COPY

IN THE SUPREME COURT OF CALIFORNIA

REBECCA MEGAN QUIGLEY

Plaintiff and Appellant,

vs.

GARDEN VALLEY FIRE PROTECTION DISTRICT, et al.,

Defendants and Respondents.

No. S242250

3 Civil No. C079270

Plumas County Superior Court
Case No. CV1000225

REPLY TO ANSWER TO PETITION FOR REVIEW

After a decision of the
Court of Appeal, Third Appellate District

Appeal from a Judgment of the Superior Court
Of the State of California, County of Plumas
Honorable Janet Hilde

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INTRODUCTION

Defendants' answer to the petition for review does not defeat the showing that this case warrants review (1) to determine the proper construction of Government Code section 850.4, which affects every tort action against a government agency for injury or loss that the agency contends is related to a condition of firefighting facilities, and (2) to resolve the conflicting decisions of the courts of appeal, acknowledged by cases and secondary authorities, on whether statutory governmental immunities, and section 850.4 in particular, can be waived.[1]

Defendants' argument that the language of Section 850.4 is plain and straightforward fails because the statute is not clear. It immunizes public agencies from liability for injuries resulting from "a condition of fire protection or firefighting equipment or facilities," but offers no guidance to determine the type of "condition" or "facility" that is within the scope of the immunity. The legislative intent of the section, however, was not to carve out an exception from the liability of public entities for a dangerous condition of property when the property, as in this case, is indirectly used in connection with fighting a fire.

Defendants answer to the petition for review misstates material facts and mischaracterizes Quigley's argument. In arguing that section 850.4 is applied broadly, the answer demonstrates that the statute is applied only to equipment and facilities actually used to fight fires.

The record does not support defendants' suggestion that their failure to rope off and sign the infield sleeping area or to take other reasonable

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[1] All further statutory references are to the Government Code unless otherwise indicated.

steps to protect personnel sleeping there from the risk of injury from passing vehicles was an exercise of discretion immune from liability. Furthermore, defendants had no discretion in the matter.

Defendants' argument that there is no conflict among the courts of appeal on the issue of waiver of governmental immunities ignores reality. Judicial and secondary authorities acknowledge that cases go both ways, some holding that immunities are jurisdictional and can never be waived, others holding that they are affirmative defenses that are waived if not affirmatively alleged. Defendants do not address the further issue raised by cases holding immunities jurisdictional—whether they are jurisdictional in the fundamental sense that a court has no power to hear and decide a case subject to an immunity, or jurisdictional in the broader sense that the immunity statutes are rules that define the court's power to act in a case that it does have jurisdiction to hear and decide.

The importance of the issues this case presents and the need to resolve conflicting decisions of the courts of appeal merit granting review.

I

DEFENDANTS ARE NOT IMMUNE FROM LIABILITY FOR A DANGEROUS CONDITION OF PROPERTY MERELY BECAUSE THE PROPERTY WAS BEING USED IN CONNECTION WITH FIREFIGHTING

Defendants argue simplistically that the language of section 850.4 is plain and the Court need not go further. The first flaw in that argument is that the language is not clear. It does define the kind of condition or kind of fire protection or firefighting facility to which the immunity applies.

Beyond that, defendants' plain-language argument, like the court of appeals' analysis, "contravenes the basic precept which teaches that 'the object of all construction of statutes is to ascertain and give effect to the in-

tention of the legislature....'" (*Highland Ranch v. Agricultural Labor Relations Bd.* (1981) 29 Cal.3d 848, 858–859, quoting *County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 639; see also, Civ. Code § 1859.) The "'first task in construing a statute'" is to determine the legislative intent. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386.)

The words of the statute are only the starting point in ascertaining the legislative intent. "[W]e begin by examining the language of the statute." (*People v. Pieters* (1991) 52 Cal.3d 894, 898.) In that examination, "'regard is to be had not so much as to the exact phraseology in which the intent has been expressed as to the general tenor and scope of the entire scheme embodied in the enactments....'" (*Highland Ranch, supra*, 29 Cal.3d at pp. 858–859, quoting *Frisbie, supra*, 19 Cal.2d at p. 639.) "Finally, we do not construe statutes in isolation, but rather read every statute 'with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.' [Citation]." (*Pieters, supra*, 52 Cal.3d at p. 899.)

"Thus, '[t]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.'" (*Ibid.*, quoting *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

Prior to *Muskopf v. Corning Hospital Dist.* (1961) 55 Cal.2d 211, the rule in California, and almost uniformly throughout the country, was that sovereign immunity shielded government entities from tort liability for losses and injuries related to fire prevention and fire protection. (Van Alstyne, "A Study Relating to Sovereign Immunity" ["Study."] 5 Cal. L. Revision Com. Rep. (1963) p. 456.) Likewise, a public entity was not liable for damage or injury resulting from negligent maintenance of fire-fighting equipment or facilities that made them unusable in fighting a fire. (*Ibid.*, p. 466.)

But under former section 53051, a local agency—a city, county, or school district under former section 53050—*was* liable for a dangerous condition of property, "including fire department property." (*Id.* at pp. 460-461; see also Stats. 1949, ch. 81, p. 285, § 1.) The statute provided tort liability "for injuries to persons and property resulting from the dangerous or defective condition of public property," without limitation as to the purpose for which the property was used. Thus, as the Law Revision Commission's study explained, "Section 53051 relates to tort liability for defective public property of all types, *including that employed in firefighting work*, owned or maintained by cities, counties and school districts." (*Id.* at p. 461, fn. 31; see also *id.* at pp. 42-59 [emphasis added].)[2]

Section 53051 was superseded by enactment of the Claims Act provisions for a dangerous condition of public property, sections 830-835.4. (4 Cal. L. Revision Com. Rep., Recommendation relating to Sovereign Immunity (1963) pp. 876-877; see also, Stats.1963, ch. 1681, p. 3267, § 1; *id.*, p. 3286, § 18.) Like former section 53051, those provisions do not provide an exception for property used in firefighting work.

Notably, neither does section 850.4. It does not provide, for example, that a public employee or agency is not liable for injuries resulting from "the condition of fire protection or firefighting equipment or facilities, *including property used for firefighting work*...."

It is, therefore, immaterial that a forest fire base camp is used as a place where firefighters can rest, eat, sleep and recover so they can return to the fire line. Read in the context of the "the entire scheme" of which section 850.4 is a part (*Pieters*, *supra*, 41 Cal.3d at p. 898), the section is not a

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[2] Section 53051 was derived from the Public Liability Act of 1923. (Study, p. 43.) Under section 2 of that Act, municipalities and school districts were liable for a defective or dangerous condition of "any" public property. (Stats. 1923, ch. 328, § 2, p. 675.)

blanket immunity from liability for injuries resulting from any condition of any facility having any connection to fire protection or firefighting.

The condition that gave rise to Quigley's injuries was a dangerous condition of property used as the base camp, not a condition of facilities used to fight fires to which section 850.4 was intended to apply.

II
DEFENDANTS MISSTATE MATERIAL FACTS, MISCHARACTERIZE QUIGLEY'S ARGUMENT AND RELY ON AUTHORITY THAT SUPPORTS HER CASE

a. Quigley was sleeping in a designated sleeping area.

Defendants state, "Vehicles drove through the grassy infield to deliver clean water and remove dirty grey water from the shower units.... Rather than sleeping in the designated sleeping area, Quigley slept in the infield where the showers were located." (Answer to Petition for Review ["Answer"], p. 7.) The insinuation is that Quigley is responsible for her own injuries, that she chose to sleep in an unauthorized infield area that vehicles crossed. The facts are otherwise.

DelCarlo, the facility unit leader, authorized use of the infield as a sleeping area when the area initially designated for sleeping filled up. (Slip op. at p. 3.) Quigley obtained permission from her supervisor, captain of her crew, to sleep there. (*Ibid.*; RT 21:23-25, 22:5-8.) She joined over 100 others who were sleeping in the infield (RT 4:6-8; 26:5-8.)

b. Defendants misstate Quigley's argument.

Defendants contend that Quigley argued in the court of appeal that section 850.4 does not apply "because she was not injured while actively engaged in fighting a fire and that the condition of the Fire Camp that caused her injuries did not relate to fire fighting." (Answer, p. 12.) Defendants subtly misstate the argument by reciting those points in reverse.

Quigley argued in the court of appeal, as she argues here, "Section 850.4 grants immunity only when injuries result from conditions of fire-fighting equipment or facilities that affect the ability to fight a fire." (Appellant's Opening Brief, p. 29.) That she was off duty and fast asleep when the water truck ran over her only underscores the point that the dangerous condition of property that caused her injury was not a condition that had any effect on fighting the fire.

c. Razeto supports Quigley's case.

Defendants characterize *Razeto v. City of Oakland* (1979) 88 Cal.App.3d 349 as holding that section 850.4 "explicitly provides immunity for any injury resulting from the condition of fire protection or firefighting equipment even if unrelated to fighting a fire." (Answer at p. 14, citing *Razeto*, 88 Cal.App.3d at pp. 351-353.) That is both an oxymoron and a misstatement of *Razeto*.

It is an oxymoron because, by definition, firefighting equipment is equipment used to fight fires. There could never be such a self-contradictory thing as firefighting equipment "unrelated to fighting a fire."

Defendants misstate *Razeto* because the court there did not hold that the immunity applies to fire protection or firefighting equipment unrelated to fighting a fire. Neither the word "unrelated" nor a synonym appears in the decision. Rather, the court concluded that section 850.4 provides immunity "for dangerous and defective fire protection equipment which causes injury or property damage *while not in use fighting fires*." (*Id.*, 88 Cal.App.3d at p. 352 [emphasis added].) That necessarily means that the immunity applies to dangerous and defective *equipment* used "in fighting fires." Defendants offer no reason why the immunity does not apply to the same kind of fire protection *facilities*—dangerous and defective facilities that are also "used in fighting fires"—and does not extend to immunize a

dangerous condition of property that is only tangentially connected to the work of firefighting.

III
DEFENDANTS' ARGUMENT THAT SECTION 850.4 IS APPLIED BROADLY ONLY SHOWS THAT IT APPLIES TO FACILITIES USED TO FIGHT FIRES

Defendants argue that section 850.4 is applied broadly and cite three case examples. All three, however, demonstrate that the section is applied only to equipment or facilities used to fight fires—closed water mains that made fire hydrants useless in *Heieck and Moran v. City of Modesto* (1966) 64 Cal.2d 229 and *New Hampshire Ins. Co. v. City of Madera* (1983) 144 Cal.App.3d 298, 304-305, and the barely open valve in the city's connector to the fire sprinkler system in *Lainer Investments v. Department of Water and Power* (1985) 170 Cal.App.3d 1.

These cases give no support to the court of appeal's holding that section 850.4 also grants immunity from liability for injuries resulting from a dangerous condition of property that is not used to fight a fire and is, in fact, miles away from the blaze. Defendants do not overcome Quigley's showing at pages 14-16 of the petition that in all of the cases holding public agencies immune for injuries and property damage resulting from the condition of fire protection or firefighting equipment or facilities, the facilities to which section 850.4 applied were facilities used to actually fight fires. To the extent that any of those cases can be read to say that the immunity applies more broadly, that is only dictum.

Defendants argue that the broad application of section 850.4 includes "operational" negligence. (Answer, p. 14, citing *State of California v. Superior Court (Nagel)* (2001) 87 Cal.App.4th 1409.) The operational negligence in *Nagel* was the failure to properly equip or maintain an airplane used to drop fire retardant on a forest or brush fire, or negligence in

giving the pilot instructions or directions. (*Id.* at p. 1411, fn. 3 and 1414.) That is in no way comparable to the negligence here, which did not create a condition that impaired facilities used to fight the fire. The negligence here was in creating a dangerous condition of property that was used while *not* fighting the fire.

IV
THERE WAS NO EXERCISE OF DISCRETION FOR WHICH DEFENDANTS COULD BE IMMUNE

Defendants quote the court of appeal's observation in *Nagel*, *supra*, that the fire protection immunity statutes are intended "to protect the discretion of public officials in determining whether fire protection should be provided at all, and, if so, to what extent and with what facilities." (*Id.*, 87 Cal.App.4th at p. 1413.) There was no such exercise of discretion here.

Defendants' failure to take reasonable steps to protect firefighters and others sleeping in the infield from being run over by a vehicle servicing the showers was not a "*basic policy decision*[ ] ... expressly entrusted to a coordinate branch of government." (*Johnson v. State of California* (1968) 69 Cal.2d 782, 793 [italics in original]; *Barner v. Leeds* (2000) 24 Cal.4th 676, 685.) The U.S. Forest Service made the basic decision to use the Plumas County Fairgrounds as the base camp for the Silver Fire. (Slip op. at p. 2.) Defendants had the duty to implement that basic decision, and their negligence in performing those duties was not an immune exercise of discretion. (*Johnson*, *supra*, at p. 797.)

Furthermore, nothing in the record suggests that in failing to rope and sign the infield sleeping area or take other reasonable steps to safeguard personnel sleeping in the infield sleeping area from the risk of injury from trucks driving to and from the showers, defendants consciously considered the risk of harm and determined that other policies justified doing nothing to protect them. (*Johnson*, *supra* at p. 794, fn. 8 and 797.)

In fact, defendants had no discretion to exercise with respect to protecting the safety of personnel sleeping in the infield. As pointed out in the petition for review, the U.S. Forest Service Health and Safety Code Handbook mandates compliance with its imperative, "Post signs and rope off sleeping areas." (*Id.*, Zero Code, p. 0-3; § 25.13b, p. 20-80, ¶ 9.) A government agency or employee does not have discretion to violate such a duty and does not have immunity from liability when it does so. (*See Ramos v. County of Madera* (1971) 4 Cal.3d 685, 693-694.)

V
REVIEW IS WARRANTED TO RESOLVE THE CONFLICTING COURT OF APPEAL DECISIONS ON WHETHER GOVERNMENT CODE IMMUNITIES ARE WAIVED BY FAILURE TO TIMELY ASSERT THEM

a. Cases and secondary authority acknowledge that court of appeal decisions conflict on whether Claims Act immunities can be waived.

The petition for review at page 9 cites cases, which defendants ignore, acknowledging that decisions among the courts of appeal are conflicting on the issue of waiver of statutory governmental immunities. (See, e.g., See *Hata v. Los Angeles County Harbor/UCLA Medical Center* (1995) 31 Cal.App.4th 1791, 1800-1804 [collecting conflicting cases]. The current edition of California Government Tort Liability (Cont. Ed. Bar 4th ed. 2017) describes the present state of the case law: "Some courts have repeatedly held that Government Claims Act [citation] immunities are jurisdictional and that a defendant's failure to plead them in an answer or demurrer does not prevent them from being raised later in the litigation or appeal. [Citations.] ... [¶] Other courts, however, have held that an immunity may be waived by failure to prove it." (*Id.*, § 8.58, p. 8-44.)

The conflicting decisions create so much uncertainty that CEB cautions attorneys representing public entities, "**NOTE➤** The safest practice

for public entities is to plead as affirmative defenses all immunities that might reasonably apply to the allegations in the plaintiff's complaint." (*Id.*, p. 8-45. [boldface and symbol in original].)

b. Defendants do not address the unsettled question whether statutory immunities are jurisdictional in the fundamental sense or in the broader sense of rules that define a court's power to act in a case.

Defendants contend that the court of appeal correctly held that section 850.4 is not waived by failure to allege it as an affirmative defense. (Answer, p. 16.) But defendants do not address the court's rationale, and that of the cases it cites for that holding: "governmental immunity is jurisdictional and may be raised at any time." (Slip op. at pp. 5-6.)

That raises the wholly unsettled question, which defendants do not acknowledge, of what "jurisdictional" means in this context. "[T]he term 'jurisdiction' is notoriously ambiguous and has different meanings in different situations [citation]...." (*Shaw v. Superior Court* (2017) 2 Cal.5th 983, 991.) In the present situation, where a governmental immunity is involved, is such an immunity jurisdictional in the fundamental sense, so that a court lacks jurisdiction altogether to hear a case subject to an immunity, or is an immunity jurisdictional only in the broader sense that the statute providing an immunity is a rule that defines the court's power to act in a case over which it has fundamental jurisdiction? (*Ibid.*; *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 288.)

Sovereign immunity is not an unyielding bar to liability of public entities. A governmental entity may waive immunity and consent to being sued. (2 Witkin, California Procedure (5th ed. 2008) Jurisdiction, § 90.) This is particularly true in California where this Court abolished sovereign immunity altogether in *Muskopf* as "mistaken and unjust." (*Id.*, 55 Cal.2d at p. 213.)

The Legislature has consented to suit against the state and its governmental agencies and subdivisions in the Claims Act. Courts have subject-matter jurisdiction over tort actions against public agencies and employees. Nothing in the Act prohibits a public entity from waiving any of the immunities it provides.

c. *McMahan's* is not alone in holding that section 850.4 is waived if not alleged an affirmative defense, nor is the case materially distinguishable.

Defendants attempt to dismiss Quigley's waiver argument by contending that it rests on a single case, *McMahan's of Santa Monica v. City of Santa Monica* (1983) 146 Cal.App.3d 683. They ignore the other cases and authorities cited at page 8 of the petition that agree.

Defendants contend that the *McMahan's* is "factually inapplicable" because in that case section 850.4 was not raised in the trial court at all. But that was not the basis for the appellate court's decision. The court held that the city waived the immunity simply by failing to plead and prove it and for that reason alone refused to consider whether it would have applied to the case. (*Ibid.* at p. 689.) *McMahan's* cannot be read to hold that, if section 850.4 is not alleged as an affirmative defense, defendant can wait until after trial has commenced to raise it for the first time.

Defendants also point out that the court of appeal distinguished *McMahan's* because it was an inverse condemnation action. (Slip op. at p. 6.) Neither the court of appeal nor defendants explain how the form of the action should have any effect on whether an immunity is waived by failure to plead it. In *Harris v. Superior Court* (1992) 3 Cal.App.4th 661, Justice Arthur Gilbert emphasized the need, when reading a case, to distinguish between facts that are pertinent only to the circumstances of the particular case and facts that are material and germane to the holding. "The *Palsgraf* rule, for example, is not limited to train stations." (*Ibid.* at p. 666.)

To the extent there may be any question about the soundness or application of the *McMahan's* holding, that is for this Court to address in resolving the conflicting court of appeal decisions on whether governmental immunities, and section 850.4 in particular, can be waived.

Finally, defendants contend that the court of appeal correctly held that section 850.4 is unlike immunities that have been held waived by failure to allege them as affirmative defenses, as those immunities require an affirmative showing. But so does section 850.4. It grants immunity from liability for injury "resulting from the condition of fire protection or firefighting equipment or facilities...." (*Ibid.*)

The proper construction of that language requires an affirmative showing, putting the burden on the governmental defendant to demonstrate that plaintiff's injury resulted from a condition that rendered equipment or facilities for combatting fires unusable or ineffective to control or extinguish a fire.

d. *Holding* that section 850.4 cannot be waived has adverse consequences for litigants and trial courts.

The adverse consequences of holding that section 850.4 cannot be waived are well demonstrated in the present case. Defendants were able to remain silent as to section 850.4, and prevent Quigley from litigating the question, through more than four years of litigation. Their answer alleged a total of 38 affirmative defenses. (I AA 58-64.) The 16th through 25th, asserted various statutory immunities (I AA 60-62.) None of them mentioned § 850.4 or alleged that Quigley's injuries resulted from a condition of a fire protection or firefighting facility. (I AA 60-62.)[3]

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[3] The fifteenth affirmative defense alleged, "A public entity and its employees are immune from liability for damages alleged in the complaint and Defendants assert all defenses and rights granted to them by the provisions of Government Code sections 810 through 996.6, inclusive." (1 AA 60.) That

In moving for summary judgment, defendants asserted five statutory immunities. (I AA 212-214.) Section 850.4 was not one of them. Nor did they assert as undisputed facts that the Silver Fire base camp was a fire protection or firefighting facility, and that Quigley's injuries resulted from a condition of the facility. (1 AA 223-272.)

In discovery, form interrogatory 15.1 asked defendants to state for each affirmative defense in their pleading "all facts upon which you base the . . . special or affirmative defense. . . ." 1 AA 151, ¶¶ 3-5. In a supplemental response, they stated over two pages of facts. (1 AA 167-169.) They did not state facts that would give rise to § 850.4 immunity, that Quigley's injuries arose from a condition of a firefighting facility. Quigley, thus, was denied the ability to learn from discovery that section 850.4 would be an issue in the case.

It was not until the third day of trial—after potential jurors were to court from all over Plumas County, voir dire was conducted, a jury was empaneled, and Quigley's counsel made his opening statement—that defendants asserted 850.4 in a motion for nonsuit.

The trial judge expressed understandable dismay that defendants waited to that point before raising the issue. "And unfortunately I wish there was some way that this would have come to the Court's attention a long time before -- before the third day of trial...." (RT 69:10-13.)

Defendants offered no reason for waiting until the third day of trial to bring the matter to the court's attention, denying Quigley the opportunity

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defense merely threw the entire Claims Act at plaintiff, leaving it for her to figure out which particular immunity or immunities defendants were claiming. The trial court, nevertheless, held that the allegation was adequate to raise section 850.4 immunity. (2 AA 389-390.) Sufficiency of the fifteenth affirmative defense was argued in the court of appeal, but the court, having held that the immunity can be raised at any time, did not address the issue.

to obtain facts material to the immunity claim through discovery and litigate the issue fully and fairly.

CONCLUSION

Rebecca Quigley suffered serious injuries as a result of the dangerous condition of public property. This is a circumstance in which the Legislature has waived sovereign immunity to assure that an individual injured by official wrongdoing does not suffer the injustice of being required to bear the burden of his or her loss rather than have that loss distributed throughout the community. (See *Lipman v. Brisbane Elementary Sch. Dist.*, (1961) 55 Cal.2d 224, 230; *Ramos*, *supra*, 4 Cal.3d at 692.)

Nevertheless, in holding that section 850.4 immunizes defendants, the court of appeal again raises the barrier of sovereign immunity to bar a claim that the Legislature has determined sovereign immunity should not preclude. The court of appeal's decision presents an important issue of first impression, the proper construction of and scope of the statute and its effect on and relationship to the rule of liability for a dangerous condition of public property.

In holding that defendants did not and could not waive section 850.4 immunity, the court's decision also adds further to the uncertainty and confusion arising from the cases that are in irreconcilable conflict over whether Claims Act immunities can or cannot be waived.

The petition for review should be granted.

Dated: June 30, 2017

JAY-ALLEN EISEN LAW CORPORATION

REINER & SLAUGHTER, LLP

By: _____
JAY-ALLEN EISEN,
Attorneys for Appellant, Rebecca Megan Quigley

CERTIFICATION

I certify, pursuant to rule 8.504, Subdivision (d)(1), California Rules of Court, that the attached **REPLY TO ANSWER TO PETITION FOR REVIEW** contains 4,188 words, as measured by the word count of the computer program used to prepare this brief.

Dated: June 30, 2017

JAY-ALLEN EISEN LAW CORPORATION

By: _____
JAY-ALLEN EISEN

PROOF OF SERVICE
(CCP Sections 1013a, 2015.5)

I, Michelle Micciche, declare:

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within cause. My business address is 1000 G Street, Suite 210, Sacramento, California 95814.

On June 30, 2017, I served the within **REPLY TO ANSWER TO PETITION FOR REVIEW** as follows:

Todd E. Slaughter **Reiner & Slaughter** **P.O. Box 494940** **2851 Park Marina Drive, Suite 200** **Redding, CA 96049-4940** **[Attorneys for Plaintiff and Appellant: Rebecca Megan Quigley]**	**Jeffry Albin Miller** **Lewis Brisbois Bisgaard & Smith LLP** **701 B Street, Suite 1900** **San Diego, CA 92101** **[Attorneys for Defendants and Respondents:** **Garden Valley Fire Protection District, et al.]**
Appeals Clerk **Plumas County** **Superior Court** **520 Main Street, #104** **Quincy, CA 95971**	**Clerk** **Third District Court of Appeal** **914 Capitol Mall, 4th Floor** **Sacramento, CA 95814**

There is delivery by United States mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 30, 2017 at Sacramento, California.

Michelle Micciche

MICHELLE MICCICHE