Case No. B266959
(Consolidated with Case No. B268452)

IN THE COURT OF APPEAL
FOR THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION THREE

MERCURY CASUALTY COMPANY as subrogee of
SARAH and CHRISTOPHER DUSSEAULT,

Plaintiff and Respondent,

vs.

CITY OF PASADENA,
Defendant and Appellant.

On Appeal from the Superior Court for the County of Los Angeles
Honorable Richard L. Fruin, Jr., Judge of the Superior Court
Case No. BC488745

AMICUS CURIAE BRIEF ON BEHALF OF THE LEAGUE OF CALIFORNIA CITIES; THE CALIFORNIA STATE ASSOCIATION OF COUNTIES; CALIFORNIA PARK AND RECREATION SOCIETY; PROFESSOR DANIEL P. SELMI; and PROFESSOR JOHN ECHEVERRIA IN SUPPORT OF CITY OF PASADENA

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CERTIFICATE OF INTERESTED ENTITIES AND PERSONS
(Cal. Rule of Court 8.208, 8.488)

The following entities and persons have either an ownership interest of ten percent or more in the parties filing this certificate or a financial or other interest in the outcome of the proceeding that the Justices should consider in determining whether to disqualify themselves from this matter:

Identity	Nature of Interest
The League of California Cities	Amici Curiae
The California State Association of Counties	Amici Curiae
California Park and Recreation Society	Amici Curiae
Professor Daniel P. Selmi	Amici Curiae
Professor John Echeverria	Amici Curiae

Dated: October 24, 2016

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INTRODUCTION

Damage caused by a tree maintained under the City of Pasadena's tree program cannot give rise to liability under inverse condemnation because it is not a public improvement that the City of Pasadena ("City") deliberately planned and built. The City convincingly proved this point in its opening and reply briefs. Not only is the City correct under case law, but the City's conclusion is sound for two important policy reasons. First, the Legislature long ago established a statutory scheme for filing claims for damages against public entities, now commonly known as the Government Claims Act (Gov. Code, §§ 810 *et seq.*) (formerly the Tort Claims Act). The Government Claims Act has stood the test of time and should not be cast aside by an unwarranted expansion of inverse condemnation law. Second, if the Court were to hold that tree maintenance ordinances and plans are works of public improvement triggering strict liability under inverse condemnation, that ruling would have detrimental effects on the public. Public entities would likely cease enacting tree maintenance ordinances, and would likely repeal existing ordinances, in order to avoid strict inverse condemnation liability.

Before the lower court's decision, no public entity would have anticipated that by enacting a tree maintenance ordinance it would have imposed on itself strict liability for tree damage, rather than liability analyzed under the Government Claims Act and decades of dangerous condition law. Should this Court affirm the lower court, a rational public entity would repeal its ordinance to eliminate strict liability based on its "plan" or "program" of tree maintenance. The end result: damage from a city tree would be analyzed – as it should be – under the Government Claims Act because no "plan" would exist on which inverse condemnation liability could be based, but the city and its residents would lose the

benefits of a reasoned, considered ordinance governing how and when trees should be planted, removed and maintained.

I. THE GOVERNMENT CLAIMS ACT SERVES IMPORTANT PUBLIC POLICIES AND SHOULD NOT BE CAST ASIDE BY AN UNWARRANTED EXPANSION OF INVERSE CONDEMNATION LAW.

A plaintiff should not be able to recover for damage caused by a public tree under inverse condemnation. Rather, the Government Claims Act (the "Act") provides adequate and appropriate remedies for such damage. First, the Legislature intended for the liability of public entities as property owners to be governed by the provisions of the Act relating to dangerous conditions of public property. Second, the sections of the Act outlining dangerous conditions of public property strike the appropriate balance between compensating the private property owner when the public entity is at fault for the damage, and protecting the public entity when it is not at fault. The Act also carefully considers the policy implications of public entity liability and defenses. Third, the Act incorporates claims presentation requirements, which allow for early resolution of disputes before expensive litigation. Lastly, the long line of cases applying the Act in factually analogous situations, compared with the complete vacuum of cases analyzing these facts under inverse condemnation, verifies that the Act provides appropriate remedies for these types of cases.

A. The Government Claims Act Strikes the Right Balance Between Government Liability and Immunity

"Except as otherwise provided by statute . . . a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (Gov. Code, § 815, subd. (a).) Further, this liability is subject to any defense provided to the public entity by statute. (*Id.* at subd. (b).) In other words, a public entity is liable only if a statute so provides and, even then, immunity

provisions will prevail over statutes imposing liability. (*Cairns v. County of Los Angeles* (1997) 62 Cal.App.4th 330, 334; *Puskar v. City and County of San Francisco* (2015) 239 Cal.App.4th 1248, 1252.)

Government Code sections 830 through 835.4 govern the liability of a public entity for property damage. Section 835 provides that a public entity may be held liable for such injuries "if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, [and] that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred." In addition, the plaintiff must establish that either: (a) "[a] negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition," or (b) "[t]he public entity had . . . notice of the dangerous condition . . . a sufficient time prior to the injury to have taken measures to protect against the dangerous condition." Public property is in a dangerous condition within the meaning of section 845 if it "is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself." (*Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 148.)

Liability does not necessarily exist, even if the evidentiary requirements of section 835 are met. "Even if the elements stated in the statute are established, a public entity may avoid liability if it shows that it acted reasonably in the light of the practicability and cost of pursuing alternative courses of action available to it." (*Gonzales v. City of San Diego* (1982) 130 Cal.App.3d 882, 889, fn. 4, quoting Sen. Com. com. to §835.) In addition to the defenses available to public entities under section 835.4, a public entity may use any other defense, such as contributory negligence or assumption of the risk, that is available under section 815(b). (*Id.*) In sum, the Act's provisions require a public entity to maintain its

property but also extend protections to public entities where their conduct was reasonable.

In enacting the Government Claims Act, and specifically the legal framework that governs dangerous conditions of public property, the Legislature intended a flexible solution that balances a public entity's liability with cost and practicality. (*Id.*) In contrast, inverse condemnation law does not permit such a holistic approach. While a defendant in an inverse condemnation case can point to contributory negligence or an intervening act, inverse condemnation is focused on one primary issue: causation.

> It is not necessary that government's liability be based on negligence as long as there is a casual relationship between government's act or omission and the loss. All that is required is a deliberate act by a public entity . . . which causes a taking or damaging of private property.

(*Aetna Life & Casualty Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 865, 873-74 [internal citations omitted].) Inverse condemnation does not attempt to balance broader public policy concerns. By contrast, those considerations are inherent in the law of dangerous conditions of public property.

In *Zelig v. County of Los Angeles*, the children of a woman who was fatally shot by her ex-husband in a county courthouse sued the county and the sheriff's department for negligence. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112.) Plaintiffs pursued a cause of action under Civil Code section 1714, which governs an individual's liability for the injury of another related to the management of the first individual's property. (*Id.* at p. 1122.) The Court of Appeal determined that Civil Code section 1714 could be applied to extend the liability of the public entity beyond the usual reach of the dangerous conditions provisions of the Government Code. (*Id.* at p. 1132.) The California Supreme Court reversed and held that:

> The Court of Appeal's conclusion fails to recognize that . . . the liability of public entities as property owners is set out specifically in Government Code section 835, as part of the general scheme of the Tort Claims Act. As we have noted, the Legislature has elected to impose liability on public entities principally through their potential vicarious liability for the negligence of their employees and has otherwise provided for relatively circumscribed liability. The Court of Appeal's expansive view of governmental liability potentially could undermine the balanced scheme set out in the Tort Claims Act.

(*Ibid.*) While *Zelig* dealt with different facts – protection from third party crime at public facilities – the same logic applies. The Legislature enacted the dangerous conditions provisions of the Government Code to deal with the issue in this case: liability of public entities as property owners. To go beyond that statutory scheme, and impose strict liability under a different body of law, subverts the Legislature's intent.

Furthermore, the legal framework governing dangerous conditions of public property carefully considers public policy implications in its assignment of liability. Again, the California Supreme Court in *Zelig* is instructive:

> In structuring Government Code section 835 to define the circumstances in which a public entity properly may be held liable for an injury caused by a dangerous condition of public property, the Legislature took into account the special policy considerations affecting public entities in their development and control of public property and made a variety of policy judgments as to when a public entity should or should not be liable in monetary damages for injuries that may occur on public property. These policy judgments would be undermined if an injured person could ignore the limitations embodied in Government Code section 835 and invoked the very general provisions of section 1714 of the Civil Code to impose liability on a public entity in circumstances in which such liability would not be permitted under section 835.

(*Id.* at p. 1132.) While *Zelig* explores the intersection of Civil Code section 1714 and the Government Code, and this case deals with the collision of inverse condemnation with the Code, the same principles are at play. Inverse condemnation seeks to impose liability on the City when such liability may not be authorized under section 835 because there is no evidence in the record of either (1) a negligent act or omission by a government employee; or (2) notice to the City of the dangerous condition prior to the accident. As the Court found in *Zelig*, such an end run around the Act should not be permitted

B. The Government Claims Act Provides for Early Resolution of Disputes

Bringing a suit under the Government Claims Act's framework for dangerous conditions of public property requires compliance with claims presentation procedures. Under Government Code section 911.2, any claim relating to injury to personal property must be presented to the public entity within six months of the accrual of the cause of action. "The point of the requirement is not to establish a needless formality" but "to require public entities to manage and control claims and to encourage timely investigation and settlement to avoid needless litigation." (*All. Fin. v. City & County of San Francisco* (1998) 64 Cal.App.4th 635, 647.)

In contrast, no claim is required to maintain an action against a public entity for inverse condemnation. (Gov. Code, § 905.1.) By circumventing the claim-filing requirement, a plaintiff diminishes the possibility of early resolution of any dispute. The potential for pre-litigation settlement is beneficial for all parties – both private individuals and the public entities. Filing a lawsuit under inverse condemnation, and obviating any preliminary claim, does a disservice to all parties and to the judicial process, clogging the courts with lawsuits that could have been avoided.

The claims presentment requirement serves several very important functions. First, it provides the public entity with prompt notice of the events leading up to the claim so that an investigation can take place while evidence and witnesses are fresh. Second, it allows ample opportunity for the possibility of settlement, thereby avoiding expenditure of public funds in needless litigation. And third, it allows the public entity to be informed in advance as to possible liability and indebtedness to facilitate budgeting for upcoming fiscal years. (*Lewis C. Nelson & Sons, Inc. v. Clovis Unified School Dist.* (2001) 90 Cal.App.4th 64; *Munoz v. State of Calif.* (1995) 33 Cal.App.4th 1767; *Life v. County of Los Angeles* (1991) 227 Cal.App.3d 894; *Mohlmann v. City of Burbank* (1986) 179 Cal.App.3d 1037.)

Our courts have consistently found that the claim presentment requirement is more than a procedural element of a claim, but is an essential element to a cause of action against a public entity. (*State of Calif. v. Superior Court* (2004) 32 Cal.4th 1234; *Wood v. Riverside General Hosp.* (1994) 25 Cal.App.4th 1113.) A failure to allege compliance with the claim presentment statute constitutes a failure to state a cause of action, and is subject to a general demurrer. (*State of Calif. v. Superior Court* (2004) 32 Cal.4th 1234.) In enacting the Government Claims Act "[t]he Legislature did not intend 'to expand the rights of plaintiffs in suits against governmental entities, but to confine potential governmental liability to rigidly delineated circumstances: immunity is waived only if the various requirements of the act are satisfied.'" (*Id.* at p. 1243 (*citing Williams v. Horvath* (1976) 16 Cal.3d 834, 838).) Thus, presenting a timely claim to a public entity is more than mere procedure, but rather it serves a different purpose than an ordinary statute of limitations.

C. Courts Consistently Decide Cases Involving Damage Caused by Public Trees Under the Government Claims Act, Not Inverse Condemnation

Courts have consistently used the Government Claims Act to decide cases involving public trees causing damage. In *Alana M. v. State of California*, a state park visitor brought a personal injury action against the State when a tree fell on her tent and injured her. (*Alana M. v. State* (2016) 245 Cal.App.4th 1482.) The plaintiff argued that the State negligently failed to properly maintain the campsite and knew or should have known of the structural defects of the tree. (*Id.* at pp. 1485-6.) The court relied on section 835, dealing with dangerous conditions of public property, in holding that the State was protected against liability by the natural condition immunity contained in section 831.2. (*Id.* at p. 1493.)

In *Meddock v. County of Yolo*, plaintiff sued the county after he was injured when a tree fell on him while in a county-owned parking lot. (*Meddock v. County of Yolo* (2013) 220 Cal.App.4th 170.) Plaintiff alleged that the county failed to maintain the trees properly and failed to warn users of the trees' danger. (*Id.* at p. 174.) Again, the court applied the Government Claims Act to identify the bounds of the county's liability as property owner. (*Id.* at p. 176.) The court held that the natural condition immunity applied even though the visitor was in an improved parking lot. (*Id.* at p. 177.)

In *Montenegro v. City of Bradbury*, a pedestrian tripped over a tree trunk while walking on a pathway and sued the city. (*Montenegro v. City of Bradbury* (2013) 215 Cal.App.4th 924.) The court held that, under sections 835 and 831.4, the city was immune because the injury was caused by a physical defect of a recreational trail. (*Id.* at p. 932.)

For over four decades, courts have decided numerous other cases involving trees on public property contributing to damage or injury, all

under the rubric of the Government Claims Act. (*See e.g., De La Rosa v. City of San Bernadino* (1971) 16 Cal.App.3d 739; *Cordova v. City of Los Angeles* (2015) 61 Cal.4th 1099; *Bakity v. County of Riverside* (1970) 12 Cal.App.3d 24; *Milligan v. City of Laguna Beach* (1983) 34 Cal.3d 829.)

In contrast, there is a dearth of factually analogous cases decided under inverse condemnation. Inverse condemnation was never intended to be used in these circumstances and the lack of precedent proves this point. Mercury, however, is not without a remedy – it can avail itself of the Government Claims Act, as so many plaintiffs have done before it.

II. A FINDING THAT A TREE PLAN OR ORDINANCE IS A "PUBLIC IMPROVEMENT" WOULD HAVE DEVASTATING EFFECTS FOR PUBLIC ENTITIES THROUGHOUT THE STATE

If this Court determines that a tree plan or ordinance is a "public improvement," it would dramatically expand the scope of liability for public entities with significant statewide consequences. The financial implications of holding that damage caused by a public tree subjects the public entity to liability under inverse condemnation would affect every city and county in the state. Los Angeles alone has an estimated 700,000 trees in its city limits. (http://bss.lacity.org/UrbanForestry/index_stewards.htm.) If damage caused by a tree could result in an inverse condemnation judgment against a city or county, then, in order to prudently manage risks, public entities will either not enact or will repeal tree ordinances, and will likely resist planting new trees.

A. Cities throughout California Have Tree Plans or Ordinances Similar to the Pasadena Tree Ordinance

All major cities and counties in California have tree plans or ordinances that govern tree maintenance. Set forth below is a brief summary of the relevant plans or ordinances:

- San Francisco – The city has an Urban Forest Plan, adopted by the Board of Supervisors in 2015.[1] (Citations in this section are included as footnotes for the ease of the Court's reading, due to irregular formatting of webpage addresses.) The plan aims to increase street trees while also establishing and funding a citywide street maintenance program.[2] The plan would relieve homeowners from the responsibility of maintenance and repairing tree-related sidewalk damage by centralizing responsibility under Public Works.[3] In 2013, San Francisco estimated it had over 105,000 public trees.[4]
- Berkeley – The city's Urban Forestry Management Program plants new and replacement trees.[5] It also maintains existing trees, including pruning and removal of hazardous trees.[6] In 2013, the city conducted a comprehensive inventory of all of the city's trees.[7] At that time, Berkeley counted over 46,000 public trees.[8]

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[1] http://sf-planning.org/urban-forest-plan.

[2] *Id.*

[3] *Id.*

[4] http://default.sfplanning.org/plans-and-programs/planning-for-the-city/urban-forest-plan/UrbanForestPlan_StreetTreeCensus_FullReport_apr2013.pdf.

[5]http://www.ci.berkeley.ca.us/Parks_Rec_Waterfront/Trees_Parks/Trees_and_Urban_Forestry_Management.aspx.

[6] *Id.*

[7]http://www.ci.berkeley.ca.us/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_Trees_and_Parks/Tree%20Inventory%20Summary%20Report%202013.pdf.

[8] *Id.*

- Oakland – The city has an Urban Forestry Department with 15 full-time employees and a $2.5 million annual budget.[9] The department inspects trees for hazardous conditions, trims and removes hazardous trees, and provides emergency tree response.[10] The department is currently seeking grant funding to complete a full tree inventory and create an urban forest master plan.[11] The city estimates that it maintains over 200,000 public trees in parks and along streets.[12]
- San Jose – While the maintenance of street trees in the city is the responsibility of the adjacent property owner, the city is responsible for the protection of its street trees in numerous locations including those adjacent to city-owned property, in designated areas in special landscape districts, in all median islands on public streets, and along certain frontage areas.[13] The city also maintains the trees in the city-owned parks and park-like areas in the city.[14]
- Sacramento – The Urban Forestry section of the city's Department of Public Works plants, maintains, prunes and removes public trees; reviews pre-development plans and landscape plans that involve public or heritage trees; and creates and maintains a list of preferred street trees.[15] The city also has a Neighborhood Pruning Program that provides routine pre-emptive tree maintenance on regular

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[9]http://www2.oaklandnet.com/government/o/PWA/o/FE/o/TreeServices/index.htm.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] http://www.sanjoseca.gov/DocumentCenter/View/21896.

[14] *Id.*

[15] (http://www.cityofsacramento.org/Public-Works/Maintenance-Services/Trees/About-Urban-Forestry.)

cycles, a Tree Planting Program that has a goal of planting 1,000 trees each planting season until the city reaches optimum density, and a Heritage Tree Program that protects heritage trees.[16] Sacramento maintains a database of approximately 100,000 public trees.[17]

- Fresno – The city has a Street Tree Program that trims all street trees in the city by square ¼ mile sections at a time.[18] With over 400 sections, it can take tree crews more than sixteen years to trim the entire city once.[19] The city also removes street trees if they meet certain criteria, at no expense to the homeowner.[20] The city provides a tree-planting program whereby residents can request a planting in their "parkstrip."[21]
- Santa Monica – The city has an Urban Forest Master Plan, approved by the City Council in 2011.[22] The long-range plan is dedicated to cultivating a successful urban forest that considers the watershed, soils, plan and wildlife communities, and climate effects.[23] In 2016,

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[16] (http://www.cityofsacramento.org/Public-Works/Maintenance-Services/Trees/Programs.)

[17] *Id.*

[18]http://www.fresno.gov/CityOfFresno/Templates/StandardTemplate.aspx?NRMODE=Published&NRNODEGUID=%7bB204897D-1EE3-432F-9476-0D7FF90D83A0%7d&NRORIGINALURL=%2fGovernment%2fDepartmentDirectory%2fPublicWorks%2fStreetsDivision%2fStreet%2bTrees%2ehtm&NRCACHEHINT=Guest.)

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22]https://www.smgov.net/uploadedFiles/Portals/UrbanForest/UFMP_ADOPTED_FINAL.pdf.

[23] *Id.*

the city worked to revise the Plan, collaborating with a committee to divide the city's streets into nearly 400 segments and identify replacement species for each segment.[24] A draft plan is expected to go to the City Council for approval in January 2017.[25] Santa Monica has over 33,000 public trees.[26]

- Los Angeles – The City has an Urban Forestry Division that manages trees and plants in the city.[27] The Division also has authority over certain native tree species on private property that are protected by the city.[28] The Division offers proactive tree trimming, pruning, planting, and removal; maintains landscaped median islands; and provides emergency tree work.[29] The Division also provides arboriculture knowledge to other city agencies.[30] Los Angeles has approximately 700,000 street trees and several million square feet of landscaped median islands.[31]
- San Diego – The city has an Urban Forestry Section which provides tree maintenance services including eliminating hazards, providing visibility, clearing the right-of-way, and tree removal.[32] The

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[24] https://www.smgov.net/portals/urbanforest/.

[25] *Id.*

[26] *Id.*

[27] http://bss.lacity.org/UrbanForestry/About.htm.

[28] *Id,*

[29] *Id.*

[30] http://bss.lacity.org/UrbanForestry/index.htm.

[31] http://bss.lacity.org/UrbanForestry/index_stewards.htm.

[32] (https://www.sandiego.gov/street-div/services/forestry/maintenance.) The city also has an Urban Forest Management Action Plan. (https://www.sandiego.gov/sites/default/files/sd_ufmp_r2_12_16v2.pdf.

objectives of the plan are to maintain optimal levels of tree cover, age, and species diversity; maintain trees in a healthy condition; and incorporate street tree plans in community plan updates.[33] San Diego has over 250,000 public trees.[34]

Most of the tree plans described above are similar in scope and purpose to the Pasadena tree ordinance at issue in this case. The Pasadena ordinance sought to preserve the city's canopy cover, safeguard the urban forest, and improve quality of life. As with Pasadena's, the cities' plans "simply set[] forth general goals and regulations to protect the public and private trees with which [the cities] are graced." (Appellant's Opening Brief at p. 10.)

B. Finding a Tree Plan or Ordinance to be Evidence of a "Public Improvement" Could Expand Liability Sufficiently to End Public Entity Tree Planning

If this Court interprets Pasadena's tree ordinance to be a "public improvement," such a holding would have far-reaching consequences for public entities throughout California. Every time one of the millions of public trees in California, maintained by a public entity as part of a tree ordinance or tree plan, fell or otherwise caused injury or damage to personal property, the public entity would be liable under inverse condemnation, regardless of whether the damage was foreseeable or whether the public entity acted reasonably in maintaining its trees. That vast expansion of liability could be severe to public entities in California.

Consequently, public entities across the State might abandon their tree ordinances and leave maintenance to ad hoc decisions by public works departments. Why? Because without an ordinance there is no "plan" converting a tree into a work of public improvement. Thus, if a city tree

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[33] *Id.*

[34] https://www.sandiego.gov/street-div/services/forestry.

caused damage in a city that had eliminated its "plan," the city's liability could not be analyzed under inverse condemnation. It would have to be analyzed the same way such liability has been analyzed for decades – under the dangerous condition framework set forth in the Government Claims Act.

In addition, cities like San Francisco or San Jose, which assigned upkeep of pubic trees to homeowners after the recession, may abandon efforts to re-assign responsibility back to the public entity. Supervisors in San Francisco have proposed legislation that would return tree maintenance obligations to the city, unburdening residents who often do not have the resources for costly pruning and associated sidewalk repairs. (http://sf-planning.org/urban-forest-plan.)

If having a tree plan or ordinance is evidence of a "public improvement" under inverse condemnation, then the accompanying liability simply would not be worth the benefit. The end result of this expansion of liability would be replacing sound public planning with *ad hoc* tree maintenance.

C. The Government Claims Act Encourages Maintenance and Upkeep

While a determination that a tree plan is evidence of a "public improvement" under inverse condemnation would discourage public entities from adopting plans for maintaining their trees, the dangerous condition provisions of the Government Claims Act incentivize and require maintenance. A public entity cannot have public property that "is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself" without potentially incurring liability. (Gov. Code, § 845; *Bonanno*, *supra,* 30 Cal.4th at p. 148.)

The public policy incentives indisputably weigh in favor of a finding that a tree plan or ordinance is not a "public improvement." Such a finding will limit the scope of liability to that which a public entity can reasonably absorb. It will also allow public entities to continue important and valuable tree programs that benefit residents and the environment. Lastly, such a finding is consistent with the provisions of the Government Claims Act that encourage public entities to maintain their trees in a safe condition.

CONCLUSION

For the foregoing reasons, this Court should reverse the superior court's Judgment in favor of Mercury.

Dated: October 24, 2016

MOSCONE EMBLIDGE & OTIS LLP

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CERTIFICATE OF WORD COUNT
(CAL. RULE OF COURT 14(C)(1))

The text of this brief uses a 13-point Times New Roman font and consists of 4,775 words as counted by the Microsoft Word word-processing program used to generate the brief.

Dated: October 24, 2016

MOSCONE EMBLIDGE & OTIS LLP

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CERTIFICATE OF SERVICE
Court of Appeal Case No. B266959
(Consolidated with B268452)

I, Anna L. Hill, certify/declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. On October 25, 2016, I served the attached:

AMICUS CURIAE BRIEF ON BEHALF OF THE LEAGUE OF CALIFORNIA CITIES; THE CALIFORNIA STATE ASSOCIATION OF COUNTIES; CALIFORNIA PARK AND RECREATION SOCIETY; PROFESSOR DANIEL P. SELMI; and PROFESSOR JOHN ECHEVERRIA

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Trial Court Judge, Superior Court

I served the attached document(s) in the manner indicated below:

☐ **BY MAIL:** I caused true and correct copy(ies) of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) named above and, following ordinary business practices, placed said envelope(s) at the Law Offices of Moscone Emblidge & Otis LLP, 220 Montgomery, Suite 2100, San Francisco, California, 94104, for collection and mailing with the United States Postal Service and there is delivery by the United States Post Office at said address(es). In the ordinary course of business, correspondence placed for collection on a particular day is deposited with the United States Postal Service that same day.

☒ **BY FEDERAL EXPRESS OVERNIGHT**: I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) named above and, following ordinary business practices, placed said envelope(s) at the Law Offices of Moscone Emblidge & Otis LLP, 220 Montgomery Street, Ste. 2100, San Francisco, California, 94104, for collection and mailing with Federal Express. I am informed that there is delivery service by Federal Express at the address(es) of the addressee(s) named above. In the ordinary course of business, correspondence placed for collection on a particular day is deposited with Federal Express that same day.

☐ **BY ELECTRONIC MAIL:** I caused true and correct copies of the above documents to be sent via electronic mail to the e-mail addressee(s) named above. I did not receive, within a reasonable amount of time after the transmission, any electronic message other indication that the transmission was unsuccessful.

I certify/declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed October 25, 2016, at San Francisco, California.

Anna L. Hill