted the arm of a student, A.S., requiring medical treatment for the injury. A.S.'s mother took immediate action by taking him to the emergency room and filing a complaint form with the school district. The complaint form was titled "COMPLAINT FORM—EMPLOYEE STUDENT ISSUE" and was the only form provided to her after she inquired about the necessary steps for filing a complaint. Despite asking both the receptionist and the assistant superintendent if any additional paperwork was required, she was told there were no other documents to complete. A lawsuit seeking monetary damages was filed on February 25, 2020, by A.S., who was then represented by legal counsel and acting through his mother as his guardian ad litem. The district responded with demurrers, objecting to the lawsuit. The trial court eventually dismissed the case, stating that A.S. and his mother had failed to file a claim in compliance with Gov. Code § 910. A.S. appealed, arguing that their complaint form substantially complied with the legal requirements and that the district was estopped from pointing out defects in the form.

Analysis and Holding:

The court held that the appellant's complaint form failed to substantially comply with the requirements set forth by the Government Code, specifically § 910. The court noted that while the form did describe the incident and injury to A.S., it did not indicate that appellant was seeking monetary damages. Even though the form contained allegations of "manhandling" and "assault and battery," and cited the need for medical treatment, it made no attempt to estimate the damages nor indicated that litigation would follow if the claims were not addressed. This was considered a crucial deficiency because the purpose of the claims requirement is not only to inform the public entity of the grievance but also to signal the possibility of litigation and damages sought.

Additionally, the court rejected the appellant's argument for equitable estoppel, which would have prevented the district from claiming the complaint form was insufficient. The appellant argued that his mother relied on the district's indications that the form was all that was required. However, the Court found this irrelevant as, upon acquiring legal counsel, the appellant should have been aware of the legal requirements for a proper claim. As such, the Court sustained the demurrer without leave to amend, effectively dismissing the appellant's case for failing to fulfill the mandatory procedural requirements for suing a public entity.

LAW ENFORCEMENT – USE OF FORCE

William Bernal, et al v. Sacramento County Sheriff's Department, et al

Docket: 22-15690

Opinion Date: July 7, 2023

Judge: James V. Selna

Areas of Law: Civil Rights, Constitutional Law

Facts:

Sacramento County Sheriffs' Deputies encountered Celia and William Bernal (collectively "the Plaintiffs") at their home during the Deputies' investigation into allegations that Plaintiffs' son planned a shooting at his school that day. During the interaction, the Deputies held Celia's arms and used a twistlock to prevent her from leaving. The Deputies also pointed a firearm at William, forcibly restrained him, and put him in handcuffs. The district court held that the Deputies did not violate the Fourth Amendment by detaining Plaintiffs even in the absence of reasonable suspicion. The district court further found that the Deputies did not use excessive force during Plaintiffs' detention and, even if they had, qualified immunity applied.

Analysis and Holding:

The Ninth Circuit affirmed in part and reversed in part the district court's summary judgment in favor of the Deputies in Plaintiffs' Section 1983 action. The panel first considered whether the initial seizure of Plaintiffs was reasonable. Because Plaintiffs were detained but not arrested, the reasonableness of their detention depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers. The panel held that the Deputies had limited authority to briefly detain and question Plaintiffs about Ryan's location due primarily to the exigencies inherent in preventing an imminent school shooting. Further, on balance, the panel concluded that the Deputies' use of force against Celia was reasonable under the circumstances. The panel concluded that the district court erred in finding that the Deputies' use of force against William was not excessive. The intrusion on William's liberty was too great in the context of detaining a non-suspect witness.

Paulette Smith v. Edward Agdeppa, et al

Docket: 20-56254

Opinion Date: August 30, 2023

Judge: Bress

Facts:

Areas of Law: Civil Procedure, Civil Rights, Constitutional Law

Two police officers were dispatched to a gym after a man reportedly threatened gym patrons and assaulted a security guard. The suspect then violently attacked the officers and refused to stop after they repeatedly deployed their tasers. One officer eventually resorted to lethal force to end the aggression. Plaintiff, the man's mother, filed this lawsuit against Defendant and the City of Los Angeles. She claimed a violation of Section 1983 based on the officer's allegedly unreasonable use of deadly force. She also sought to hold the City liable under *Monell v. Dep't of Social Services*. Plaintiff further brought wrongful death actions against the officer and the City under California law. The court concluded that Defendant was not entitled to qualified immunity. The court denied Defendant's motion for summary judgment on Plaintiff's state law claims for similar reasons. Defendant appealed.

Analysis and Holding:

The Ninth Circuit reversed. The panel held that because Defendant did not challenge the district court's determination that a reasonable juror could conclude that Defendant violated the man's Fourth Amendment right to be free from excessive force, this appeal turned solely on the second step of the qualified immunity analysis. The panel held that Defendant's use of deadly force, including his failure to give a warning that he would be using such force, did not violate clearly established law given the specific circumstances he encountered. The court wrote that there was no basis to conclude that Defendant's use of force here was obviously constitutionally excessive.

LAW ENFORCEMENT – UNLAWFUL ARREST

Kirstin Johnson, et al v. Kierstie Barr, et al

Docket: 21-16547

Opinion Date: July 6, 2023

Judge: Gould

Facts:

Areas of Law: Civil Procedure, Civil Rights

In an action brought by Plaintiff and her five minor children alleging federal and state law claims arising out of Plaintiff's arrest, the Ninth Circuit affirmed the district court's grant of summary judgment to Defendants—individual police officers and the City and County of San Francisco— on Plaintiff's federal claims based on qualified immunity; remanded to the district court Plaintiff's state law claims for false arrest and negligence; affirmed the district court's grant of summary judgment to the defendants on the remaining state law claims; and affirmed the district court's denial of the motion to recuse.

Analysis and Holding:

The panel first considered whether there was probable cause to arrest Plaintiff under the three statutes cited by Defendants. The panel held that there was a jury question whether officers had probable cause to arrest Plaintiff. Some of the bases on which the defendants attempt to claim probable cause are not supported by the record. However, Plaintiff's federal claims are still subject to qualified immunity. The court wrote that Plaintiff did not sufficiently show how her arrest violated a clearly established right to be free from an unlawful arrest when the undisputed evidence (under the probable cause analysis) presented before the district court does not show that every reasonable officer would be on notice that the actions taken by the defendants were unconstitutional. The panel vacated the district court's grant of summary judgment on Plaintiff's state law false arrest and negligence claims, which were premised on a finding that probable cause existed as a matter of law.

Kirstin Johnson, et al v. Kierstie Barr, et al

Docket: 21-16547

Opinion Date: August 18, 2023

Judge: Gould

Facts:

Areas of Law: Civil Rights, Constitutional Law

Plaintiff on behalf of herself and her five minor children, appealed the district court's grant of summary judgment in favor of the individual defendant police officers and the City and County of San Francisco ("Defendants").

Analysis and Holding:

The Ninth Circuit affirmed the district court's grant of summary judgment to Defendants—individual police officers and the City and County of San Francisco— on Plaintiff's federal claims based on qualified immunity; remanded to the district court Plaintiff's state law claims for false arrest and negligence; affirmed the district court's grant of summary judgment to Defendants on the remaining state law claims; and affirmed the district court's denial of the motion to recuse. The panel first considered whether there was probable cause to arrest Plaintiff under the three statutes cited by Defendants. The panel held that there was a jury question whether officers had probable cause to arrest Plaintiff. There were some facts, even when viewed in the light most favorable to Plaintiff, that suggest Defendants may have had probable cause to arrest Plaintiff.

However, Plaintiff's federal claims are still subject to qualified immunity. In applying the qualified immunity analysis to claims of unlawful arrest, there is a two-step inquiry: whether there was probable cause for the arrest and whether reasonable officers could disagree as to the legality of the arrest. The panel held that although a reasonable jury could find that Defendants lacked probable cause to arrest Plaintiff, Defendants were entitled to qualified immunity because, even construing all facts in Plaintiff's favor, the law did not clearly establish that probable cause was lacking.

EMPLOYMENT LAW

Brown v. City of Inglewood

Docket: B320658(Second Appellate District)

Opinion Date: June 30, 2023

Judge: Frances Rothschild

Facts:

Areas of Law: Constitutional Law, Labor & Employment Law, Personal Injury

Plaintiff sued the City and several members of the Inglewood City Council (the council), alleging that after she reported concerns about financial improprieties, the City and the individual defendants defamed and retaliated against her. She alleged causes of action for (1) defamation; (2) violation of Labor Code section 1102.5, subdivisions (b) and (c), which prohibit retaliation against an employee based on the employee reporting or refusing to participate in what the employee reasonably believes to be illegal activity by the employer (the section 1102.5 retaliation claim); and (3) intentional infliction of emotional distress (IIED), based both on the alleged retaliation and the alleged defamation. The City and the individual defendants filed a joint special motion to strike the complaint as a strategic lawsuit against public participation, or SLAPP, under the antiSLAPP statute. The court granted the motion in part but denied it as to the section 1102.5 retaliation claim and the retaliation-based IIED claim against all Defendants. Defendants appealed, arguing the court incorrectly denied the anti-SLAPP motion as to the retaliation-based claims against the individual defendants.

Analysis and Holding:

The Second Appellate District reversed the trial court's order on the Defendants' anti-SLAPP motion to the extent it denies the motion as to Plaintiff's Section 1102.5 retaliation claim against the individual Defendants and Plaintiff's retaliation-based IIED claim against the individual Defendants. In all other respects, the order regarding the anti-SLAPP motion is affirmed. The court explained that it agrees with Defendants that the section 1102.5 retaliation claim is not legally sufficient because Plaintiff is not an "employee" for the purposes of that statute.

Ronald Hittle v. City of Stockton, et al

Docket: 22-15485

Opinion Date: August 4, 2023

Judge: Korman

Facts:

Areas of Law: Civil Procedure, Civil Rights, Labor & Employment Law

Plaintiff alleged that he was terminated from his position as Fire Chief for the City of Stockton based on his religion and, specifically, his attendance at a religious leadership event.

Analysis and Holding:

The Ninth Circuit affirmed the district court's summary judgment in favor of Defendants in Plaintiff's employment discrimination action under Title VII and California's Fair Employment and Housing Act. The panel held that, in analyzing employment discrimination claims under Title VII and the California FEHA, the court may use the McDonnell Douglas burden-shifting framework, under which plaintiff must establish a prima facie case of discrimination. The burden then shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the challenged actions. Finally, the burden returns to Plaintiff to show that the proffered nondiscriminatory reason is pretextual. Alternatively, Plaintiff may prevail on summary judgment by showing direct or circumstantial evidence of discrimination.

The court explained that Plaintiff was required to show that his religion was "a motivating factor" in Defendants' decision to fire him with respect to his federal claims and that his religion was "a substantial motivating factor" with respect to his FEHA claims. The panel concluded that Plaintiff failed to present sufficient direct evidence of discriminatory animus in Defendants' statements and the City's notice of intent to remove him from City service. And Plaintiff also failed to present sufficient specific and substantial circumstantial evidence of religious animus by Defendants.

MUNICIPAL CODE ENFORCEMENT - HOMELESS***Gloria Johnson, et al v. City of Grants Pass***

Docket: 20-35752

Opinion Date: July 5, 2023

Judge: Silver

Facts:

Areas of Law: Civil Rights, Constitutional Law

The City of Grants Pass maintains ordinances that preclude homeless persons from using a blanket, a pillow, or a cardboard box for protection from the elements while sleeping within the City's limits. Three homeless individuals filed a putative class action complaint against the City, arguing a number of City ordinances were unconstitutional. The district court certified a class of "involuntarily homeless" persons and later granted partial summary judgment in favor of the class. The district court issued a permanent injunction prohibiting enforcement against the class members of some City ordinances, at certain times, in certain places. The City appealed.

Analysis and Holding:

In the amended opinion, the Ninth Circuit affirmed in part and vacated in part the district court's summary judgment and permanent injunction in favor of Plaintiffs; affirmed certification of a class of "involuntary homeless" persons; and remanded. The panel rejected the City's argument that the district court lacked jurisdiction because Plaintiffs' claims were moot or because Plaintiffs failed to identify any relief that was within a federal court's power to redress. The panel held that the district court did not err by finding Plaintiffs satisfied the requirements of Fed. R. Civ. P. 23(a) such that a class could be certified under Rule 23(b)(2). The panel affirmed the district court's ruling that the City of Grants Pass could not enforce its anticamping ordinances against homeless persons for the mere act of sleeping outside with rudimentary protection from the elements or for sleeping in their car at night when there was no other place in the City for them to go.

ISSUE PRECLUSION

Shane Love v. Aaron Villacana, et al

Docket: 20-56003

Opinion Date: July 11, 2023

Judge: Wallace

Facts:

Areas of Law: Civil Procedure, Civil Rights, Constitutional Law

In 2018, Plaintiff filed a federal Terry action against the City of Pasadena and several of its police officers seeking to recover for the death of Reginald Thomas, a father figure to Plaintiff. The Terry action, which included a section 1983 claim, was dismissed with prejudice for lack of Article III standing in 2019. Plaintiff then filed a nearly identical lawsuit in California state court, which the Defendants removed to federal court and successfully moved to dismiss based on issue preclusion.

Analysis and Holding:

The Ninth Circuit vacated the district court's dismissal of Plaintiff's Section 1983 action brought against Defendants. The panel held that a plain reading of the first district court's judgment established that Article III standing was actually litigated and decided, although erroneously. However, erroneous, unappealed judgments are still owed preclusive effect. The panel concluded that issue preclusion was available, and Plaintiff was bound by the prior standing determination. While issue preclusion was available, the panel held that the Defendants waived issue preclusion by removing the refiled case to federal court because a removing defendant voluntarily invokes and acquiesces to the federal courts and bears the burden of establishing subject-matter jurisdiction and Article III standing. Accordingly, the panel vacated and remanded to the second and current district court to determine, in the first instance, whether jurisdiction lies in the federal courts and whether Plaintiff adequately stated a claim if the Defendants pursue such an argument on remand.