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STAY REQUESTED
Case Management Conference
set for 1/30/20; Trial set for 6/29/20.

IN THE SUPREME COURT OF CALIFORNIA

PRESBYTERIAN CAMP AND CONFERENCE CENTERS, INC.,
Petitioner,

v.

THE SUPERIOR COURT OF SANTA BARBARA COUNTY,
Respondent.

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

AFTER A DECISION BY THE COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION SIX, CASE NO. B297195

PETITION FOR REVIEW

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PETITION FOR REVIEW

ISSUES PRESENTED

Amendments in 1971 had the effect of removing the words "personally or through another" following the introductory phrase "[a]ny person" in Health and Safety Code section 13009, which creates the sole basis of liability for fire suppression costs under certain circumstances.[1] The phrase "[p]ersonally or through another" was not added to section 13009 in any later amendments

[1] All further references are to the Health and Safety Code, unless otherwise indicated.

and was not added to section 13009.1—which allows for the recovery of fire investigation costs—when it was enacted in 1984.

1. Can a person (corporate or natural) be vicariously responsible for fire suppression and investigation costs under sections 13009 and 13009.1 (in this case totaling more than $12 million) when the person alleged to be liable neither performed, authorized, or ratified the allegedly negligent act that caused a wildfire, nor negligently failed to do something that would have prevented the fire from starting in the first place?

2. An irreconcilable conflict now exists between two Courts of Appeal that have interpreted the effect of the 1971 change to section 13009 and the later enacted section 13009.1. Only this court can resolve this disagreement. The Third District held in *Department of Forestry & Fire Protection v. Howell* (2017) 18 Cal.App.5th 154, 182 (*Howell*), that sections 13009 and 13009.1, as currently worded, do not permit vicarious liability for fire suppression and investigation costs on what would amount to a claim of respondeat superior or vicarious liability. The Court of Appeal in this case, *Presbyterian Camp and Conference Centers, Inc. v. Superior Court* (2019) 42 Cal.App.5th 148 (*PCCC*) (see pp. 35-61, *post*) rejected *Howell* as wrongly decided, expressly disagreeing with *Howell*'s reasoning and conclusion. (See typed opn. 12-19; pp. 47-54, 60-61, *post.*) Which of these two published opinions is correct? We contend it is *Howell*.

INTRODUCTION

WHY REVIEW AND A STAY SHOULD BE GRANTED

California today confronts an unpreedented increase in the frequency and ferocity of wildfires. Such fires have caused substantial harm, including loss of life. Additionally, the fires have imposed huge costs on California's public agencies as they deploy their firefighting resources to contain the various infernos.[2] The issues presented for review are particularly important in light of these many recent, widespread, and tragically destructive California wildfires, and the substantial pending and anticipated future litigation regarding liability for the enormous cost of suppressing and investigating such fires.

The fire liability problem in California has been the subject of much debate in the Legislature, the courts, and the Public Utilities Commission almost since the creation of California. This Court recently heard oral argument on one aspect of the problem in *Scholes v. Lambirth Trucking Company* (review granted June 21, 2017, argued Dec. 4, 2019, S241825), which focused on the damages that an owner of injured trees may recover from a person

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[2] By September 2018, California's fire agency had reportedly exhausted its annual budget of $442.8 million and needed an additional $234 million to continue fighting wildfires. (See Shoot, *California's $442 Million Fire Budget Is Exhausted—and Needs $234 Million More to Keep Fighting* (Sept. 6, 2018) Fortune <https://fortune.com/2018/09/06/california-fire-2018-cost-insurance-claims/> [as of Dec. 19, 2019].) This followed total fire suppression spending of $773 million in 2017. (*Ibid.*)

responsible for a fire. The Courts of Appeal are in conflict whether the "multiplier" provisions of Civil Code section 3346 apply to such a recovery, or whether section 13007 limits the claimant to actual damages. This Court granted review in *Scholes* to resolve that conflict.

The present case presents another aspect of fire liability, and another conflict in published Court of Appeal decisions for this Court to resolve. Public entities incur fire suppression costs as a public service funded by the taxpayers. Statutes identify who additionally may bear liability for fire suppression and investigation, but there is no common law right to recover such costs. (*Howell*, *supra*, 18 Cal.App.5th at p. 176 ["At common law, there was no recovery of government-provided fire suppression costs; that recovery is purely a creature of statute"].) Sections 13009 and 13009.1 establish when such liability exits.

Relying on section 13009, plaintiff California Department of Forestry and Fire Protection (CalFire) commenced this action seeking to recover approximately $12 million in fire suppression costs incurred fighting the 2016 "Sherpa" fire in Santa Barbara County.[3] Citing *Howell*, *supra*, 18 Cal.App.5th 154, defendant Presbyterian Camp and Conference Centers, Inc. (PCCC) demurred to the complaint and petitioned for relief by writ when

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[3] CalFire also seeks to recover its investigative, reporting, and administrative expenses under section 13009.1, which the Legislature enacted in 1984. (Vol. 1, exh. 3, p. 35; typed opn. 11; p. 46, *post*.) The conditions for recovery under sections 13009 and 13009.1 are the same. (See *Howell*, *supra*, 18 Cal.App.5th at pp. 176-177.)

the trial court overruled the demurrer. In a published opinion, the Court of Appeal affirmed the trial court's ruling that PCCC could be vicariously liable for CalFire's suppression costs based on the negligence of its alleged employee, codefendant Charles Cook, and expressly disagreed with the contrary holding in *Howell*. (Typed opn. 2, 8-11, 18-19; see pp. 37, 43-46, 53-54, 60-61, *post*.)

As originally enacted in 1931 and then codified in 1953, the liability under section 13009 (by its cross-reference to section 13007) originally extended to "[a]ny person *who personally or through another*" was responsible for negligently setting a fire, or allowing it to be set or to spread.[4] (Section 13009, added by Stats. 1953, ch. 48, § 3, emphasis added; see pp. 68, 70, *post*.) The Legislature effectively deleted the emphasized language from section 13009 when it amended it in 1971, and removed the express reference to section 13007 and its description of who was liable. (See p. 72, *post*.) Nor did lawmakers reinsert this language or a substitute reference to "persons who personally or *through another*' in any subsequent amendments to section 13009 or when section 13009.1 was enacted in 1984 and subsequently amended.

In *Howell*, *supra*, 18 Cal.App.5th at pages 175-182, the Third Appellate District held that the current versions of sections 13009 and 13009.1 do not impose on a person *vicarious liability* for fire suppression or investigation costs. A person will be liable for such costs if, but only if, the person negligently acts or fails to act

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[4] For the convenience of this court, copies of the five prior statutory enactments to which we refer in our discussion are attached as exhibits to this petition. (See pp. 62-72, *post*; Cal. Rules of Court, rule 8.504(e)(1)(C).)

in the way the statute describes, or authorizes or ratifies conduct that will trigger the statutory liability. (*Ibid.*) In other words, there is a distinction drawn between a person's *direct responsibility* for conduct that warrants liability under the statute, and *vicarious responsibility* for such conduct by "another" actor under a theory of respondeat superior; the latter lies beyond the scope of sections 13009 and 13009.1.

In *PCCC*, *supra*, 42 Cal.App.5th 148, the court expressly created a conflict by holding, contrary to *Howell*, that a person may be vicariously liable for fire suppression and investigation costs because an employee or agent has engaged in negligent conduct. (Typed opn. 2, 8-11, 18-19; pp. 37, 43-46, 53-54, 60-61, *post*.)

Vicarious liability based on respondeat superior is a common law policy that advances the goal of assuring that innocent tort victims are compensated for their property and personal losses. Implicit in that policy is that the employer or principal on whom the obligation to pay is imposed has personally done nothing wrong for which it bears direct responsibility. The liability is that of the employee or agent. For reasons of public policy favoring victim compensation, the state has determined that the employer or principal also should be answerable for another's conduct.

There is less justification for spreading liability in this way to a wholly innocent employer or principal when it comes to reimbursement for public expenditures to which the employer or principal has already contributed through its taxes. The common law policy justifications do not apply. There is no added benefit to those directly injured by any misconduct – which includes public

entities whose land has been affected. They have alternative means to recover their damages, including recovery under principles of respondeat superior. The public policy choice concerning when a person should be liable for public expenditures such as fire suppression is one for the Legislature to make, and it reasonably has limited such liability to those directly responsible..

The words "or through another" in section 13007 and its 1931 predecessor statute originally signaled the potential for vicarious liability to compensate fire-injury victims for their losses. (See pp. 68, 70, *post*.) However, the effective *removal* of those words from section 13009, when the Legislature amended the statute in 1971 (see p. 72, *post*), and the failure to include those words from section 13009.1 when enacted in 1984, indicates that some form of direct responsibility is needed to justify recovery of public fire suppression and investigation costs. The scope of this liability is distinct from that for damages from a fire suffered by property owners and others, which continues to exist under section 13007. (See pp. 17-18, 21-24, 70, *post*.) This argument is further supported by other changes made to section 13009, which now goes into additional detail about those "persons" who made be held liable for costs. (See pp. 22-23, 72, *post*.)

There is a logical basis for the Legislature's decision to treat liability for reimbursement of the costs of suppression differently from the liability for the harm that fires cause. Through taxes, we all contribute to the public expense of fighting a wildfire in California, which can match or exceed the actual damage to property and persons. Public entities have the means to prepare

for and fund such efforts. And they typically may receive additional publicly funded resources should the actual costs exceed those budgeted. Fire protection is generally considered a basic governmental service of great importance. Other persons have no such available tools to provide the enormous fund that may be required.

The costs of suppression, like the fires themselves, are unpredictable, which may limit the availability of insurance and greatly increase its cost. Yet as the allegations in this case show, the trigger for a disastrous event covering vast areas of land can be what in normal conditions would be considered a minor mistake by an individual. If the event here occurred on a cool evening after the rains had started, any damage likely would be limited and confined. Fire suppression costs could create a liability out of all proportion to what a person could reasonably anticipate or insure against.

This Court should grant review to clarify the scope of California's statutory scheme for imposing liability on persons for the costs of suppressing and investigating fires. In particular, this court should resolve the conflict that now exists within the Courts of Appeal regarding whether a person may be *vicariously* liable for such costs, or whether a person must in some *direct* way be responsible for the fire before liability for suppression costs exists. To conserve judicial economy, this court also should stay further trial court proceedings until the conclusion of proceedings before this court.

STATEMENT OF THE CASE

A. The laws governing civil liability for fires

The right of a public agency to recover fire suppression costs has its origin in a 1931 statute defining the civil liability for failure to control fire. (Stats. 1931, ch. 790, §§ 1-3, p. 1644 (Fire Liability Law); see pp. 67-68, *post*.). In pertinent part, the 1931 Fire Liability Law provided:

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

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

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

Sections 1, 2, and 3 of the 1931 statute were codified, largely verbatim, in 1953 as, respectively, sections 13007, 13008, and 13009. (See pp. 69-70, *post*.)

Tracking the language of the 1931 statute, section 13007 (added by Stats. 1953, ch. 48, § 1; p. 70, *post*) provided—as it still does today—that "[a]ny person who personally or through another wilfully, negligently, or in violation of law, sets fire to, allows fire to be set to, or allows a fire kindled or attended by him to escape

to, the property of another, . . . is liable to the owner of such property for any damages to the property caused by the fire." The "any person" wording of section 13008 (added by Stats. 1953, ch. 48, § 2; p. 70, *post*) similarly echoed section 2 of the 1931 Fire Liability Law—in each case without the "personally or through another" language that exists in section 13007. Section 13008 still reads the same today.

Although its introductory sentence was worded differently, section 13009 (added by Stats. 1953, ch. 48, § 3; p. 70, *post*), had the same effect as section 3 of the 1931 Fire Liability Law. As relevant here, as enacted in 1953, the first sentence stated that "[t]he expenses of fighting any fires mentioned in Sections 13007 and 13008 are a charge against any person *made liable by those sections* for damages caused by such fires." (Section 13009, added by Stats. 1953, ch. 48, § 3, emphasis added; p. 70, *post*.) Furthermore, consistent with the 1931 statute, section 13009 as added provided that such a charge would constitute a debt of the person charged and be collectible in the same manner as in the case of a contract obligation. (*Ibid.*)

As a result of its cross-reference to section 13007, the liability for fire suppression costs under section 13009 as enacted in 1953 necessarily extended to any person who "personally or through another" was responsible for negligently setting a fire, or allowing it to be set or to spread. [5] (See pp. 21-22, 70, *post*.)

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[5] The quoted words have never been in section 13009. (*Howell*, *supra*, 18 Cal.App.5th at pp. 176-178.) However, by cross-referencing persons liable under section 13007 to describe who (continued...)

B. The 1971 amendments to Health and Safety Code section 13009

At issue here is the effect of the 1971 amendments to section 13009. (See pp. 71-72*, post*.)

In *People v. Williams* (1963) 222 Cal.App.2d 152, 155 (*Williams*), the court held that as worded in 1953, section 13009 did not authorize the recovery of fire suppression costs if the fire did not escape from the property of the person sought to be charged because such persons were not liable for damages under sections 13007 or 13008. To abrogate that result, the Legislature deleted the first sentence of section 13009 and substituted language borrowed—in part—from section 13007 to describe those who could be held liable for the costs of fighting the fire. As reworded, section 13009 (as amended by Stats. 1971, ch. 1202, § 1; p. 72, *post*) stated that "[a]ny person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him to escape onto any forest, range or nonresidential grass-covered land is liable for the expense of fighting the fire." Missing from the amended statute was the implication that the fire had to reach the property of another for liability to attach because it no longer relied on the liability as defined in its two sister statutes.

More pertinent to our case was that section 13009, as amended in 1971, omitted any reference to the phrase "personally or through another" to characterize who may be liable for fire

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could be liable for fire suppression costs, the statute as enacted in 1953 effectively incorporated them by reference. (*Id.* at p. 178.)

suppression costs—language that continues to this day to exist in section 13007 to define who is liable for *damages* cause by certain man-made fires. (See pp. 22-24, 70*, post*.) Thus, although the Legislature now expressly incorporated language from the first sentence of section 13007, it similarly substituted the word "person" for the phrase "[a]ny person who personally or through another" in the beginning of the newly crafted sentence. [6] (*Ibid.*)

In *Howell*, *supra*, 18 Cal.App.5th at pages 175-182, the Third District held that the 1971 changes to section 13009 eliminated vicarious liability for fire suppression costs.

C. The current conflict in the law

1. The incident

Presbyterian Camp and Conference Centers, Inc. is a religious corporation that owns various properties that it uses or makes available for conferences and other gatherings. (Vol. 1, exh. 3, pp. 21-22.) One of its properties, named Rancho la Sherpa (the Camp Property), is in an unincorporated area of the hills above Goleta, Santa Barbara County. (*Ibid.*; see typed opn. 2; p. 37, *post*.)

CalFire alleges in its complaint that at times relevant to this action, Charles Cook was overseeing the Camp Property as PCCC's employee or agent. (Vol. 1, exh. 3, p. 21; typed opn. 2-3; pp. 37-38, *post*.) On June 15, 2016, the cabin Cook occupied filled with smoke

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[6] In addition, the 1971 amendment to 13009 eliminated liability for the cost of suppressing and investigating fires when damages are recoverable under section 13008 but not section 13007. (See p. 23, *post*.)

when the fireplace chimney malfunctioned. (Vol. 1, exh. 3, pp. 20, 23; typed opn. 3; p. 38, *post*.) In an effort to control the smoky conditions, Cook removed a smoldering log from the fireplace and took it outside. (Vol. 1, exh. 3, p. 23; typed opn. 3; p. 38, *post*.) Burning embers from the log fell onto dry vegetation, which ignited what became known as the 7,500 acre Sherpa Fire. (Vol. 1, exh. 3, pp. 20, 23; typed opn. 3; p. 38, *post*.) He returned inside when he realized the effect of removing the log from the interior, but it was too late and his effort to stop the spreading fire were not effective.

2. The Second District expressly disagrees with *Howell*

CalFire alleges that it cost about $12 million to suppress the Sherpa fire. (Vol. 1, exh. 3, p. 23; typed opn. 3; p. 38, *post*.) It seeks to recover those costs from PCCC and Cook pursuant to section 13009. (Vol. 1, exh. 3, p. 35; typed opn. 3; p. 38, *post*.)

PCCC demurred to CalFire's complaint, arguing that under the express holding of *Howell*, *supra*, 18 Cal.App.5th at page 182, it could not be found vicariously liable for the costs of suppressing the fire triggered by Cook's careless removal of a smoldering log from a cabin fireplace to the outside. (Vol. 1, exhs. 4-6, pp. 37-59.) In its order overruling PCCC's demurrer, the trial court acknowledged *Howell*, but ruled that it was limited to its specific facts. (Vol. 1, exhs. 2, 8, pp. 16-18, 69-72; typed opn. 4; p. 39, *post*.)

PCCC petitioned the Second Appellate District, Division Six, for relief by writ. CalFire responded with a letter brief *supporting* PCCC's request for a decision on the merits of the issues PCCC

presented, recognizing the importance of settling this important issue. Faced with the parties' agreement that PCCC's writ petition deserved attention, the Second District issued an Order to Show Cause. We believe that the creation of a conflict further demonstrates the importance of the issue to all those potentially concerned.

The court here, in its published decision, expressly rejected the result and reasoning of *Howell*. (Typed opn. 2, 8-11, 18-19; see pp. 37, 43-46, 53-54, 60-61, *post*.) It held that, despite the 1971 amendments to section 13009, PCCC can be found vicariously liable for the fire suppression costs that CalFire incurred as a result PCCC's alleged employee's negligence. (Typed opn. 11, 19; pp. 46, 54, *post*.) The court made minor modifications to its opinion on PCCC's petition for rehearing, but left its holding and judgment intact. (See pp. 57-61, *post*.)

LEGAL ARGUMENT

I. The Third District's *Howell* opinion correctly construed the 1971 amendments to section 13009 to preclude responsibility for fire suppression costs on a respondeat superior theory of vicarious liability.

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

spread when Howell Forest's employees neglected to timely complete a required inspection of the area where they had been working. (*Ibid*.)

Relying on section 13009, CalFire sued the landowners, their property manager, the purchaser of the timber, Howell Forest and its negligent employees for the costs of suppressing the fire. (*Howell*, *supra*, 18 Cal.App.5th at pp. 162-163, 165.) The landowners, property manager, and purchaser of timber argued they could not be liable as a matter of law, and the trial court agreed. (*Id*. at pp. 165, 175-176.)

Looking to the 1971 amendments to section 13009, the Court of Appeal for the Third District agreed that no vicarious liability for fire suppression costs existed as a matter of law. (*Howell*, *supra*, 18 Cal.App.5th at pp. 176-179.) The court noted that "Cal Fire's ability to recover its fire suppression costs is strictly limited to the recovery afforded by statute." (*Id*. at p. 176)

The court then observed that, as originally enacted in 1931 and then codified in 1953, a public agency could seek to recover fire suppression costs from the same people who would be liable for the damage that the fire caused. (*Howell*, *supra*, 18 Cal.App.5th at p. 177.) Until 1971, the scope of potentially liable parties thus included " 'any person *who acted personally or through another*' " set fire to, or allowed a fire to be set or to escape to, the property of another, as provided in section 13007.[7] (*Id*. at pp. 177-179,

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[7] Persons potentially liable for fire suppression costs under section 13009 also included those liable for damages caused by a fire (no matter its origin) that they negligently allowed to escape (continued...)

emphasis added.) A " 'person' " for this purpose included " 'any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company,' " as provided by section 19. (*Id.* at p. 177.)

The *Howell* court correctly recognized that the 1971 amendments substantially changed section 13009. (*Howell*, *supra*, 18 Cal.App.5th at p. 178.) In particular, the amendments eliminated the anomaly identified in *Williams*, *supra*, 222 Cal.App.2d at page 155, that a public agency had no right to recover the costs of suppressing a fire negligently set by persons on their own property in order to prevent the fire's escape to the properties of adjoining owners. (*Howell*, at p. 178.)

In addition, the Legislature's 1971 rewording of the first sentence of section 13009 removed the cross-references to persons liable for damages under sections 13007 and 13008 as the basis for recovering fire suppression costs. (*Howell*, *supra*, 18 Cal.App.5th at pp. 177-178.) In place of the cross-references, the new first sentence said that " '[a]ny person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him to escape' " would be responsible for the costs of suppressing a fire. (*Id.* at p. 178.) This echoed the operative language of section 13007 regarding the conduct that would render

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to other property under section 13008. (Stats. 1953, ch. 48, § 3; p. 70, *post*.) However, section 13008 was worded more narrowly than section 13007 in terms of the conduct that created liability, and it has, since its earliest form, lacked the above emphasized language found in section 1 of the 1931 Fire Liability Law and the 1953 enactment of section 13007 creating vicarious responsibility. (See Stats. 1953, ch. 48, §§ 1-2; p. 70, *post*.)

one liable under section 13009 but omitted was the phrase "personally or through another." (*Id.* at p. 177.) At the same time, it also eliminated any responsibility for suppression costs for persons who were nevertheless liable to pay damages solely under section 13008 for a fire (regardless of origin) that they negligently allowed to escape onto neighboring property. (*Id.* at pp. 177-178; accord, *People v. Southern Pacific Co.* (1983) 139 Cal.App.3d 627, 638 (*Southern Pacific*).)

Significant to the *Howell* court's decision, however, was that the 1971 amendments removed the phrase " 'who personally or through another' " from the description in section 13009 of the persons who could be responsible for paying suppression costs. (*Howell*, *supra*, 18 Cal.App.5th at p. 178, emphasis omitted.) The court held this change in the law precluded vicarious liability. (*Id.* at p. 179.) Section 13009 applied to "one who . . . through his *direct action* proximately cause[d] the fire." (*Id.* at p. 181, emphasis added; see *id.* at pp. 180-181; see also *ante*, pp. 17-18.)

In reaching this result, the *Howell* court adhered to well-established rules of statutory interpretation. It rejected CalFire's argument that the words " 'who personally or through another' " were mere surplusage, the absence of which in the current version of section 13009 could be ignored. (*Howell*, *supra*, 18 Cal.App.5th at p. 179, emphasis omitted.) As the *Howell* court reasoned, "the presence of the language in section 13007, a similar statute on a related subject, and its omission from sections 13009 and 13009.1 is significant in ascertaining legislative intent from the statutes' language." (*Ibid.*)

Under CalFire's position, which the *Howell* court rejected, a person liable for damages caused by a fire pursuant to section 13007 would always also be liable for the costs of suppressing the fire pursuant to section 13009—even though the two statutes used significantly different language to specify when someone was liable. (*Howell*, *supra*, 18 Cal.App.5th at p. 179.) As *Howell* observed, it was not "incongruous that the Legislature may have afforded a longer reach in recovery efforts to an owner whose property was *damaged* than it afforded those who expended funds *fighting or investigating* the fire."[8] (*Howell*, *supra*, 18 Cal.App.5th at p. 179, emphasis added.)

Supporting its result was the *Howell* court's observation that section 13009 clearly did not incorporate all aspects of the common law of negligence, such as the potential for liability based on negligent supervision, hiring, inspection, management and use of property, peculiar risk—or vicarious liability. (*Howell*, *supra*, 18 Cal.App.5th at pp. 175-176, 179-180, 182.) The court explained that the word " 'negligently' " in the first sentence of the statute "is an adverb modifying three potential verb phrases: (1) sets a fire, (2) allows a fire to be set, or (3) allows a fire kindled or attended by him or her to escape." (*Id.* at p. 179.) Other theories of wrongdoing purportedly covered by the statute are "simply too attenuated a construction to be plausible." (*Id.* at pp. 179-180.)

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[8] Despite this analysis in *Howell*, the Second District erroneously claimed that *Howell* did not explain why the Legislature would treat liability under section 13009 differently from liability under section 13007. (Typed opn. 16-17; pp. 51-52, *post*.)

II. The Second District's published decision here rejects the result and reasoning of *Howell*, thereby creating a conflict in the law that this Court should resolve.

A. The Second District mistakenly reasons that corporations can never be liable for fire suppression costs under *Howell*.

In this case, the Second District has taken a different approach to the question of vicarious liability under section 13009. Starting from the "legal fiction[]" that corporations are people, with rights and responsibilities of natural persons, the court observes that they " 'necessarily act through agents.' " (Typed opn. 1,7; pp. 36, 42, *post*.) And it cites *Tunkl v. Regents of University of California* (1963) 60 Cal.2d 92, 103, for the proposition that the law draws " ' "no distinction" ' " between a corporation's own liability and vicarious liability based on the conduct of its agents. (Typed opn. 1-2; pp. 36-37, *post*.) From there, it found it was an easy jump to the conclusion that *Howell* was wrongly decided, and that PCCC can be held vicariously liable for CalFire's fire suppression costs. (Typed opn. 2, 8, 10; pp. 37, 43, 45, *post*.)

In doing so, however, the Second District misstated the holding of *Howell*. It writes: "The *Howell* majority concluded that corporations cannot be held liable for the costs of suppressing and investigating fires their agents or employees negligently set, allow to be set, or allow to escape." (Typed opn. 2; p. 37, *post*.) The court was mistaken in two respects.

First, *Howell's* holding that vicarious liability does not exist under sections 13009 and 13009.1 was not limited to corporations. The reasoning and result applied to *all persons*, natural or otherwise, who might be deemed to have had an employee or agent for the purpose of respondeat superior under ordinary negligence law. (See *Howell*, *supra*, 18 Cal.App.5th at p. 177.)

Second, contrary to what the Second District believes, *Howell* did not hold that section 13009 does not apply to corporations. What *Howell* held was that neither a corporation nor any other "person," as defined by Health and Safety Code section 19, can be held responsible to pay such costs solely on a theory of vicarious liability. (*Howell*, *supra*, 18 Cal.App.5th at pp. 175-176, 182.) Nothing in *Howell* precludes a corporation's *direct* liability.

Indeed, the Second District's decision unquestionably reads as though a corporation's tort liability in any context is *always and necessarily* "vicarious," simply because a corporation (or similar entity) must act through individuals. (Typed opn. 7; p. 42, *post*.) "Corporations are never direct actors," the typed opinion says; "[t]he *Howell* majority's assertion that sections 13009 and 13009.1 permit corporate liability when corporations are 'direct actors' is a legal impossibility." (Typed opn. 18; p. 53, *post*.)

Not true.

B. A corporation can be directly liable for the costs of suppressing fires caused by the authorized or ratified acts of its employees or agents, or by its failures to act. Such a *direct* liability is different from *vicarious* liability.

Witkin explains the difference between direct and vicarious liability based on the conduct of an employee or agent. "The liability of the principal for torts of the agent or employee is not always based on the doctrine of respondeat superior [citation]. It may result from the principal's direction or authorization to perform a tortious act, the principal being liable for his or her own wrong." (3 Witkin, Summary of Cal. Law (11th ed. 2017) Agency and Employment, § 173, p. 226.) The authorized acts of the agent or employee are legally those of the employer itself. (Civ. Code, § 2339.) Alternatively, the employer may be at fault and become directly responsible for the unauthorized conduct of an agent or employee because it ratifies the conduct. (3 Witkin, *supra*, § 174, pp. 226-227; Civ. Code, § 2339.)

By contrast, vicarious liability on a theory of respondeat superior proceeds from the assumption that the agent or employee *alone* is at fault. (3 Witkin, Summary of Cal. Law, *supra*, Agency and Employment, § 175, p. 227; Civ. Code, § 2338; see *Lathrop v. HealthCare Partners Medical Group* (2004) 114 Cal.App.4th 1412, 1423 [an employer's liability "is wholly derived from the liability of the employee"]; 3 Witkin, *supra*, § 177, p. 230 ["The liability of an innocent, nonparticipating principal under the respondeat superior doctrine is based on the wrongful conduct of the agent"].)

Such liability departs from the normal tort principle that liability follows fault. (See *Rodgers v. Kemper Constr. Co.* (1975) 50 Cal.App.3d 608, 618.) Indeed, the conduct for which the innocent employer becomes vicariously liable may be unauthorized and even contrary to the employer's instructions.[9] (3 Witkin, *supra*, § 175, p. 227.)

Accordingly, a corporation can be directly liable for the negligent acts of its employees and agents it authorizes or ratifies, and for negligent failures to act, that cause harm to others.[10]

Thus, in *Southern Pacific*, *supra*, 139 Cal.App.3d at pages 638-640, the court upheld a railroad company's liability for suppression costs when the evidence showed that sparks or particles emitted by the operation of its train must have started a fire that spread to adjoining lands. In *County of Ventura v. So. Cal. Edison Co.* (1948) 85 Cal.App.2d 529, 531-533, the court held

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[9] The rationale for vicarious liability " 'is a rule of policy, a deliberate allocation of a risk.' " (*Hinman v. Westinghouse Elec. Co.* (1970) 2 Cal.3d 956, 959.) The goals of this rule of policy are to (a) prevent recurrence of the tortious conduct, (b) give greater assurance of compensation for the victim, and (c) ensure that the victim's losses will be equitably borne by those who benefit from the enterprise that gave rise to the injury. (*Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 209.)

[10] Omissions for which a corporation could incur direct fire suppression cost liability would include the failure to take the corrective action to eliminate fire hazards, as described in section 13009, subdivisions (a)(2) and (a)(3). (Typed opn. 11-12, 18-19; pp. 46-47, 53-54, *post*.) The failures to act as described there are of a type consistent with the conduct described in section 13009, subdivision (a)(1), as a result of which a corporation *could also* become directly liable for suppression costs.

a utility company was liable for suppression costs because its negligent failure to maintain its power lines allowed a fire to start. Neither of these cases found the responsibility to pay costs based on a vicarious liability/respondeat superior theory nor did they even discuss this possibility. Nor, so far as we are aware, has any reported case done so since section 13009 was amended in 1971.

C. The decision in this case parts ways with *Howell* when it comes to conclusions drawn from the legislative history.

Reaching back to former Political Code section 3344 and former Civil Code section 3346a,[11] both of which used the word "person" with no qualifying language, the Second District says those earlier statutes served as a basis for imposing vicarious liability for personal and property damage on a corporate defendant in *Haverstick v. Southern Pac. Co.* (1934) 1 Cal.App.2d 605 (*Haverstick*). (Typed opn. 12-14, as mod.; see pp. 47-49, 60-61, *post.*) "We presume the Legislature was aware of the *Haverstick* court's interpretation of [those statutes], and that it intended that the same interpretation apply to the substantially similar language in the [1931] Fire Liability Law and section 13008." (Typed opn. 13, as mod.; p. 48, *post*.)

One problem with this is that *Haverstick* was decided more than three years *after* the 1931 Fire Liability Law went into effect.

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[11] Both statutes were repealed by sections 5 and 6 of the 1931 Fire Liability Law. (See p. 68, *post.*) Sections 1 through 3 of the 1931 Fire Liability Law were codified in 1953 as sections 13007, 13008, and 13009. (See p. 70, *post.*)

The Legislature could not have known in 1931 how the appellate court would decide *Haverstick* in 1934. Another problem is that *Haverstick* and the pre-1931 fire-related statutes on which it relied concerned compensation to fire damage victims, not the recovery of fire suppression costs. The *Haverstick* court did not consider a person's liability to reimburse a public agency for its costs of providing a public service funded through taxpayer dollars.

What we know is that *prior to* the 1934 *Haverstick* decision, the Legislature had departed from the language in the preexisting statute by qualifying the word "person" in section 1 of the 1931 Fire Liability Law with the phrase "[w]ho . . . [¶] personally or through another." It is still there in section 13007 as the largely verbatim successor to section 1 of the 1931 Fire Liability Law.[12] (See pp. 68, 70, *post*.) Yet despite a history of amendments to section 13009, successor to section 1, over the decades, the phrase is neither expressed nor implied in that statute as it exists today for the purpose of recovering fire suppression costs and was removed at a time when the Legislature was clarifying the scope of section 13009.

The Second District also observes that references in the 1971 legislative history were simply to "a person" when describing who could be liable under section 13009 for fire suppression costs, both before and after the amendments to the statute, and it omitted any reference to the qualifying words " 'personally or through

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[12] The Second District acknowledges that its holding in this case reduces the words " 'personally or through another' " in section 13007 to mere surplusage. (Typed opn. 17; p. 52, *post*.)

another.' " (Typed opn. 15-16, emphasis omitted; pp. 50-51, *post*.) The court concludes from this that the Legislature intended no change in the law on vicarious liability for such costs, despite the changes to section 13009's operative language. (Typed opn. 16-17; pp. 51-52, *post*.)

That is too thin a reed to support such an inference, especially in view of the plain language of the amended statute in context with sections 13007, 13008, and 13009.1. It was accurate to say that "a person" could be liable for fire suppression costs before the 1971 amendments and would remain so afterwards. However, that does not answer the question whether such person could be *vicariously* liable on a theory of respondeat superior following the changes to the section's scope. Before the amendments, a person could be vicariously liable. After the amendments, a person could not be.

Nevertheless, the Second District justifies its contrary result by saying that interpreting " 'person' " to allow vicarious liability would be "consistent with longstanding common-law and statutory rules." (Typed opn. 7; p. 42, *post*.) But that also begs the question this case presents. The court says that *Howell* recognized the Legislature provided for vicarious liability for fire damages under section 13007 by using the words any person who " 'personally or through another . . . .' " (Typed opn. 12, 16-17; pp. 47, 51-52, *post*.) The common law and other statutory rules are no help in deciding what the Legislature intended when it effectively *removed* the quoted words from the operation of section 13009 and failed to reinstate the earlier language or its equivalent.

The Second District says that interpreting " 'person' " in section 13009 to permit vicarious corporate liability would also be consistent with the word's interpretation in Health and Safety Code sections 13000 and 13001. (Typed opn. 7; p. 42, *post*.) However, sections 13000 and 13001 (and the next several sections following them in the code) are *criminal* statutes that subject the defendant to a maximum fine of $1,000 and a term of imprisonment. The court in *Golden v. Conway* (1976) 55 Cal.App.3d 948, 963, which the court cites, did not say why those criminal provisions applied to the civil dispute in that case and, indeed, it would seem inappropriate to rely on a criminal statute to impose civil liability vicariously.

Finally, the Second District insists the 1971 amendments to section 13009 were intended " 'to address a very specific problem': recovery of costs for fighting fires that do not escape a landowner's property," and it observes there is no mention in the legislative committee reports of a purpose to change the rule of vicarious liability. (Typed opn. 14-15; pp. 49-50, *post*.) The court overlooks that neither is there any mention of eliminating a person's liability for the costs to suppress escaped fires covered only by section 13008, something else that the amendments also accomplished. (*Southern Pacific*, *supra*, 139 Cal.App.3d at p. 638.) This shows the Legislature pursued objectives that are not reflected in the history of the 1971 amendments. There is no need for an express statement of a legislative goal when, as here, the Legislature's purpose can be cleanly be discerned from what it did.

We ask the court to grant review to resolve the conflict created by the Court of Appeal here, and to affirm the approach taken by the Court of Appeal in *Howell*.

CONCLUSION

For the foregoing reasons, this Court should grant review to resolve the conflict in the law that currently exists by deciding the issues presented.

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December 27, 2019

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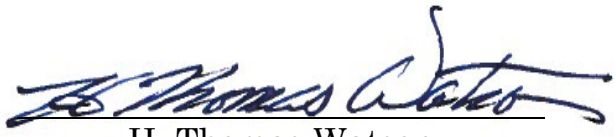
CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.504(d)(1).)

The text of this petition consists of 6,720 words as counted by the Microsoft Word version 2016 word processing program used to generate the petition.

Dated: December 27, 2019



H. Thomas Watson

ATTACHMENT A

Presbyterian Camp & Conference Centers, Inc.
v. Superior Court of Santa Barbara County
(California Department of Forestry and Fire Protection; Charles E. Cook)

(Cal. Rules of Court, rule 8.508(b)(4), (e)(1)(A))

Filed 11/18/19

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

PRESBYTERIAN CAMP AND CONFERENCE CENTERS, INC., Petitioner, v. THE SUPERIOR COURT OF SANTA BARBARA COUNTY, Respondent; CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION, Real Party in Interest.	2d Civil No. B297195 (Super. Ct. No. 18CV02968) (Santa Barbara County)

The law is replete with legal fictions. Among the best known is that corporations are people, with many of the same rights and responsibilities as natural persons. But corporations cannot act on their own; they "'necessarily act through agents.' [Citation.]" (*Snukal v. Flightways Manufacturing, Inc.* (2000) 23 Cal.4th 754, 782 (*Snukal*).) Thus the law draws "no distinction

between [a] corporation's 'own' liability and vicarious liability resulting from [the] negligence of [its] agents." (*Tunkl v. Regents of University of Cal.* (1963) 60 Cal.2d 92, 103.)

In a split decision, our colleagues in the Third Appellate District rejected this principle in the context of Health and Safety Code[1] sections 13009 and 13009.1. (*Department of Forestry & Fire Protection v. Howell* (2017) 18 Cal.App.5th 154 (*Howell*).) The *Howell* majority concluded that corporations cannot be held liable for the costs of suppressing and investigating fires their agents or employees negligently set, allow to be set, or allow to escape. (*Id.* at pp. 175-182.) Justice Robie disagreed, concluding that sections 13009 and 13009.1 do permit vicarious corporate liability. (*Id.* at pp. 204-208 (dis. opn. of Robie, J.).)

We agree with Justice Robie.

The Department of Forestry and Fire Protection (CalFire) sued Presbyterian Camp and Conference Centers (PCCC) to recover costs arising from a fire started by a PCCC employee. PCCC demurred, arguing that *Howell* precludes liability. The trial court disagreed, and overruled the demurrer.

PCCC challenges the trial court's order in a petition for writ of mandate. It contends the court erroneously overruled its demurrer because sections 13009 and 13009.1 do not permit it to be held liable for its employee's negligent or illegal acts. We disagree, and deny the petition.

FACTUAL AND PROCEDURAL HISTORY

PCCC operates a camp and conference center in rural Santa Barbara County. Its employee, Charles Cook, was

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[1] All further unlabeled statutory references are to the Health and Safety Code.

responsible for maintaining the camp. In June 2016, a cabin on the property filled with smoke after a chimney malfunctioned. Cook removed a burning log from the fireplace and carried it outside. Embers from the log fell onto dry vegetation, igniting what is now known as the Sherpa Fire.

The fire spread rapidly, and ultimately burned nearly 7,500 acres. CalFire spent more than $12 million to fight the fire and investigate its cause. The investigation revealed that PCCC: (1) failed to clear dry vegetation near at least one of its cabins, (2) failed to maintain the chimney that filled the cabin with smoke, and (3) failed to inspect and maintain fire safety devices. These omissions constituted negligence and violated several laws and regulations. Cook's act of carrying a smoldering log over dry vegetation was also negligent and in violation of the law. Together, PCCC's and Cook's acts and omissions caused the Sherpa Fire and contributed to its rapid spread.

CalFire sued Cook and PCCC to recover fire suppression and investigation costs. (§§ 13009, 13009.1.) PCCC demurred to CalFire's complaint, arguing that it could not be held liable for Cook's actions based on *Howell*, *supra*, 18 Cal.App.5th 154.

Howell involved the Moonlight Fire that burned 65,000 acres in Plumas County. (*Howell*, *supra*, 18 Cal.App.5th at p. 162.) The fire started when a bulldozer struck a rock, causing superheated metal fragments to splinter off and ignite the surrounding vegetation. (*Id.* at p. 164.) The operator of the bulldozer and his coworker did not timely inspect the area where they had been working, which allowed the fire to spread. (*Ibid.*)

CalFire sued the two workers for the costs of suppressing and investigating the resulting fire. (*Howell*, *supra*,

18 Cal.App.5th at pp. 162-163.) It also sued the timber harvester that employed the workers, the company that purchased the timber from the harvester/employer, the company that managed the property, and the property owners. (*Id*. at p. 163.) The trial court granted motions dismissing the property owners, property manager, and timber purchaser from the case. (*Id*. at p. 165.) It concluded that sections 13009 and 13009.1 did not provide a basis for their liability. (*Ibid*.) A majority of the Court of Appeal agreed, concluding that the statutes do not provide for vicarious liability. (*Id*. at p. 182.) Only CalFire's claims against the workers and their employer remained. (*Id*. at p. 176.)

The court below determined that *Howell* did not bar CalFire's claims against PCCC. While *Howell* concluded that the property owners, property manager, and timber purchaser could not be vicariously liable for the workers' acts, it said nothing about the harvester/employer's liability. Indeed, the harvester/employer remained a defendant in the underlying case. Because CalFire alleged that PCCC was Cook's employer when the Sherpa Fire started, the court concluded that *Howell* did not apply to the facts of this case. It overruled PCCC's demurrer.

DISCUSSION

PCCC argues that the trial court erroneously overruled its demurrer because: (1) a corporation is not a "person" for purposes of sections 13009 and 13009.1, (2) the legislative history of these statutes shows that they do not permit vicarious liability, and (3) permitting such liability would render superfluous language in related fire liability statutes.

Standard of review

When a party seeks writ review of a trial court's order overruling a demurrer, "[t]he 'ordinary standards of

demurrer review still apply.'" (*Southern California Gas Leak Cases* (2019) 7 Cal.5th 391, 398, fn. 3.) We independently determine whether the complaint states a cause of action. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) We reasonably interpret the complaint, "reading it as a whole and its parts in their context." (*Ibid.*) We deem true "'all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law. [Citation.]'" (*Ibid.*) "'We also consider matters which may be judicially noticed.' [Citation.]" (*Ibid.*)

Rules of statutory interpretation

Whether PCCC can be vicariously liable for Cook's negligent or illegal acts involves questions of statutory interpretation for our independent review. (*Western States Petroleum Assn. v. Board of Equalization* (2013) 57 Cal.4th 401, 415.) Our fundamental task is to ascertain the Legislature's intent when it enacted sections 13009 and 13009.1. (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 803 (*Pacific Palisades*).) We begin with the statutes' words, giving them their plain, commonsense meanings. (*Bruns v. E-Commerce Exchange, Inc.* (2011) 51 Cal.4th 717, 724.) We interpret the words in the context of related statutes, harmonizing them whenever possible. (*Mejia v. Reed* (2003) 31 Cal.4th 657, 663 (*Mejia*).) We also interpret them in a manner that avoids conflicts with common-law principles. (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 297.)

We presume the Legislature "was aware of existing related laws" when it enacted sections 13009 and 13009.1, and that it "intended to maintain a consistent body of rules." (*People v. Superior Court* (*Zamudio*) (2000) 23 Cal.4th 183, 199

(*Zamudio*).) We also presume the Legislature was aware of the judicial interpretations of those laws, and that it intended that the same interpretation apply to related laws with identical or substantially similar language. (*Moran v. Murtaugh Miller Meyer & Nelson, LLP* (2007) 40 Cal.4th 780, 785 (*Moran*).) We will follow the statutes' plain meanings unless doing so would lead to absurd results the Legislature did not intend. (*Meza v. Portfolio Recovery Associates, LLC* (2019) 6 Cal.5th 844, 856.)

If the meanings of sections 13009 and 13009.1 are unclear, we may examine their legislative history to determine the Legislature's intent. (*Pacific Palisades*, *supra*, 55 Cal.4th at p. 803.) We may also "consider the impact of an interpretation on public policy" and the consequences that may flow from it. (*Mejia*, *supra*, 31 Cal.4th at p. 663.) But we cannot insert words into the statutes that the Legislature has omitted. (Code Civ. Proc., § 1858.) Our job is not to rewrite statutes to conform to an assumed intent that does not appear from their language. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 545.)

Plain meanings of sections 13009 and 13009.1

CalFire's ability to recover the costs of services it provides is limited to the recovery provided by statute. (*Howell*, *supra*, 18 Cal.App.5th at p. 176.) Section 13009, subdivision (a)(1), permits CalFire to recover fire suppression costs from "[a]ny person . . . who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by [them] to escape onto any public or private property." Section 13009.1, subdivision (a)(1), permits CalFire to recover costs for investigating a fire from the same classes of persons. A "person" includes "any person, firm, association, organization, partnership, business trust, corporation, limited liability

company, or company." (§ 19.[2]) Thus, under the plain language of these statutes, CalFire can recover fire suppression and investigation costs from a corporation, like PCCC, that negligently or illegally sets a fire, allows a fire to be set, or allows a fire it kindled or attended to escape. And because a corporation "'necessarily act[s] through agents'" (*Snukal*, *supra*, 23 Cal.4th at p. 782), it is vicariously liable if one of its agents sets a fire in the scope of their employment (*Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 968 (*Perez*)).

Interpreting "person" in sections 13009 and 13009.1 to permit vicarious corporate liability is consistent with its interpretation in other fire liability laws in the Health and Safety Code. For example, pursuant to section 13000, no "person" may allow a fire to escape their control. Pursuant to section 13001, no "person" may use a device that might cause a fire without taking precautions to ensure against the fire's spread. In *Golden v. Conway* (1976) 55 Cal.App.3d 948, 963, the court determined that, pursuant to these sections, a landlord may be able to recover damages resulting from a fire that occurred in her building "on the theory that [her tenant] *or one of his employees* negligently left combustible material too close to [a] wall heater." (Italics added.)

Interpreting "person" in sections 13009 and 13009.1 to permit vicarious corporate liability is also consistent with longstanding common-law and statutory rules. Vicarious liability is """a deeply rooted sentiment""" in California. (*Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 208.) At common law, an employer could be held vicariously liable for its employee's torts if

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[2] The Legislature enacted section 19 in 1939. (Stats. 1939, ch. 60, § 19, p. 484.)

the torts were committed in the scope of employment. (*Perez*, *supra*, 41 Cal.3d at p. 967.) The Legislature codified this common-law rule nearly 150 years ago. (Civ. Code, § 2338.) We presume the Legislature was aware of Civil Code section 2338 and the common-law rules governing vicarious liability when it enacted sections 13009 and 13009.1. (*Zamudio*, *supra*, 23 Cal.4th at p. 199.) And we presume the Legislature did not intend to depart from these rules since sections 13009 and 13009.1 are silent on the issue of vicarious liability. (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149.)

Here, it is undisputed that Cook started the Sherpa Fire. And it is undisputed that PCCC was his employer at that time. Therefore, if CalFire can prove that Cook started the fire negligently or in violation of law, and did so in the scope of his employment, PCCC can, pursuant to sections 13009 and 13009.1, be held vicariously liable for CalFire's fire suppression and investigation costs.

Section 19's definition of "person"

PCCC argues that sections 13009 and 13009.1 do not apply to corporations. But section 19's definition of "person"—which includes a corporation—applies to all provisions of the Health and Safety Code "[u]nless the provision or the context otherwise requires." (§ 5.) Neither of the provisions at issue here explicitly restricts "person" to a natural person. And the predecessors to sections 13009 and 13009.1 were routinely used to recover firefighting costs from corporations—both before and after the Legislature enacted section 19 in 1939. (See, e.g., *County of Ventura v. So. Cal. Edison Co.* (1948) 85 Cal.App.2d 529 (*Ventura County*); *Haverstick v. Southern Pac. Co.* (1934) 1 Cal.App.2d 605 (*Haverstick*); *Kennedy v. Minarets & Western Ry.*

Co. (1928) 90 Cal.App. 563.) Had the Legislature wanted to alter this well-established understanding of "person," it would have done so in the ensuing 80 years. (Cf. *Foodmaker, Inc. v. Alcoholic Bev. etc. Appeals Bd.* (1974) 10 Cal.3d 605, 609 [definition of "person" in Business and Professions Code section 23008 applied in Business and Professions Code section 24071 where Legislature did not specify "natural person"].)

The context of sections 13009 and 13009.1 similarly does not require restricting their applicability to natural persons. "The clear intent of [these sections] is to require reimbursement by the wrongdoer for expenses incurred in the suppression of fire." (*Ventura County*, *supra*, 85 Cal.App.2d at p. 533.) It would be contrary to the Legislature's intent if we were to conclude that corporations are not among the wrongdoers required to pay for fire suppression and investigation costs. They are.

Legislative history of sections 13009 and 13009.1

PCCC next argues that, even if sections 13009 and 13009.1 do apply to corporations, the legislative history shows that they do not permit vicarious liability. The *Howell* majority agreed with this argument. (*Howell*, *supra*, 18 Cal.App.5th at pp. 175-182.) It concluded that sections 13009 and 13009.1 do not "clearly delineate the impact of the inclusion of the term 'negligently,'" and thus examined the statutes' legislative history to determine whether the Legislature intended that they provide for vicarious liability. (*Id.* at p. 177.)

We do not believe the use of the term "negligently" renders sections 13009 and 13009.1 unclear. Whether the statutes permit corporations to be vicariously liable for the acts of their agents and employees hinges on the definition of "person," not "negligently." And "person" is clearly defined in section 19.

In any event, an examination of the statutes' legislative history confirms that the Legislature intended that they provide for vicarious liability.

In 1931, the Legislature enacted the Fire Liability Law. Section 1 of the law provided that "'any person who: (1) personally or through another, and (2) wilfully, negligently, or in violation of law, commit[ted] any of the following acts: (1) set[] fire to, (2) allow[ed] fire to be set to, (3) allow[ed] a fire kindled or attended by [them] to escape to the property, whether privately or public owned, of another'" was liable for the damage that ensued. (*Howell*, *supra*, 18 Cal.App.5th at p. 177, italics and alterations omitted.) Section 2 provided that "'any person' who allowed a fire burning on [their] property to escape to another's property 'without exercising due diligence to control such fire'" was liable for the resulting damage. (*Ibid.*, italics and alterations omitted.) Section 3 "permitted recovery of the expenses of fighting such fires 'by the party, or by the federal, state, county, or private agency incurring such expenses.' [Citation.]" (*Ibid.*)

Twenty-two years later, the Legislature codified the Fire Liability Law in the Health and Safety Code. (*Howell*, *supra*, 18 Cal.App.5th at p. 177.) Section 1 of the Fire Liability Law was codified at section 13007. (*Ibid.*) As codified, section 13007 permitted a property owner to recover from "'any person who personally or through another wilfully, negligently, or in violation of law set[] fire to, allow[ed] fire to be set to, or allow[ed] a fire kindled or attended by [them] to escape to the [owner's] property.'" (*Ibid.*, italics and alterations omitted.) Section 2 was codified at section 13008. (*Ibid.*) Section 13008 made liable "'any person' who allowed a fire burning on [their] property to escape to another's property 'without exercising due diligence to control

such fire.' [Citation.]" (*Id.* at p. 178, alterations omitted.) Section 3 was codified at section 13009. (*Ibid.*) Section 13009 permitted the recovery of "'the expenses of fighting any fires mentioned in [s]ections 13007 and 13008 against any person made liable by those sections for damages caused by such fires.' [Citation.]" (*Id.* at p. 177, alterations omitted.)

The Legislature amended section 13009 in 1971. (*Howell*, *supra*, 18 Cal.App.5th at p. 178.) This amendment expanded section 13009 to permit recovery of firefighting expenses for fires that burned only one's own property. (*Ibid.*) It also deleted section 13009's references to sections 13007 and 13008. (*Ibid.*) As amended, section 13009 permitted recovery of firefighting costs from "'[a]ny person who negligently, or in violation of the law, set[] a fire, allow[ed] a fire to be set, or allow[ed] a fire kindled or attended by [them] to escape onto any forest, range[,] or nonresidential grass-covered land.'" (*Ibid.*)

The Legislature added section 13009.1 in 1984 to permit recovery of fire investigation costs against the same persons described in the 1971 version of section 13009. (*Howell*, *supra*, 18 Cal.App.5th at p. 178.) Three years later, the Legislature amended sections 13009 and 13009.1 to extend liability for fire suppression and investigation costs: Liability against the persons who set fires, allowed fires to be set, or allowed fires to escape was recodified at subdivision (a)(1) of the statutes. Subdivision (a)(2) extended liability to "[a]ny person . . . other than a mortgagee, who, being in actual possession of a structure, fails or refuses to correct, within the time allotted for correction, despite having the right to do so, a fire hazard prohibited by law, for which a public agency properly has issued a notice of violation respecting the hazard." (§§ 13009, subd. (a)(2),

13009.1, subd. (a)(2).) Subdivision (a)(3) extended liability to "[a]ny person . . . including a mortgagee, who, having an obligation under other provisions of law to correct a fire hazard prohibited by law, for which a public agency has properly issued a notice of violation respecting the hazard, fails or refuses to correct the hazard within the time allotted for correction, despite having the right to do so." (§§ 13009, subd. (a)(3), 13009.1, subd. (a)(3).)

The 1992 and 1994 amendments to section 13009 did not reincorporate the "personally or through another" language into the statute. Nor has the language been included in section 13009.1. The "personally or through another" language remains in section 13007, however, which has not been amended since its 1953 enactment. It remains absent from section 13008, which, like section 13007, has not been amended since 1953.

The *Howell* majority determined that "the presence of the 'personally or through another' language in section 13007 and its absence in sections 13009 and 13009.1 [was] indicative of [the Legislature's] intent to preclude application of vicarious liability concepts in the latter sections." (*Howell*, *supra*, 18 Cal.App.5th at p. 179, citing *Los Angeles County Metropolitan Transportation Authority v. Alameda Produce Market, LLC* (2011) 52 Cal.4th 1100, 1108 [where statute contains a provision, the omission of that provision from a statute on a related subject """is significant to show that a different legislative intent existed with reference to the different statutes"""].) But this determination ignores that, prior to 1971, section 13009 permitted recovery of firefighting costs from any person liable under *either* section 13007 or 13008. Section 13008 did not—and still does not—contain the "personally or through another" language. Yet that statute's

predecessor—section 2 of the 1931 Fire Liability Law—served as a basis for imposing vicarious liability in *Haverstick*.

In *Haverstick*, *supra*, 1 Cal.App.2d at pages 609-611, the court upheld liability imposed on a railroad after its employees negligently permitted a fire to spread from a railway car to the plaintiff's land. The *Haverstick* court did not state explicitly that the statutory basis for the railroad's liability was section 2 of the Fire Liability Law, but it is apparent from the facts of the case: There was "[n]o . . . explanation" for how the fire started on board the train. (*Id*. at p. 610.) The employees did not set it, allow it to be set, or kindle it. (See *ibid*.) Section 1 of the Fire Liability Law was thus inapplicable. But the employees did allow the fire to escape from the train car onto the plaintiff's land (*id*. at pp. 607-608), permitting the railroad's liability under section 2. That section lacks the "personally or through another" language of section 1. The railroad's vicarious liability was thus necessarily based on the phrase "any person."

We presume the Legislature was aware of the *Haverstick* court's interpretation of section 2 of the Fire Liability Law, and that it intended that the same interpretation apply to the identical language it codified at section 13008. (*Moran*, *supra*, 40 Cal.4th at p. 785.) We see no reason why a different interpretation should apply to the same language in sections 13009 and 13009.1.

The Legislature's addition of section 19 in 1939—five years after the *Haverstick* decision—reinforces our conclusion. Pursuant to section 19, the term "person" includes a corporation. That definition applies throughout the Health and Safety Code. (§ 5.) Thus, when the Legislature codified section 2 of the Fire Liability Law at section 13008 in 1953, corporations, by

definition, could be liable for fires that escaped onto others' properties. As it was widely understood that corporations could act only though their agents and employees (see, e.g., *Jeppi v. Brockman Holding Co.* (1949) 34 Cal.2d 11, 17; *Brown v. Central Pacific R. R. Co.* (1885) 68 Cal. 171, 174 (dis. opn. of McKee, J.)), it was also understood that any corporate liability under section 13008 was vicarious (*Haverstick*, *supra*, 1 Cal.App.2d at pp. 607-611). With its reference to section 13008, section 13009 also incorporated vicarious liability principles. Nothing in the legislative history suggests that the Legislature sought to change that when, in 1971, it deleted section 13009's reference to section 13008 but continued its use of the phrase "any person."

Indeed, the 1971 amendment of section 13009 was wholly unrelated to corporations' vicarious liability.[3] In 1963, the court in *People v. Williams* (1963) 222 Cal.App.2d 152 held that state agencies could not, pursuant to section 13009, recover costs for fighting fires that remained on the properties of those who started them. (*Id.* at p. 155.) This "create[d] an inequality in favor of the very large property owner." (Dept. of Conservation, Enrolled Bill Rep. on Assem. Bill No. 1247 prepared for Governor Reagan (Oct. 1971), p. 1; see also Sen. Com. on Judiciary, Background Information on Assem. Bill No. 1247, p. 1.) The Department of Conservation requested that the Legislature amend section 13009 to remedy this inequality and permit public agencies to recover fighting fires costs regardless of whether a fire escaped the property of origin. (Dept. of Conservation,

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[3] We grant CalFire's unopposed request to take judicial notice of the legislative history materials cited herein. (*In re J.W.* (2002) 29 Cal.4th 200, 211-212; see Evid. Code, §§ 452, subd. (c), 459, subd. (a).)

Enrolled Bill Rep. on Assem. Bill No. 1247 prepared for Governor Reagan (Oct. 1971), p. 2.) The Legislature did so by adopting Assembly Bill No. 1247. (See Stats. 1971, ch. 1202, § 1, p. 2297.) The bill amended section 13009 to provide that liability could no longer be imposed "only where the fire damages the property of another" (Legis. Counsel's Dig., Assem. Bill No. 1247 (1971 Reg. Sess.)), a direct response to the *Williams* decision (see *People v. Southern Pacific Co.* (1983) 139 Cal.App.3d 627, 637).

This legislative history makes clear that the Legislature adopted Assembly Bill No. 1247 "to address a very specific problem": recovery of costs for fighting fires that do not escape a landowner's property. (*Apple, Inc. v. Superior Court* (2013) 56 Cal.4th 128, 146-147.) Given this narrow, specific focus, it is "not surprising" that there was no discussion of continuing or eliminating vicarious corporate liability under section 13009. (*Id.* at p. 147.) The Legislature simply "was not presented with that issue." (*Ibid.*)

Moreover, the legislative history materials show that the Legislature made no distinction between "persons" subject to liability under section 13007 and those subject to liability under section 13008. An analysis of Assembly Bill No. 1247 stated that, pursuant to the version of section 13009 then in effect, *a person* was liable for firefighting costs if they violated either section 13007 or section 13008:

> Under existing law, *a person* is liable for the expense in fighting a fire if [they do] either of the following:
>
> (a) Willfully, negligently, or in violation of law, sets fire to, allows fire to be set to, or allows a fire kindled

> or attended by [them] to escape to, the property of another.
>
> (b) Allows any fire burning upon [their] property to escape to the property of another without exercising due diligence to control the fire.

(Dept. of Conservation, Fire Fighting Expenses Liability, Analysis of Assem. Bill No. 1247, July 19, 1971, p. 2, italics added.) The amended version of section 13009 would:

> Impose[] liability for such expense upon *a person* who negligently, or in violation of the law, does any of the following:
>
> (1) Sets a fire.
>
> (2) Allows a fire to be set.
>
> (3) Allows a fire kindled or attended by [them] to escape onto any forest, range, or nonresidential grass-covered land.

(*Id*. at p. 1, italics added.)

The Legislature's consistent use of "a person"—not qualified by "personally or through another"—when discussing sections 13007, 13008, and 13009 reinforces our conclusion that it did not seek to eliminate vicarious liability when it amended section 13009 in 1971. As the *Howell* majority recognized (and as PCCC concedes), section 13007 has always permitted vicarious

corporate liability. (*Howell*, *supra*, 18 Cal.App.5th at pp. 178-180.) Why sections 13008 and 13009 would not, despite the Legislature's use of the same descriptors, is left unanswered in *Howell*. "The Legislature [was] not required to use the same language to accomplish the same ends." (*Niles Freeman Equipment v. Joseph* (2008) 161 Cal.App.4th 765, 783.)

Rule against surplusage

PCCC argues that basing its liability for the Sherpa Fire on sections 13009 and 13009.1 would render the phrase "personally or through another" surplusage in section 13007. (See *Howell*, *supra*, 18 Cal.App.5th at p. 179, citing *Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1038 [courts should avoid interpretations that render provisions superfluous].) That may be true. But "[w]e are not required to assume that the Legislature [chose] 'the most economical means of expression'" when it wrote every statute. (*People v. Martinez* (1995) 11 Cal.4th 434, 449.) Our job is to determine the Legislature's intent. (*Pacific Palisades*, *supra*, 55 Cal.4th at p. 803.) Where surplus language is absent in one statute but present in another, we will not ignore that intent simply so we can give special meaning to the surplus words. (*People v. Cruz* (1996) 13 Cal.4th 764, 782-783.)

Here, both the plain meanings of sections 13009 and 13009.1 and their legislative history show that the Legislature intended that the statutes provide for vicarious corporate liability. To conclude that the "personally or through another" language of section 13007 alone permits such liability would require us to ignore that intent. We will not subordinate the Legislature's intent simply to avoid surplusage in section 13007. (*People v. Townsend* (1998) 62 Cal.App.4th 1390, 1399.)

Moreover, as Justice Robie noted, interpreting "person" in sections 13009 and 13009.1 to prohibit vicarious corporate liability "would result in corporations . . . never being held liable for fire suppression costs." (*Howell*, *supra*, 18 Cal.App.5th at p. 206 (dis. opn. of Robie, J.).) In *Ventura County*, *supra*, 85 Cal.App.2d at pages 532-533, the Court of Appeal determined that an electric utility could be liable for firefighting costs pursuant to section 3 of the Fire Liability Law based on its negligent construction and maintenance of power lines, a violation of the second prong of section 1 of the Fire Liability Law. The *Howell* majority distinguished that case because: (1) liability was imposed under a law that incorporated liability against a person who acted "personally or through another," and (2) the utility was a *direct actor*. (*Howell*, at p. 180.)

Corporations are never direct actors. (*Snukal*, *supra*, 23 Cal.4th at p. 782.) The electric utility did not negligently construct and maintain its power lines; its employees did. The *Howell* majority's assertion that sections 13009 and 13009.1 permit corporate liability when corporations are "direct actors" is a legal impossibility.

PCCC also asserts that interpreting subdivision (a)(1) of sections 13009 and 13009.1 to permit vicarious corporate liability would render meaningless subdivisions (a)(2) and (a)(3) of those statutes because the latter would no longer serve any purpose. (See *Howell*, *supra*, 18 Cal.App.5th at pp. 181-182.) Not true. Consider a person who received notice of a fire hazard and had the right or obligation to correct it. Pursuant to subdivisions (a)(2) and (a)(3), that person could be liable if they did not correct the hazard and that hazard allowed a fire to *grow*. (See *City of Los Angeles v. Shpegel-Dimsey, Inc.* (1988) 198 Cal.App.3d 1009,

1015-1016, 1019, fn. 2.) But that same person could not be liable pursuant to subdivision (a)(1) because they did not allow the fire to be *set*. (*Id*. at pp. 1019-1020.) Conversely, if the person did correct the hazard, yet nevertheless allowed the fire to be set, they could *only* be liable pursuant to subdivision (a)(1). The actions of the person responsible for the fire, not whether that person can be vicariously liable for it, are what differentiate subdivisions (a)(1), (a)(2), and (a)(3). Because subdivisions (a)(2) and (a)(3) provide for liability where none exists under subdivision (a)(1), they are not meaningless if the latter permits vicarious liability.

We thus conclude that sections 13009 and 13009.1 include principles of vicarious corporate liability. They expressly permit the recovery of fire suppression and investigation costs from a corporation, like PCCC, when one of its agents or employees "negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by [them] to escape onto any public or private property." (§§ 13009, subd. (a)(1), 13009.1, subd. (a)(1).) The trial court correctly overruled PCCC's demurrer to CalFire's complaint.[4]

[4] Given our conclusion, we need not decide whether the court successfully distinguished this case from *Howell*. (See *Gentry v. eBay, Inc.* (2002) 99 Cal.App.4th 816, 824-825 [appellate court will uphold trial court's ruling on a demurrer if correct on any legal theory].)

DISPOSITION

The order to show cause is discharged. PCCC's petition for writ of mandate is denied. CalFire shall recover its costs in this writ proceeding.

CERTIFIED FOR PUBLICATION.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Thomas P. Anderle, Judge

Superior Court County of Santa Barbara

Daley & Heft, Lee H. Roistacher, Robert W. Brockman, Jr,. and Garrett A. Marshall, for Petitioner.

No appearance for Respondent.

Xavier Becerra, Attorney General, Robert W. Bryne, Assistant Attorney General, Gary E. Tavetian, Ross Hirsch, Jessica Barclay-Strobel and Caitlan McLoon, Deputy Attorneys General, for Real Party in Interest.

Filed 12/9/19 (unmodified opinion attached)

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

PRESBYTERIAN CAMP AND CONFERENCE CENTERS, INC., Petitioner, v. THE SUPERIOR COURT OF SANTA BARBARA COUNTY, Respondent; CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION, Real Party in Interest.	2d Civil No. B297195 (Super. Ct. No. 18CV02968) (Santa Barbara County) **ORDER MODIFYING OPINION AND DENYING REHEARING [NO CHANGE IN JUDGMENT]**

THE COURT:

It is ordered that the opinion filed herein on November 18, 2019, and certified for publication, be modified as follows:

1. On page 2, first sentence of the third full paragraph, the word "allegedly" is to be inserted between the words "fire" and "started" so that the sentence reads:

The Department of Forestry and Fire Protection (CalFire) sued Presbyterian Camp and Conference Centers (PCCC) to recover costs arising from a fire allegedly started by a PCCC employee.

2. On page 2, second sentence of the fourth full paragraph, beginning "It contends" is deleted and the following sentence is inserted in its place:

It contends the court erroneously overruled its demurrer because sections 13009 and 13009.1 do not permit it to be held liable for an alleged employee's negligent or illegal acts.

3. On page 2, after section header "FACTUAL AND PROCEDURAL HISTORY," add as footnote 2 the following footnote, which will require renumbering of all subsequent footnotes:

[2] The facts are taken from CalFire's complaint, which we accept as true in our review of the trial court's order overruling PCCC's demurrer. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 (*Blank*).)

4. On page 5, first partial paragraph, second citation "(*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)" is modified to read as follows:

(*Blank*, *supra*, 39 Cal.3d at p. 318.)

5. On page 8, first full paragraph, beginning "Here, it is" is deleted and the following paragraph is inserted in its place:

Here, it is alleged that Cook started the Sherpa Fire. And it is alleged that PCCC was his employer at that time. Therefore, if CalFire can prove that Cook was PCCC's employee, that he started the fire negligently or in violation of law, and that he did so in the scope of his employment, PCCC can, pursuant to sections 13009 and 13009.1, be held vicariously liable for CalFire's fire suppression and investigation costs.

6. On page 10, first full paragraph beginning "In 1931" is deleted and the following two paragraphs are inserted in its place:

In 1872, the Legislature enacted the first predecessor to the fire liability statutes now codified at sections 13007, 13008, 13009, and 13009.1. (*McKay v. State of California* (1992) 8 Cal.App.4th 937, 939; *Gould v. Madonna* (1970) 5 Cal.App.3d 404, 406-407 (*Gould*).) As enacted, former Political Code section 3344 provided that "'[e]very person negligently setting fire to [their] own woods, or negligently suffering any fire to extend beyond [their] own land, [was] liable in treble damages to the party injured.'" (*Haverstick*, *supra*, 1 Cal.App.2d at p. 615.) Thirty-three years later, the Legislature enacted Civil Code section 3346a. (See *McKay*, at p. 939.) Its language was identical to that in the Political Code. (See *Haverstick*, at p. 615.)

The Legislature repealed Political Code section 3344 and Civil Code section 3346a when it enacted the Fire Liability Law in 1931. (*Gould*, *supra*, 5 Cal.App.3d at p. 406; see Stats. 1931, ch. 790, §§ 5 & 6, p. 1644.) Section 1 of the new law provided that "'any person who: (1) personally or through

another, and (2) wilfully, negligently, or in violation of law, commit[ted] any of the following acts: (1) set[] fire to, (2) allow[ed] fire to be set to, (3) allow[ed] a fire kindled or attended by [them] to escape to the property, whether privately or public owned, of another'" was liable for the damage that ensued. (*Howell*, *supra*, 18 Cal.App.5th at p. 177, italics and alterations omitted.) Section 2 provided that "'any person' who allowed a fire burning on [their] property to escape to another's property 'without exercising due diligence to control such fire'" was liable for the resulting damage. (*Ibid.*, italics and alterations omitted.) Section 3 "permitted recovery of the expenses of fighting such fires 'by the party, or by the federal, state, county, or private agency incurring such expenses.' [Citation.]" (*Ibid.*)

7. The last sentence of the paragraph commencing at the bottom of page 12 with "The *Howell* majority" and ending at the top of page 13 with "liability in *Haverstick*" is deleted and the following sentence is inserted in its place:

Yet that statute's predecessors—former Political Code section 3344 and former Civil Code section 3346a—served as a basis for imposing vicarious corporate liability in *Haverstick*.

8. On page 13, first full paragraph beginning "In *Haverstick*," is deleted and the following paragraph is inserted in its place:

In *Haverstick*, *supra*, 1 Cal.App.2d at pages 609-611, the court upheld liability imposed on a railroad after its employees negligently permitted a fire to spread from a railway car to the plaintiff's land. Former Political Code section 3344 and former Civil Code section 3346a were in force when the fire broke

out. (*Id*. at pp. 614-615; compare *id*. at p. 610 [fire started May 19, 1931] with Stats., ch. 790, p. 1644 [sections repealed August 14, 1931].) Those sections—like their successors, section 2 of the Fire Liability Law and current section 13008—lacked the "personally or through another" language currently found in section 13007. (See *id*. at p. 615.) The railroad's vicarious liability thus did not hinge on the presence of that phrase: "[T]he better reasoning supports the holding that the negligence *of the company* or person setting the fire is the proximate cause of the injury in the absence of a showing of contributory negligence on the part of the injured person." (*Id*. at p. 613, italics added.)

9. On page 13, second full paragraph beginning "We presume" is deleted and the following paragraph is inserted in its place:

We presume the Legislature was aware of the *Haverstick* court's interpretation of former Political Code section 3344 and former Civil Code section 3346a, and that it intended that the same interpretation apply to the substantially similar language in the Fire Liability Law and section 13008. (*Moran*, *supra*, 40 Cal.4th at p. 785.) We see no reason why a different interpretation should apply to the same language in sections 13009 and 13009.1.

There is no change in judgment.

Petitioner's petition for rehearing is denied.

TANGEMAN, J. GILBERT, P.J. PERREN, J.

ATTACHMENT B

Historical California Statutory Enactments

(Cal. Rules of Court, rule 8.508(e)(1)(C))

THE

POLITICAL CODE

OF THE

STATE OF CALIFORNIA.

PUBLISHED UNDER AUTHORITY OF LAW, BY

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

In Two Volumes.

VOL. I.

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

Secretary to keep record, and certificate to be proof.

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

Duties of Chief of Fire Department.

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

Chief to attend fires and preserve property.

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

Setting woods on fire.

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

Extinguishing fire in woods.

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

THE

STATUTES OF CALIFORNIA

AND

AMENDMENTS TO THE CODES

PASSED AT THE

THIRTY-SIXTH SESSION OF THE CALIFORNIA LEGISLATURE

1905

BEGAN ON MONDAY, JANUARY SECOND, AND ENDED ON FRIDAY, MARCH TENTH,
NINETEEN HUNDRED AND FIVE

SACRAMENTO:
W. W. SHANNON, : : : : SUPERINTENDENT STATE PRINTING.
1905.

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

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

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

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

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

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

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

CHAPTER CDLXIII.

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

[Approved March 21, 1905.]

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

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

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

CHAPTER CDLXIV.

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

[Approved March 21, 1905.]

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

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

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

Statutes of California

1931

CONSTITUTION OF 1879

AS AMENDED

MEASURES SUBMITTED TO VOTE OF ELECTORS 1930

GENERAL LAWS, AMENDMENTS TO CODES, RESOLUTIONS AND CONSTITUTIONAL AMENDMENTS

PASSED AT THE

REGULAR SESSION OF THE FORTY-NINTH LEGISLATURE 1931

CALIFORNIA STATE PRINTING OFFICE
HARRY HAMMOND, STATE PRINTER
SACRAMENTO 1931

A1—86258

CHAPTER 790.

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

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

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

Liability for damage by fire

SECTION 1. Any person who:

(1) Personally or through another, and

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

(1) Sets fire to,

(2) Allows fire to be set to,

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

Same

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

Expenses of fighting fires

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

Saving clauses

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

Repeal

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

Repeal

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

CHAPTER 791.

Stats 1915, p 1404, amended

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

STATUTES OF CALIFORNIA

1952 AND 1953

CONSTITUTION OF 1879 AS AMENDED
MEASURES SUBMITTED TO VOTE OF ELECTORS,
1952 GENERAL ELECTION

GENERAL LAWS, AMENDMENTS TO CODES,
RESOLUTIONS, AND CONSTITUTIONAL
AMENDMENTS

PASSED AT

THE 1952 REGULAR SESSION OF
THE LEGISLATURE

THE 1952 FIRST AND SECOND EXTRAORDINARY
SESSIONS OF THE LEGISLATURE

AND THE

1953 REGULAR SESSION OF THE LEGISLATURE

CHAPTER 48

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

In effect September 9, 1953

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

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

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

Liability for fire damage

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

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

Same

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

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

Fire-fighting expenses a debt

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

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

Cause of action accruing prior to August 14, 1931

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

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

Fire protection contracts

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

Privileges and immunities

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

Repeal

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

Volume 1

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1971

Constitution of 1879 as Amended

General Laws, Amendments to the Codes, Resolutions, and Constitutional Amendments passed by the California Legislature at the

1971 Regular Session

and the

1971 First Extraordinary Session

Compiled by
GEORGE H. MURPHY
Legislative Counsel

1A—3935

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

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

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

CHAPTER 1202

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

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

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

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

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

CHAPTER 1203

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

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

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

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

13010. It shall be the duty of the bureau:

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

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On December 27, 2019, I served true copies of the following document(s) described as **PETITION FOR REVIEW [with Conformed Copy of Association of Counsel Filed in Court of Appeal • B297195]** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY FEDERAL EXPRESS: I enclosed said document(s) in an envelope or package provided by Federal Express (FedEx) and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.

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

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

Executed on December 27, 2019, at Burbank, California.

Kathy Turner

Kathy Turner

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

Individual / Counsel Served	Party Represented
Lee H. Roistacher, Esq. Robert W. Brockman, Jr., Esq. Garrett A. Marshall, Esq. DALEY & HEFT LLP 462 Stevens Avenue, Suite 201 Solana Beach, California 92075-2065 (858) 755-5666 • FAX: (858) 755-7870 Email: lroistacher@daleyheft.com rbrockman@daleyheft.com gmarshall@daleyheft.com	Petitioner Presbyterian Camp And Conference Centers, Inc. ***Electronic Copy*** via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)
William Michael Slaughter, Esq. Jonathan David Marshall, Esq. SLAUGHTER, REAGAN & COLE, LLP 625 E. Santa Clara Street, Suite 101 Ventura, California 93001-3284 (805) 658-7800 • Fax: (805) 644-2131 Email: slaughter@srllplaw.com marshall@srllplaw.com	Real Party in Interest Charles E. Cook ***Electronic Copy*** via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)
Melissa J. Fassett, Esq. Timothy E. Metzinger, Esq. PRICE, POSTEL & PARMA 200 E. Carrillo Street, 4th Floor Santa Barbara, California 93101-7144 (805) 962-0011 • Fax: (805) 965-3978 Email: mjf@ppplaw.com tem@ppplaw.com	La Paloma Ranch, LLC ***Electronic Copy*** via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)

Individual / Counsel Served	Party Represented
Xavier Becerra, Esq. Attorney General of California Gary E. Tavetian, Esq. Supervising Deputy Attorney General Ross H. Hirsch, Esq. 300 S. Spring Street, Suite 1702 Los Angeles, California 90018 (213) 269-6635 Email: Ross.Hirsch@doj.ca.gov	Real Party in Interest California Department of Forestry Fire and Protection ***Electronic Copy*** via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)
Jessica Barclay-Strobel, Esq. Attorney General of California 600 W. Broadway, Suite 1800 P.O. Box 85266 San Diego, California 92103-5203 (619) 738-9000 Email: Jessica.barclaystrobel@doj.ca.gov	Real Party in Interest California Department of Forestry and Fire Protection ***Electronic Copy*** via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)
Theodore A. B. McCombs, Esq. Deputy Attorney General Natural Resources Law Section California Department of Justice 600 W. Broadway, Suite 1800 P.O. Box 85266 San Diego, California 92103-5203 (619) 738-9000 Email: Theodore.McCombs@doj.ca.gov docketinglaawt@doj.ca.gov	Real Party in Interest California Department of Forestry and Fire Protection ***Electronic Copy*** via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)
Hon. Thomas P. Anderle Santa Barbara County Superior Court Historic Anacapa Courthouse 1100 Anacapa Street, Dept. 3 Santa Barbara, California 93101-2099 (805) 882-4570	Trial Court Judge • 18CV02968 Hard Copy via Federal Express [Petition Only • Without Conformed Association of Counsel filed in B297195]

Individual / Counsel Served	Party Represented
Office of the Clerk California Court of Appeal Second Appellate District • Division Six 200 E. Santa Clara Street Ventura, California 93001-2793 (805) 641-4700	***Electronic Service*** via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) Case No. B297195 [Petition Only • Without Conformed Association of Counsel filed in B297195]
Clerk of the Court Supreme Court of California 350 McAllister Street San Francisco, California 94102-3600 (415) 865-7000	***Electronic Filing*** via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) Unbound Hard Copy of Petition for Review and Conformed Association of Counsel filed in B297195 via Federal Express

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **Presbyterian Camp and Conference Centers, Inc. v. Superior Sourt of Santa Barbara (California Department of Forestry and Fire Protection and Charles E. Cook)**
Case Number: **TEMP-LL50D188**
Lower Court Case Number:

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

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

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

Title(s) of papers e-served:

Filing Type	Document Title
ISI_CASE_INIT_FORM_DT	Case Initiation Form
PETITION FOR REVIEW	2019-12-27 Petition for Review (PFR) of PC&CC (PC&CC v. SCBC-Cal. Forestry)
ADDITIONAL DOCUMENTS	2019-12-20 [TF-Conf] Association of Counsel (AOC) (H&L w D&H) (PCCCC v. SBSC-CalForestry).PDF

Service Recipients:

Person Served	Email Address	Type	Date / Time
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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

12/27/2019

Date

/s/H. Thomas Watson

Signature

Watson, H. Thomas (160277)

Last Name, First Name (PNum)

Horvitz & Levy LLP

Law Firm