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https://www.planjpa.org/

CLAIMS COMMITTEE MEETING
AGENDA

Thursday, January 26, 2023
1:30 p.m.

Zoom
Please contact Katie Sullivan for videoconference information.

All or portions of this meeting will be conducted by teleconferencing in accordance with Government Code Section 54953(b). Teleconference locations are as follows: Sedgwick, 1750 Creekside Oak Drive, Suite 200, Sacramento, CA 95833; City of Burlingame, 501 Primrose Rd, Burlingame, CA 94010; Town of Hillsborough, 1600 Floribunda Ave, CA 94010; Town of Los Gatos, 110 East Main St., Los Gatos, CA 95030; City of Morgan Hill, 17575 Peak Ave, Morgan Hill, CA 95037; and City of San Carlos, 600 Elm St, San Carlos, CA 94070.

Each location is accessible to the public, and members of the public may address the Claims Committee from any teleconference location.

In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation to participate in this meeting, please contact Katie Sullivan at katie.sullivan@sedgwick.com (916) 244-1164 or (916) 244-1199 (fax). Requests must be made as early as possible, and at least one full business day before the start of the meeting.

Documents and materials relating to an open session agenda item that are provided to the Pooled Liability Assurance Network Joint Powers Authority (PLAN JPA) Claims Committee less than 72 hours prior to a regular meeting will be available for public inspection at 1750 Creekside Oaks Dr., Suite 200, Sacramento, CA 95833.

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1. CALL TO ORDER

2. INTRODUCTIONS

3. APPROVAL OF AGENDA AS POSTED (OR AMENDED)

* Reference materials enclosed with staff report.

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4. PUBLIC COMMENTS - The Public may submit any questions in advance of the meeting by contacting Katie Sullivan at: katie.sullivan@sedgwick.com. This time is reserved for members of the public to address the Committee relative to matters of the Claims Committee not on the agenda. No action may be taken on non-agenda items unless authorized by law. Comments will be limited to five minutes per person and twenty minutes in total.

5. CONSENT CALENDAR

4 *A. Minutes from the November 17, 2022, Claims Committee Meeting

7 *B. Minutes from the December 8, 2022, Claims Committee Meeting

Recommendation: Staff recommends the Claims Committee approve the Consent Calendar.

6. CLAIMS MATTERS

9 *A. Update from PLAN JPA Litigation Manager

Recommendation: None.

7. CLOSED SESSION

A. Pursuant to Government Code Section 54956.95(a), the Committee will hold a closed session to discuss the following claims:

- Burkleo v. Town of Atherton
- Giddens v. City of Suisun City
- Moore v. City of Suisun City
- Glorioso v. City of Millbrae, et al

B. Pursuant to Government Code Section 54957.1, the Committee will report in open session any reportable action taken in closed session.

8. CLOSING COMMENTS

This time is reserved for comments by Claims Committee members and/or staff and to identify matters for future Claims Committee business.

A. Claims Committee
B. Staff

9. ADJOURNMENT

NOTICES:

- The next Claims Committee meeting will occur on Thursday, February 23, 2023, at 1:30pm via videoconference.

* Reference materials enclosed with staff report.

Agenda Items 5.A-B.

CONSENT CALENDAR

SUBJECT: Consent Calendar

BACKGROUND AND HISTORY:

The Consent Calendar consists of items that require approval or acceptance but are self-explanatory and require no discussion. If a Committee member would like to discuss any item listed, it may be pulled from the Consent Calendar.

STAFF RECOMMENDATION:

Staff recommends the Claims Committee approve the Consent Calendar.

REFERENCE MATERIALS ATTACHED:

A. Minutes from the November 17, 2022, Claims Committee Meeting
B. Minutes from the December 8, 2022, Claims Committee Meeting

DRAFT

POOLED LIABILITY ASSURANCE NETWORK JOINT POWERS AUTHORITY (PLAN JPA)

MINUTES OF THE CLAIMS COMMITTEE MEETING OF NOVEMBER 17, 2022

A regular meeting of the Claims Committee was held on November 17, 2022, via videoconference.

MEMBERS PRESENT: Donald Larkin, Chair, Morgan Hill
Michael Guina, Burlingame
Ann Ritzma, Hillborough
Gabrielle Whelan, Los Gatos
Rebecca Mendenhall, San Carlos

MEMBERS ABSENT: None

OTHERS PRESENT: Jon Paulsen, PLAN JPA General Manager
Katie Sullivan, PLAN JPA Assistant General Manager
Susan DeNardo, PLAN JPA Litigation Manager
Eric Dahlen, PLAN JPA Sr. Consultant
Greg Rubens, Board Counsel

1. **CALL TO ORDER:**

   The Regular Meeting of the PLAN JPA Claims Committee meeting was called to order at 1:31 p.m.

2. **INTRODUCTIONS:**

   A roll call was taken and it was determined there was a quorum present.

3. **APPROVAL OF THE AGENDA AS POSTED (OR AMENDED):**

   Susan DeNardo, PLAN JPA Litigation Manager, informed the Committee the matter of James Hill v. City of East Palo Alto would not be discussed.

   Ann Ritzma moved to approve the amended agenda. Michael Guina seconded the motion. A roll call vote was taken and the motion passed unanimously by Donald Larkin, Michael Guina, Ann Ritzma, Gabrielle Whelan, and Rebecca Mendenhall.

4. PUBLIC COMMENTS:

None.

5. CONSENT CALENDAR:

Ann Ritzma moved to approve the following items: A) Minutes from the October 27, 2022, Claims Committee Meeting. Michael Guina seconded the motion. A roll call vote was taken and the motion passed unanimously by Donald Larkin, Michael Guina, Ann Ritzma, Gabrielle Whelan, and Rebecca Mendenhall.

6. CLAIMS MATTERS:

A. Consideration of City of Foster City's Request for Defense Counsel

The City of Foster City submitted a request for attorneys Benjamin Stock and Nicholas Muscolino from the Burke, Williams, & Sorenson firm to represent them in the matter of Foster City Marina LLC v. The City of Foster City.

Susan DeNardo, PLAN JPA Litigation Manager, informed the Committee neither Mr. Stock or Mr. Muscolino are on PLAN JPA's approved panel list. She also noted Mr. Stock currently serves as the City Attorney for the City of Foster City.

After a brief discussion, the Committee granted conditional approval pending further discussion at their meeting in December.

Donald Larkin moved to conditionally approve Benjamin Stock and Nicholas Muscolino to represent the City of Foster City in the Foster City Marina LLC v. City of Foster City claim, pending further discussions at the December Claims Committee meeting. Gabrielle Whelan seconded the motion. A roll call vote was taken and the motion passed unanimously by Donald Larkin, Michael Guina, Ann Ritzma, Gabrielle Whelan, and Rebecca Mendenhall.

7. CLOSED SESSION:

A. The Committee convened to closed session, pursuant to Government Code section 54956.95(a) at 1:34 p.m. to discuss the following claims:

- Michael Mitchell v. City of Burlingame
- Etzel Williams, et al v. City of Burlingame
- Foster City Marina LLC v. City of Foster City

- Jowy Roman v. City of Foster City
- Glorioso v. City of Millbrae, City of San Bruno, et al
- Alok Jain, et al v. City of Milpitas
- John Henneberry v. City of Newark

B. Pursuant to Government Code Section 54957.1, the Committee reconvened to open session at 2:27 p.m. The following actions were taken under closed session:

No reportable action was taken during closed session.

8. CLOSING COMMENTS:

A. Claims Committee

None.

B. Staff

Staff inquired when the Committee would like to meet next and suggested a quick meeting before the PLAN JPA Strategic Planning and Board of Directors meeting on December 8, 2022. The Committee was in agreement.

9. ADJOURNMENT

The Regular Meeting of the PLAN JPA Claims Committee was adjourned at 2:34 p.m.

Katie Sullivan, Assistant General Manager

DRAFT

POOLED LIABILITY ASSURANCE NETWORK JOINT POWERS AUTHORITY (PLAN JPA)

MINUTES OF THE CLAIMS COMMITTEE MEETING OF DECEMBER 8, 2022

A regular meeting of the Claims Committee was held on December 8, 2022, via videoconference.

MEMBERS PRESENT: Donald Larkin, Chair, Morgan Hill
Michael Guina, Burlingame
Ann Ritzma, Hillsborough
Rebecca Mendenhall, San Carlos

MEMBERS ABSENT: Gabrielle Whelan, Los Gatos

OTHERS PRESENT: Jon Paulsen, PLAN JPA General Manager
Katie Sullivan, PLAN JPA Assistant General Manager
Susan DeNardo, PLAN JPA Litigation Manager
Eric Dahlen, PLAN JPA Sr. Consultant
Greg Rubens, Board Counsel
Byrne Conley, Coverage Counsel

1. **CALL TO ORDER:**

   The Regular Meeting of the PLAN JPA Claims Committee meeting was called to order at 8:39 a.m.

2. **INTRODUCTIONS:**

   Introductions were made and it was determined there was a quorum present.

3. **APPROVAL OF THE AGENDA AS POSTED (OR AMENDED):**

   The agenda was approved as posted.

4. **PUBLIC COMMENTS:**

   None.

5. CLOSED SESSION:

A. The Committee convened to closed session, pursuant to Government Code section 54956.95(a) at 8:40 a.m. to discuss the following claims:

- Foster City Marina, LLC v. City of Foster City
- James Hill v. City of East Palo Alto

B. Pursuant to Government Code Section 54957.1, the Committee reconvened to open session at 9:00 a.m. The following actions were taken under closed session:

No reportable action was taken during closed session.

6. CLAIMS MATTERS:

A. Consideration of the City of Foster City's Request for Defense Counsel

This item was not discussed.

7. CLOSING COMMENTS:

A. Claims Committee

None.

B. Staff

None.

8. ADJOURNMENT

The Regular Meeting of the PLAN JPA Claims Committee was adjourned at 9:00 a.m.

Katie Sullivan, Assistant General Manager

Agenda Items 6.A

CLAIMS MATTERS

SUBJECT: Update from PLAN JPA Litigation Manager

BACKGROUND AND HISTORY:

Susan DeNardo, PLAN JPA Litigation Manager, will provide the Claims Committee with the following updates:

Government Claims Manual

The Litigation Management Department has updated its Government Claims Manual. The Manual provides information and forms for members and PLAN JPA's Third Party Administrator to reference when handling a government claim. Members should still consult with their City Attorney's Office for legal advice.

Danielle Lewis

PLAN JPA Panel Counsel Danielle Lewis joined Hawkins Parnell as of January 1, 2023. She brought her existing PLAN JPA case load with her to the new firm. She would like to continue to represent PLAN JPA members as panel counsel. She is not currently requesting a rate increase. Ms. Lewis has provided firm background and insurance information also included with this staff report.

STAFF RECOMMENDATION:

None.

REFERENCE MATERIALS ATTACHED:

- PLAN JPA Government Claims Manual
- Hawkins Parnell Background and Insurance Information
- PLAN JPA Panel Counsel List (Updated)

Table of Contents

I. INTRODUCTION

This handbook has been prepared for the Pooled Liability Assurance Network Joint Powers Authority ("PLAN") as a guide for use by its members in the processing of claims and lawsuits in which a member entity is a potential or actual defendant or cross-defendant. It sets forth, in general terms, the requirements imposed on claimants by law, the circumstances wherein claims are required, how claims should be processed, the requirements of serving legal complaints, governmental immunities and a glossary of common terms.

This handbook should be reviewed by the entity's attorney periodically to ensure that the information is current and that the laws are updated. The sample forms including but not limited to notices and releases are examples and should be reviewed by the member's attorney before being used. For example, the mutual release may not be desired by the entity and may be changed to only the claimant agreeing to release the member and its representatives. Reproduction of this handbook without written permission is prohibited.

II. CLAIMS REQUIREMENTS

A. Overview

With certain exceptions, a person who believes he or she has been injured or damaged by a public entity or a public employee must file a written claim with the public entity, and the entity must reject it before a lawsuit against the entity and/or employee may be filed in court. *See*, Gov't Code § 945.4.[1]

B. Matters Requiring a Claim to be Filed

As a general rule, under the Government Tort Claims Act, a claim must be filed with a public entity for "money or damages" allegedly caused by the public entity or employee(s). *See*, § 905. This covers most of the liability situations which will occur during normal governmental activities (*i.e.*, breach of contract, trip and falls, alleged dangerous conditions of property, police civil liability cases, and negligence, in which physical and/or emotional injury and/or property damage are claimed).

C. Matters Not Requiring a Claim

There are some "non-tort" claims in which money or damages are sought where a formal claim is not required. *See*, § § 905 & 905.1. Matters not requiring a claim are often combined with matters that do require a claim. When presented with a claim, you should immediately forward it to the third-party administrator, the litigation manager or your legal counsel.

<u>There is no requirement that a claim be filed for the following types of matters before commencement of suit:</u>

(1) Claims under the Revenue and Taxation Code and related statutes;

(2) Claims in connection with the filing of a notice of lien, statement of claim, or stop notice is required under any provision of law relating to mechanics', laborers', or materialmen's liens;

(3) Claims by public employees for fees, salaries, wages, mileage, or other expenses and allowances;

[1] Unless otherwise indicated, further references are to the Government Code.

(4) Claims for which Workers' Compensation is the exclusive remedy;

(5) Claims with their own specific claims filing procedures such as the California Fair Employment and Housing Act (FEHA) (a separate administrative procedure exists through the Department of Fair Employment & Housing or through the Equal Employment Opportunity Commission in Federal matters)

(6) Applications related to public retirement or pension systems;

(7) Claims for failure to pay funds collected by a police agency under writ of execution;

(8) Claims for principal or interest on bonds or related indebtedness;

(9) Claims related to special assessments constituting specific liens;

(10) Claims arising under any provision of the Unemployment Insurance Code;

(11) Claims governed by the Pedestrian Mall Law of 1960 Streets & Highways Code;

(12) Claims for the recovery of penalties or forfeiture made pursuant to certain provisions of the Labor Code;

(13) Property damage claims framed in terms of Inverse Condemnation (3-year statute of limitations, Code of Civil Procedure Section 338);

(14) Claims relating to public assistance under the Welfare and Institutions Code or other provisions of law related to public assistance;

(15) Federal Civil Rights Actions under 42 U.S.C. Section 1983;

(16) Claims by the state, a state agency, another public entity, or a judicial branch;

(17) Certain claims for childhood sexual abuse occurring after January 1, 2009, brought pursuant to the delayed accrual provisions of Code of Civil Procedure Section 340.1;

(18) Claims made pursuant to Section 49013 of the Education Code for reimbursement of pupil fees for participation in educational activities; and

(19) Actions for relief other than money or damages (e.g., declaratory, injunctive, specific, and mandamus relief).

D. Claims by One Public Entity Against Another

Claims by the state or another local public entity are exempt from the claim presentation requirement, as noted above, unless the defendant public entity has adopted a resolution or ordinance pursuant to Section 935. Section 935 empowers local public entities to establish their own policies and procedures for the presentation of those claims against them, which are exempt by Section 905. If your entity has not yet enacted an ordinance or resolution which establishes claim requirements for these exceptions, please contact our office for assistance, as it is in your best interest to do so. *See*, **APPENDIX D, Form Y: Sample Government Code Section 935 Ordinance**.

E. What If the Claim Is for Allegations of Workplace Wrongdoing?

When a current or former employee files a claim with the public entity alleging employment discrimination or some other form of employment practice liability under state and/or federal law, it may be difficult to determine if the claim is one for general liability or workplace wrongdoing based on the wording used. If the public entity is a member of a self-insurance pool, coverage for general liability is usually available, subject to certain exclusions and other limiting language. More often than not, employment practices liability coverage is excluded from self-insurance pools. The public

entity may or may not be a member of a separate self-insurance pool for employment practices liability.

It is important to determine as early as possible whether the primary risk sharing pool includes coverage for employment practices liability claims. If you are unsure, contact the third-party administrator, the litigation manager or your legal counsel immediately.

If your public entity is a member of the Employment Risk Management Authority ("ERMA"), you must notify ERMA immediately upon receipt of a claim. Failure to notify ERMA of the claim may void any coverage for the alleged employment related act(s).

F. When Must a Claim be Filed?

A claim relating to a cause of action for death or bodily injury, damage to personal property, or damage to crops must be filed not later than six (6) months after the accrual of the cause of action. A claim relating to any other cause of action (*i.e.*, a contract claim or a claim for damage to real property) must be filed within one (1) year after the accrual of the cause of action. *See*, § 911.2.

G. When Does a Claim Accrue?

For purposes of evaluating a claim's timeliness, one must first determine when a cause of action accrues. Generally, a claim accrues when the injury or damage occurs giving rise to a cause of action (i.e., the date of the auto accident or the date of the damage to claimant's property). *See,* § 901. Claims for indemnification, however, accrue when the claimant is served with a lawsuit. The date of accrual can vary depending on various circumstances. Any claim which potentially raises accrual issues should be reviewed by your legal counsel or the litigation manager.

The following is a partial list of circumstances in which the date of accrual may vary:

(1) Claims based on the "late discovery rule." There are occasions when the cause of action does not accrue until the injury or damage is actually discovered or, with reasonable diligence, should have been discovered. An example of this would be a cause of action against a county or city hospital for medical malpractice which is not actually discovered for many months, or sometimes years, after the actual surgery or procedure (i.e., two years after having his appendix removed by a city hospital doctor, patient suffers pain from a surgical tool left behind during the appendectomy). Another example would involve claims of soil subsidence.

(2) Claims in which the cause of action does not accrue at the initial alleged injury but at the conclusion of a series of events. An example of this would be a claim for false imprisonment in which the claim accrues upon release from custody. Another example would be a claim for malicious prosecution in which the claim accrues as of the date of exoneration by a court hearing.

(3) Claims on behalf of minors, generally, must be presented within six (6) months of the date of injury or damage. However, the cause of action for injuries to a minor accrues at the time the parent(s) or guardian knew or should have known, through reasonable inquiry, that the acts of the public entity or its employee(s) caused the injuries. (**Note:** As explained in greater detail below, in the event the parent(s) or guardian of a minor child presents an entity with an Application for Leave to Present a Late Claim, you should be aware that special rules apply, which generally favor the granting of such application.)

These complex issues and any others that arise, should be directed immediately to the third-party administrator, the litigation manager and your legal counsel.

H. When is the Six-Month Filing Requirement Tolled?

Sometimes the statute of limitations is suspended ("tolled") for a period of time and then begins to run again. For example, claims on behalf of those in military service. The time to present a claim may be tolled by the Servicemembers Civil Relief Act of 2004, formerly known as the Soldiers' and Sailors' Relief Act of 1940, if the claimant was in active military service during all or part of the six-month (6) period. Cases dealing with tolling may be very complicated and should be directed immediately to the third-party administrator, the litigation manager and your legal counsel.

I. Where Must a Claim be Filed?

A claim must be filed with the "clerk, secretary, or auditor" of the local public entity from which damages are sought. *See*, § 915. Claimants and/or their representatives often mail or deliver a claim to the wrong department or the wrong public entity. Although the claimant has the burden of proving that the claim was presented to the right person and/or entity, you must not treat misdirected claims lightly. That is, if a claim is initially incorrectly filed but forwarded to the correct clerk, secretary, auditor, or governing body of the entity, a court would likely deem the claim "actually received" and in compliance with the Government Claims Act.

J. How Must a Claim be Filed?

The claim may be presented in person to the clerk, secretary, or auditor of the public entity from which damages are sought. Alternatively, the claim may be mailed to such clerk, secretary, auditor, or governing body at its principal office. *See*, § 915(a). As noted above, if a claim is incorrectly served but actually received by the clerk, secretary, auditor, or board of the local public entity, it would be deemed to have been presented in compliance with the Government Claims Act. *See*, § 915(e)(1).

K. What Information Must the Claim Include?

Any claim filed with a public entity must include specific information as required by Section 910 (see list below). Most courts, however, have accepted claims that do not meet all statutory requirements after recognizing that many claimants are laymen who lack skills in legal procedure. Instead, courts will accept claims that are "substantially compliant" with Section 910. To meet this standard, a claimant must include enough information that allows the entity to investigate and respond to the claim.

Generally, a claim must contain the following information:

(1) Name and residential address of claimant;

(2) Post office address to which the claimant wants responses to the claim sent (if different than the residential address);

(3) Date, place and other circumstances which give rise to the claim. In a claim for indemnification, this would be the date the claimant was served with the lawsuit, which is the basis of the claim for indemnification;

(4) Description of damage, injury, or loss known at the time of the claim;

(5) Name(s) of public employee(s) causing damage, injury, or loss, if known. This may be a critical issue when deciding on what action to take on the claim;

(6) The actual amount claimed, if it totals less than ten thousand dollars as of the date of the presentation of the claim, including the estimated amount of any prospective injury, damage, or loss insofar as it may be known at the time of the presentation of

the claim, together with the basis of the computation of the amount claimed. If the amount claimed exceeds ten thousand dollars ($10,000), no dollar amount shall be included in the claim; however, it shall indicate to the court of appropriate jurisdiction and, if the superior and municipal courts have been consolidated, whether the claim would be a limited civil case. The limited civil case jurisdictional limit is $25,000. As is typical with some legislation, the code does not address the issue of a claim for exactly $10,000; and

(7) The signature of the claimant or representative. A representative is simply a person who acts on someone's behalf and need not be an attorney.

See, §§ 910 & 910.2.

One of the purposes of the claim is to allow the entity to investigate the allegations and resolve the claim, if possible, before the expense of litigation. To conduct such an investigation often calls for information about the claimant or the incident beyond that required by the statute. *See*, **APPENDIX D, Form B: Sample Claim Form**.

L. Considerations When Claimant Is a Medicare Beneficiary

As most people are aware, the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA) allow Medicare to seek reimbursement from claimants, their attorneys, and self-insured entity defendants for monies spent on past and future medical treatment for injuries caused by another person or entity. As a "secondary payer," Medicare is mandated to seek recovery from other responsible primary payers. Although not required by the *California Government Claims Act*, we recommend using **Form B-Sample Claim Form** to identify all potential beneficiaries. *See*, **APPENDIX D**. This **Sample Claim Form** requests claimant's social security number and date of birth in order to determine whether the claimant is an actual or potential Medicare or MediCal beneficiary. Many claimants and their attorneys will provide this information, but some will not. Please be aware the failure to provide this information on the claim form is not a good reason to reject the claim or return it as insufficient. If, however, the claimant and/or the attorney refuse to provide the Social Security Number or date of birth, they should be informed that you cannot resolve the claim without the information.

M. Right of Claimant to Obtain Information from the Entity

The California Public Records Act gives a potential claimant the right to obtain public documents for the purpose of formulating a legally sufficient claim. *See*, § 6250. If you receive such a request, please forward it to the third-party administrator immediately so that issues such as a reasonable time for production and costs can be addressed.

III. PROCEDURES UPON RECEIPT OF CLAIM/NOTICE OF INCIDENT

A. Handling the Claim

Upon receipt of a claim, it should be date-stamped, and a copy immediately forwarded to the third-party administrator. In addition to date-stamping the claim, it is imperative to note the method of receipt, as your time to respond depends on the method of service. If the claim was received by mail, the envelope must be kept, and a copy of the envelope and the claim forwarded to the third-party administrator so that the date of mailing by the claimant can be preserved. (**Note:** A claim which is mailed is considered filed on the date on which it is placed in the mail. Therefore, saving the envelope with the postmark may be crucial in determining whether the claim was timely filed. Additionally, maintaining a log of claims received, the date they were received by the entity, the method of service and date-stamping the claim can be of invaluable assistance if a conflict or issue of timely filing or response were to arise.) *See*, **APPENDIX D, Form A: Liability Incident Report and Verified Claim Log**.

As noted above, a claim may be considered properly presented if it is actually received, even though not delivered or mailed as specified above (*i.e.*, a file clerk at one of the entity's departments receives the claim in the mail and then forwards it to the appropriate person designated to receive claims). Again, it is important to date-stamp every claim, including method of service, to show when it was actually received by one of the persons specified above. Again, a claim can arguably be presented as an attachment to an email or by fax if it is actually received by the public entity. We suggest that you contact your legal counsel, third-party administrator or litigation manager to determine what action to take on a claim received by these methods.

It is imperative to forward the claim to the third-party administrator for review as soon as it is received. As discussed in further detail below, failure to respond to a claim within the short statutory deadlines may result in the entity waiving important rights and defenses, which could terminate further legal action.

It is strongly recommended that each entity designate a single individual, as well as a back-up, to be responsible for processing all claims and reports of serious incidents and accidents. In addition, it is advisable for each entity to maintain its own log of pending and closed claims and to cross-check that log against the loss run, which is periodically provided by the third-party administrator. *See*, **APPENDIX D, Form A: Liability Incident Report and Verified Claim Log**.

B. Notice of Serious Incident but no Formal Claim

Even though no formal claim has been received, your memorandum of coverage likely requires you to report certain serious incidents. The serious incidents delineated in your memorandum of coverage must be reported to the third-party administrator immediately after learning of the incident. To report such incidents, it is strongly recommended that a **Serious Incident Loss Notice Form** be completed and forwarded to the third-party administrator. *See*, **APPENDIX D, Form T.** In almost every such instance, a claim will eventually be received. The relatively small amount of financial expenditure and effort required to complete this form on an incident that does not go to claim status is far outweighed by the advantage of having evidence obtained and preserved at an early stage in the case.

C. Documentation Sufficient to Constitute a Claim

Items you may not recognize as a claim, such as letters, notices and other informal documents, could serve as a valid claim if all of the necessary elements are present. Therefore, you must be alert to the possibility that a claimant who failed to file a formal claim form may later contend that letters or other documents submitted constituted a claim. You should seek the immediate advice of the third-party administrator and/or the litigation manager if it is unclear whether correspondence or miscellaneous documents received constitute a "claim". You should also seek advice if you have questions regarding the use of the public entity's form. Failure to recognize documents as a claim may cause the entity to miss relevant deadlines and waive important rights and possible defenses with respect to the claim.

A public entity (other than the State of California) is not required but may provide its own claim form to potential claimants. For ease and consistency in processing claims, we recommend you provide a standard claim form to potential claimants. *See*, **APPENDIX D, Form B: Sample Claim Form**. A "claim" should not be returned as defective simply because the claim is not submitted on the entity's own claim form.

D. Review of the Claim

Upon receipt of the claim, the adjuster for the third-party administrator will review the claim to ensure that:

(1) The signature of the claimant or representative is present. (**Note**: If the claim is for supplies, materials, equipment, or services provided to the entity, the claim need only be on a billhead or invoice regularly used by the claimant's business);

(2) The claim has been filed within six (6) months or, where appropriate, one (1) year of the incident or accident;

(3) It can be reasonably understood from the claim why the claimant is seeking damages from the entity and when and where the incident or accident giving rise to the claim occurred (see below for detailed discussion);

(4) Claimant's or representative's name and resident address is present;

(5) And either (1) the amount of damages the claim seeks is specified, if the amount is under $10,000, or (2) the court of appropriate jurisdiction is designated instead of the amount sought, if the amount exceeds $10,000.

After review of the claim, the adjuster for the third party administrator will review the claim, confer with the litigation manager, if necessary, and communicate with the city's claims representative within a short period of time as to how the claim should be processed (*i.e*., returned for insufficiency, lack of timeliness or placed on the governing body agenda for consideration, etc.).

E. Recognizing Insufficiency and Defects

One of the most important questions on the recommended **Form B: Sample Claim Form** is, "What did the entity or the employee do to cause this loss, damage, or injury?" It is this area where the claimant needs to provide the most detailed information surrounding the claim. Be on the lookout for vague responses to this question. Catch-all phrases such as "negligent conduct of your employee," "improper design," "inadequate maintenance," "excessive force," or "dangerous condition" may trigger a notice of insufficiency. If you are unable to investigate the incident because there is not enough detail to understand how the incident occurred, Paragraph 6 on **Form C: Notice of Insufficiency of Claim and Return Without Action** should be circled or referenced in the notice of insufficiency. *See*, **APPENDIX D**.

It is also important to be on the lookout for the more obvious defects as well. Make sure all claims

contain the information required by statute, such as the name and mailing address of the claimant, the amount sought by the claimant or the court of appropriate jurisdiction, and the claimant's or representative's signature.

F. What if a Claim is not Sufficient?

If a review of the claim by the adjuster or the litigation manager determines that the claim is defective or legally insufficient, the entity may forward to the claimant a notice of the insufficiency or defect within twenty (20) days of the filing of the claim. Section 910.8 requires that the insufficiencies be described with particularity. *See*, **APPENDIX D, Form C: Notice of Insufficiency of Claim and Return Without Action** for recommended notice. After notice is given, action may not be taken on the claim for fifteen (15) days from the date of this notice. (**Note**: The suggested form lists as "insufficiencies" information which is inadequate such that the claim cannot be investigated without that information.) Failure to give notice of insufficiency will waive any defect or omission in the claim.

G. Importance of Sending a Notice of Insufficiency

The notice of insufficiency process is a very important tool and has two (2) important purposes. First, it can be used as a vehicle for fact-finding, allowing an entity to investigate the facts giving rise to the claim. For example, a notice of insufficiency will preclude a claimant from describing a trip and fall accident on a sidewalk in those general terms by compelling the claimant to provide more detailed information, such as the exact location and type of every defect that may have caused the harm. Armed with that information, the entity can begin to thoroughly investigate the claim at the earliest stage. Second, a notice of insufficiency will preclude a claimant from advancing a vague theory (or theories) regarding the cause of the incident by again compelling the claimant to allege a specific theory (or theories) regarding the cause.

Forcing the claimant to detail the factual basis for the claim is useful, as the claimant will not be able to later allege different or additional theories in a complaint if they were not originally set forth in the claim.

Failure to send a notice of insufficiency where a claim uses generalities and vague terms may allow a claimant to later proceed on theories not considered by the entity at the time the claim was submitted. Alternatively, a court may dismiss a complaint if it is based on facts or theories other than those identified in the preceding claim, particularly if the claimant had been previously advised of insufficiencies in the claim. A timely filed notice of insufficiency, therefore, can serve to narrow and limit the exposure to the entity.

H. Amending a Claim

Claimants may amend their claim within the fifteen (15) day period allowed upon notification of an insufficiency, as previously described, or at any time during the period designated for the filing of the claim (either six (6) months or one (1) year), or before final action is taken by the governing board, whichever is later. *See*, § 908. The amended claim must relate to the same transaction or facts giving rise to the original claim. *See*, § 910.6(a). If the amended claim filed in response to a notice of insufficiency is again insufficient, the entity does not have to send out another notice of insufficiency. Any questions about this procedure should be directed to the third-party administrator, the litigation manager or your legal counsel.

I. What if a Claim is Untimely?

The discussions regarding late claims apply only to claims which must be filed within six (6) months. There are no late claim procedures for a claim that must be filed within one (1) year.

If, on the face of the claim, it appears that the claimant has failed to file a claim within the six-month (6) period required by statute, the adjuster or the litigation manager will recommend that a notice of return without action be sent to the claimant. In such a case, the claim must be included with the notice of return without action. This must be done within forty-five (45) days of the filing of the claim or the defense of "untimeliness" is waived. *See*, § 911.3. The notice is required to be in a format specified by statute. *See*, **APPENDIX D, Form D: Notice of Return, Without Action, of a Claim Required to Be Filed Within Six (6) Months**.

A claim should not be rejected on its merits if it appears "late on its face," *i.e.*, submitted more than six (6) months after the accrual of the cause of action. This may have the effect of waiving any late claim defenses. These dilemmas are best handled by the third-party administrator, the litigation manager or your legal counsel.

(**Note**: While there is no late notice requirement with regard to a claim required to be filed within one (1) year, *See*, **APPENDIX D, Form E: Notice of Return, Without Action, of a Claim Required to Be Filed Within One (1) Year or an Application for Leave to Present a Late Claim** has been designed to give this notice in the interest of public relations and to keep proper accounting of all claims.) As discussed in more detail below, **Form E** is also the form, which must be used to respond to an untimely filing of an application for leave to present a late claim.

J. What if the Claim is Sufficient and Timely?

If it is determined by the adjuster or the litigation manager that a claim is legally sufficient and timely, the entity will be notified to place the claim on the governing body's agenda for consideration and action. A claim must be allowed or rejected within forty-five (45) days of its presentation (either personally delivered or mailed). It is important to monitor this forty-five (45) day rule to make sure that rejections are made in a timely manner. A rejection is effective on the date the notice is personally given or mailed. (**Note:** If the claim was mailed, Section 915.2(b) allows forty-five (45) days plus five (5) days for mailing of the rejection.)

Adherence to this forty-five (45) day rule is important because it triggers the time within which the claimant must legally file any lawsuit arising from the incident. If an entity's governing body rejects a claim within the forty-five (45) day period, and sends notice of such rejection, the claimant has only six (6) months from the date of rejection to file a lawsuit. *See*, § 945.6. (**Note**: **APPENDIX D, Form G: Notice of Rejection of Claim** is the standard rejection notice which is recommended in most situations. This form clearly advises the claimant or his/her representative of the six-month (6) requirement.)

If the governing body fails to reject the claim and give notice of such rejection within the 45-day period, by statute, the claim is deemed to have been rejected on the 45th day. *See*, § 912.4. In this case, the claimant has two (2) years from the date of accrual of the cause of action within which to file suit, extending the period of vulnerability for the entity. *See*, § 945.6. Upon discovery that a formal rejection was not made within the 45-day period, giving the claimant two (2) years from the date of accrual of the cause action to file suit, a notice of rejection by operation of law should be sent to the claimant as soon as possible, as the six (6) month statute of limitation for the filing of a lawsuit begins on the date this notice is sent to the claimant. *See*, **APPENDIX D, Form K: Notice of Rejection by Operation of Law**.

DO NOT, however, send this notice within six (6) months of the date on which the two (2) year statute of limitations will expire. To send the notice within that period of time would lengthen the

statute of limitations.

> **Example:** If an accident happened on January 1, 2020, and assuming a claim was timely filed, but the governing body did not give notice of rejection of the claim as required (within 45 days), the claimant would have until January 1, 2022, to file a lawsuit (two (2) years from the accrual of the cause of action). If someone at the entity realized the **Notice of Rejection** was not sent and then mailed a **Notice of Rejection by Operation of Law** on October 1, 2021, the claimant would then have until April 1, 2022, to file the lawsuit (six (6) months from the date of notice) instead of having to file a lawsuit by January 1, 2022. By sending the **Notice of Rejection by Operation of Law** within six (6) months of the date the two (2) year statute of limitations would have expired, the entity waived the two (2) year statute of limitations (January 1, 2022) and gave the claimant an additional four (4) months to file suit (April 1, 2022).[2]

In the case of an amended claim, the governing body has the same 45-days after the amendment is filed to reject the amended claim. *See*, § 912.4.

K. Presentation of the Claim to the Governing Body

When a claim is submitted to the entity's governing body, it should be submitted with a recommendation instead of a specific directive. Never submit a claim to the governing body using language such as, "This claim is being submitted for your rejection." Instead, use wording such as, "After consideration and investigation, it is our recommendation that the claim be rejected." The law clearly states that the governing body shall make the determination on the claim, unless they have specifically delegated that responsibility to someone such as a risk manager, city attorney or county counsel, city manager, or county administrator. A person who is not an employee of your agency, for example, a third-party adjuster, should not issue the notices or make the decision to accept or reject the claim. The third-party adjuster may assist in making the decision by providing suggestions for handling the claim.

L. How is a Claim Rejected or Accepted?

The manner in which a claim is rejected or accepted is also governed by statute. *See*, § 913. The attached sample forms provide for rejection or acceptance of a claim, including partial or complete payment when a claim is accepted. *See*, **APPENDIX D, Form F: Notice of Action on Claim; Form G: Notice of Rejection of Claim; Form I: Notice of Full Payment of Claim,** and/or **Form J: Notice of Partial Payment of Claim**.

[2] This example does not take into account any stays and/or extensions due to any COVID emergency orders.

A personal approach, in addition to the formal rejection procedure, can occasionally allow a claim to be settled without pushing the claimant into an attorney's office. Including a cover letter to the formal rejection should, however, be used with sensitivity to the fact the letter could educate the claimant how better to make his or her claim or lawsuit. *See*, **APPENDIX D, Form X: Sample Notice of Receipt of Claim** and **Form W: Sample Explanation Letter**. Both of these forms are included as samples only of a more "personal approach" and should be tailored to fit your individual situation, if you choose to use them. Your agency should consult with its attorney or litigation manager before using this approach.

M. Benefits to Early Acceptance of a Claim

From time to time, during the investigation of the claim, a financial settlement can be made with the claimant that is beneficial to both the claimant and the entity. When it is advantageous for the entity to settle such claims, settlement should be done in a timely and expeditious manner.

It is a valuable tool to accept a claim when there is clear liability and the damages sought by the claimant are reasonable. The danger in not accepting a claim under these circumstances is that the claimant will not be bound to the dollar amount requested in the claim once rejected. Conversely, if the claim is accepted, then the claimant is bound by the amount of damages sought.

In order for such an early acceptance of a claim to take place, there should be a representative of the entity who has settlement authority. This person could be someone such as a city attorney, city manager, risk manager or administrator. It is our recommendation that the delegated settlement authority be at least $10,000. Authority may be granted up to and inclusive of $50,000. *See*, §§935.2 & 935.4. If the governing board of a given entity is reluctant to grant authority in that amount, a minimum $5,000 in authority should be granted. This delegation of authority can be accomplished either by resolution or ordinance. *See*, **APPENDIX D, Form H: Sample Resolution**.

IV. PROCEDURES FOR PROCESSING AN APPLICATION FOR LEAVE TO PRESENT A LATE CLAIM

A. When Must an Application for Leave to Present a Late Claim be Filed?

An application for leave to present a late claim must be submitted within a reasonable time, but generally no later than one (1) year after the accrual of the cause of action. The application must state the reason(s) for delay in filing the claim, and the proposed claim must be attached to the application. *See*, § 911.4. Although it is not uncommon for applicants to fail to attach a proposed claim, the application should be denied on the ground that it fails to conform to the mandatory claim presentation requirements. *See*, § 911.4.

In certain limited situations, an application for leave to present a late claim may be presented later than one (1) year after the accrual of the cause of action if the person who suffered the injury, damage, or loss can show that there was a period of time in which he/she was mentally incapacitated and without a guardian or conservator or, in very limited cases, where the person was a minor (under the age of 18) during that time. The period of time the individual was incapacitated or was a minor, in some instances, can be deducted from the overall time between the date of accrual and the date of application. If the balance is less than one (1) year, the application could be timely; however, the burden is on the plaintiff to convince a court why the one (1) year statute could not have been met. In almost all cases, the one (1) year limitation period is upheld by the courts.

The claimant need only comply with the statute to make a properly presented application. *See*, **APPENDIX D, Form E: Notice of Return, Without Action, of a Claim Required to Be Filed**

Within One (1) Year or an Application for Leave to Present a Late Claim. This form is designed to notify a claimant that either a one (1) year claim or an application for leave to present a late claim was received too late to be considered. This notification is not required by any statute but is recommended for public relations and in the interest of proper accounting for all claims.

B. Time to Respond to an Application for Leave to Present a Late Claim?

The statute requires that a governing body grant or deny an application for leave to present a late claim within forty-five (45) days after it is presented. If no action is taken, it is presumed to have been denied. *See*, § 911.6. The statute provides no "penalty" for failure to take action on an application as it does in the situation where the governing body fails to act on a claim. However, it is in the financial interest of the entity to review and act promptly on all applications. Approval, where appropriate, saves the litigation costs incurred in opposing petitions made to the court for relief from the claim presentation requirement.

C. Under What Circumstances Must an Application for Leave to Present a Late Claim be Granted?

Section 911.6 is very specific in stating that the governing body shall grant the application where any one or more of the following is applicable:

(1) The failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect and the public entity was not prejudiced in its defense of the claim by the failure of the claimant to present the claim within six (6) months after the incident or accident; or

(2) The person who sustained the alleged injury, damage, or loss was a minor (under the age of 18) during all of the six (6) month period after the incident or accident, and applies within one (1) year after the date of accrual; or

(3) The person who sustained the alleged injury, damage, or loss was physically or mentally incapacitated during all of the six (6) month period after the incident or accident and because of that disability failed to present the claim; or

(4) The person who sustained the alleged injury, damage, or loss died before the expiration of the six (6) month period after the incident or accident.

The last three (3) are much easier to determine objectively. The first basis for sustaining the application is very subjective and, therefore, very difficult to define. On occasion, the admission in a declaration of attorney neglect will be enough to allow relief. However, the failure to consult an attorney, the failure to identify the public entity or ignorance of the claims filing requirements is not proper grounds to grant relief. The adjuster, litigation manager or the entity's attorney should be consulted on these issues.

Written notice of the governing body's action must be sent to the claimant. *See*, § 911.8. The use of **Form L: Notice of Board Action on Application for Relief from the Claim Filing Statute** is recommended, as it incorporates the language required by statute to be in the notice. *See*, **APPENDIX D**.

If the application for leave to present a late claim is granted, the claim should be processed in the same manner as a properly filed claim. The date that the application is granted serves as the date upon which the claim was "filed". *See*, § 912.2.

D. When a Claimant Simultaneously Files the Claim and the Application to Present a Late Claim

If the situation occurs where a claimant simultaneously files both a claim and an application to present a late claim, instead of just an application with a proposed claim attached, the entity must both respond to the claim (*i.e.*, return it as late) and submit the application to the governing body for action on the application. When faced with this situation you should:

(1) Return the claim, without action, as untimely within 45 days; and

(2) Submit the application to be determined on the next governing body agenda.

See, §§ 911.3 & 911.4

The only recourse for the claimant if the application is denied is to present a petition for relief from the claim filing statute to the court within a reasonable time.

V. PROCEDURES UPON RECEIPT OF A PETITION FOR RELIEF FROM THE CLAIM FILING STATUTE

A. When Must a Petition be Filed?

If an application for leave to present a claim is denied or deemed to be denied, a petition may be made to a court with proper jurisdiction for an order relieving the petitioner from the claim filing statute. *See*, § 945.4. The petition must be filed within six (6) months from the date that notice is given by the entity that the application for leave to present a late claim is denied (not the date the notice is mailed) or six (6) months from the date that the application is deemed to be denied by operation of law (after forty-five (45) days). *See*, § 946.6.

In this situation, the court decides whether to grant the claimant complete relief from the claims filing requirements. It does not decide whether the application for the late claim should be accepted by the public entity. If the court grants the petition, the claimant only has thirty (30) days to file a complaint with the court. *See*, § 946.6(f).

B. What Should Be Done When the Petition for Relief is Received?

The petition for relief from the claim filing statute should immediately be forwarded to the adjuster or the defense attorney who will be handling the opposition to the petition. In addition, all of the following should be sent with the petition or as soon thereafter as possible:

(1) A copy of the application for leave to present a late claim, including a copy of the claim;

(2) All documents or other items provided by the claimant in support of the application;

(3) All documents pertaining to the claim, including any investigation of the incident or accident which is the subject of the claim;

(4) All documents, including minutes or transcripts, which provide any insight into the reason(s) why the governing body denied the application; and

(5) A copy of the notice of the denial of the application.

VI. PROOF OF MAILING OF NOTICES

If a claimant denies receiving a statutory notice, the public entity must be prepared to offer legal proof of mailing. Statutory notice would include such items as a notice of insufficiency, return of untimely claims, rejection of claim or rejection of a late claim application.

By statute, proof of mailing requires a declaration based on personal knowledge that (1) the declarant deposited the notice at a United States Post Office or a mailbox, sub-post office, substation or mail chute, or other like facility regularly maintained by the U.S. government; (2) a statement of where the declarant deposited it in the mail; and (3) that the item mailed had proper postage. *See*, § 915.2. Each entity should establish procedures requiring that the clerk mailing the notice check the applicable provision on the declaration and sign the declaration at the time the notice is mailed. *See*, **APPENDIX D, Form M: Declaration of Proof of Service by Mail**.

VII. PROCEDURES UPON RECEIPT OF A LAWSUIT

A. How Are Lawsuits Served?

Lawsuits are generally served against the entity in one of three ways:

(1) By mail. A lawsuit can be served by mail by mailing a copy of the lawsuit (summons and complaint) to the entity and/or defendant employee along with a form entitled "Notice and Acknowledgment of Receipt." If the "Notice and Acknowledgement" form is signed and returned to the sending party (usually the plaintiff's attorney), the lawsuit is deemed to have been properly served on the date that the document is signed and returned. **DO NOT SIGN OR RETURN THIS FORM.** The unsigned "Notice and Acknowledgement" form should be given, along with a copy of the lawsuit, to the adjuster and/or litigation manager, who will then forward it to the attorney who will be defending the case. Not signing the "Notice and Acknowledgement" form allows the defense attorney some extra time in which to prepare a response to the lawsuit.

(2) By substitute service. A lawsuit can be served on an entity and/or defendant employee through an employee of legal age of maturity by leaving a copy of the lawsuit at the entity's office during business hours in the employee's name, followed by mailing a copy of the lawsuit to the entity and/or defendant employee. The suit is considered served only after both tasks are completed, and service is effective ten (10) days after mailing. *See*, Code Civ. Proc., § 415.20.

(3) By personal service. A lawsuit can be personally served on an entity and/or defendant employee at the entity's business office.

B. What Should be Done After a Lawsuit is Served?

The lawsuit (summons and complaint) should immediately be forwarded to the third-party adjuster, who will consult with the litigation manager and forward it to the attorney who is, or will be, handling the defense of the lawsuit. In state court, a defendant has 30 days from the date of service to file responsive pleadings. In federal court, it is usually 20 days from the date of service to file a responsive pleading, and a default may be entered automatically if a response is not filed. Therefore, prompt action is imperative!

C. What Should be Done if a Lawsuit is Served on an Employee?

The most common cause of a default judgment arising during litigation involving a public entity is the failure of a defendant employee to notify the proper person or department that he or she has been served with a lawsuit. Conversely, a complaint that is often heard from employees is that they never knew they were named in a lawsuit until many months, and often years after a lawsuit was served on the agency. Therefore, it is recommended that a policy be adopted on an entity-wide basis that places obligations on employees who have been served with a lawsuit to immediately notify

the appropriate person or department within the entity.

That policy should also provide a mechanism to keep defendant employees informed as to the status of any litigation in which they are named and encourage defendant employees to cooperate in the litigation process.

As part of that policy, it is recommended your entity utilize **Form N: Notice of Receipt of Lawsuit; Form O: Notice of Substitute Service; Form P: Notice of Personal Service or Attempted Personal Service-Tender of Defense; Form Q: Acceptance of Tender of Defense and Request for Indemnification; Form R: Tentative Acceptance of Tender of Defense and Request for Indemnification with Reservation of Rights; and Form S: Denial of Tender of Defense and Request for Indemnification.** *See*, **APPENDIX D**.

In addition, if an employee of an entity is named in a lawsuit in which punitive damages are sought, the entity should consider sending the employee a correspondence advising them of their rights. *See*, **APPENDIX D, Form Z: Advisement of Law**. Some defense attorneys prefer to send this letter to the affected employee. Please consult with the third-party administrator, the litigation manager or your legal counsel if a situation such as this should arise.

VIII. CONCLUDING COMMENTS

The discussion of the claim and lawsuit handling process above is not intended to be a detailed analysis of all aspects of the statutory process involving claims against public agencies. Rather, it is intended as an overview of the process, coupled with suggestions and methods for handling these claims and suits. Any specific questions that may arise or problems, which may surface that do not fall within any of the discussions or recommended approaches, should be promptly discussed with the litigation manager, third party administrator or your own legal counsel before action is taken.

The entity, at any time, and at just about any step of the claims process, may grant a claimant a longer period of time to comply with the provisions of the statute, or obtain from the claimant an extension of time for the entity to perform some act or make some decision. This can occur formally or informally and intentionally or unintentionally. All persons who deal with claimants should be cautioned against making any statement that might later be construed to have been a waiver of some obligation placed upon the claimant by statute, unless it is specifically intended that the waiver of the obligation be made or the extension of time be granted.

Because a number of entities have requested it, we have included a sample "release" form. *See*, **APPENDIX D, Form V: Release of All Property Claims.** Form V should be used in those minor "property damage only" cases to be handled by you in-house**.** We have also included a sample “Release of All Claims” form to be used if there is a bodily injury component to the claim. *See*, **APPENDIX D, Form U: Release of All Claims**. Again, we strongly encourage you to track <u>all</u> cases, whether or not they are sent to the third-party administrator or disposed of in-house. *See*, **APPENDIX D, Form A: Liability Incident Report and Verified Claim Log**.

APPENDIX A: GLOSSARY OF COMMON TERMS

Please note: The definitions provided in this section convey common, frequent understandings. Many of the words may be defined differently in specific insurance contracts or may have expanded, reduced, or in other ways different meanings in particular circumstances. They are provided here for convenience only, as they will frequently appear in communications from our office, defense counsel, or adjusters.

ABANDONMENT
A relinquishing of property by the owner to the insurer in order to claim loss when, in fact, the loss may be less than total.

ACT OF GOD
An accident or event that is the result of natural causes, without human intervention or agency, and one that could not have been prevented by reasonable foresight or care; e.g., floods, lightening, earthquake, or storms.

ACTUAL CASH VALUE (ACV)
The replacement cost of an item less depreciation. Frequently, the price that would need to be paid to acquire a similar item with the same wear and tear as the original item.

ANSWER
One of a number of responsive pleadings following service of a lawsuit. *Black's Law Dictionary* offers the following definition: "Strictly speaking, it is a pleading by which defendant in suit at law endeavors to resist the plaintiff's demand by an allegation of facts, either denying allegations of plaintiff's complaint or confessing them and alleging new matter in avoidance, which defendant alleges should prevent recovery on facts alleged by plaintiff."

The answer or another form of responsive pleading must be filed with the appropriate State Court in California within thirty days after the defendant has been served, and with the Federal Court, within twenty days after service.

BETTERMENT
The replacing of an item with another of greater value. This term is frequently used in conjunction with "depreciation", which in common usage, is another side of the same coin. A carrier will charge depreciation to prevent the possibility of the insured profiting from betterment. For example, replacing a stolen two-year old battery with a new one would be an act of betterment; it would improve the insured's condition.

BODILY INJURY
Physical damage to the body, including death, mental damage, pain, sickness, and disease. Not generally included in this category are items considered to be "personal injury", libel/slander, humiliation, and embarrassment. The category of mental distress can fall in either category depending upon the circumstances.

CLAIM
The notice form required to be filed with a public entity (pursuant to Government Code 910) prior to the filing of a legal complaint.

COMPARATIVE NEGLIGENCE
Comparative negligence is negligence measured in terms of percentage. One party may be 60% responsible for a loss and another may be 40% responsible. California law currently operates on a comparative fault basis, allowing each party either to recover or be liable for damages in proportion to his/her share in the negligent incident.

COMPLAINT

The initial legal pleading filed with the court by the plaintiff to initiate the legal process against defendant(s).

DAMAGES
That which has been lost because of an accident or event. Damages include loss to property, loss of use, bodily injury, personal injury, loss of income, loss of reputation, etc. Generally, damages are expressed in dollar terms and by divisions such as Special Damages, General Damages, Punitive and Exemplary Damages.

> **Special Damages** include those amounts which have been incurred and can be verified. These include medical bills, funeral and burial costs, loss of wages, loss of future income and expenditures, which are required as a result of the loss.
>
> **General Damages** are monies that are payable to compensate for pain and suffering, embarrassment, inconvenience, and the like.
>
> **Punitive Damages** are sums awarded by the Court beyond special and general damages for the purpose of punishing a defendant for conduct deemed to be willful and especially heinous or outrageous. The purpose is to punish and to set aside by example.

DEMUR/DEMURRER
One of several responsive pleadings to the court following service of a Complaint. The demurrer states that, even if the facts alleged in the Complaint are correct, the legal consequences are not such that liability accrues to the defendant and there is no need to answer them.

DEPOSITION
Testimony by a party having knowledge material to a cause of action taken outside of court but under oath. The deposition provides access to information and can be read into evidence in court under certain circumstances, such as inconsistency between deposition and trial testimony by the same witness. Depositions are part of a larger information gathering process prior to trial known as Discovery.

DISCOVERY
The information gathering process occurring under power of subpoena and with written and oral testimony being provided under oath. Interrogatories and depositions are part of that larger process.

DISMISSAL
An order or judgment finally disposing of an action or suit. Dismissals may be with prejudice which bars the right to bring or maintain an action on the same claim or grounds. They may also be without prejudice whereby there is no bar to bringing or maintaining the action in the future on the same claim or grounds.

EMINENT DOMAIN (OR PUBLIC TAKING)
Eminent Domain is the power to take private property for public use by a public entity, provided the property is taken for a public purpose and just compensation is given to the owner of the property which is taken.

EXCESS COVERAGE
Insurance coverage which does not provide for payment of damages on behalf of the insured until either underlying insurance coverage has paid its limits or the insured has paid its self-insured retention. Public entity excess coverage frequently begins after payment of the self-insured retention per occurrence. Some excess insurance contracts are "following form" and written with coverages identical to those in the underlying or basic policies thereby providing for no gap or break in coverage. Other policies have coverages and conditions worded differently from those found in the basic policies that may broaden or restrict coverage.

EXEMPLARY DAMAGES See DAMAGES, Punitive

FIRST PARTY

Refers to the insured in an insurance contract. The second party is the insurance carrier. The third party is a claimant seeking recovery for damages against the insured through the insured's liability insurance provisions.

GENERAL DAMAGES See DAMAGES, General

HOLD HARMLESS AGREEMENT
A contractual provision establishing that one party will not be considered liable for particular damages which might arise. This type of agreement frequently is expanded by the requirement that the party holding another harmless agrees to defend and to indemnify the party held harmless. This may be done personally, or it may be easily and more safely done by adding the name of the party held harmless to an insurance policy as an Additional Insured.

INDEMNITY
Black's Law Dictionary provides the following definition:
"A collateral contract or assurance by which one person engages to secure another against an anticipated loss or to prevent him from being indemnified by the legal consequences of an act or forbearance on the part of one of the parties or of some third party. The term is also used to denote a compensation given to make the person whole from a loss already sustained; as where the government gives indemnity for private property taken by it for public use."

The provisions in the liability insurance contract calling for payment of damages on behalf of the insured for certain circumstances are considered the indemnity provisions of the contract.

INTERROGATORIES
Part of the information gathering process known as Discovery occurring between the time that a responsive pleading is filed following service of a lawsuit and the time of trial. Interrogatories are written questions submitted to a party or witness to a lawsuit, with written responses provided under oath within a specified time.

INVERSE CONDEMNATION
The reduction in value of a citizen's property by reason of public action taken or damage to the property leading to diminution in value for which the public entity is held responsible. Coverage for indemnity on actions arising out of inverse condemnation is quite frequently excluded from liability coverage for public entities.

LIEN
A charge or security or encumbrance upon property.

NEGLIGENCE
The omission to do something that a reasonable person guided by those normal considerations which ordinarily regulate human affairs would do under the same or similar circumstances, or the doing of something that a reasonable and prudent person would not do under the same or similar circumstances.

NON-SUIT
Per *Black's Law Dictionary*:
"A term broadly applied to a variety of terminations of an action which do not adjudicate issues on the merits. Name of a judgment given against the plaintiff when he is unable to prove a case, or when he refuses or neglects to proceed to trial and leaves the issue undetermined."

NUISANCE
Something wrongfully done or permitted which interferes with another person's enjoyment of his or her legal rights.

OCCURRENCE
Generally, an accident or event neither expected nor intended from the standpoint of an insured and which gives rise to property damage or bodily injury during the period during which a policy of coverage is maintained. The reader is cautioned to review the definition provided in each policy of insurance or memorandum of coverage.

PROPERTY DAMAGE
Generally, physical injury to tangible property, destruction of tangible property, loss of use of such injured or destroyed property, and, in some circumstances, loss of use of property not injured or destroyed.

PROXIMATE CAUSE (also sometimes referred to as LEGAL CAUSE)
That which, in a natural and continuous sequence unbroken by an efficient intervening and superseding cause, produces the injury and without which the result would not have occurred.

PUNITIVE DAMAGES See DAMAGES, Punitive

REPLACEMENT COST
The amount required for replacement of a damaged item. Coverage by insurance for replacement cost makes no deduction for betterment/depreciation and pays whatever is reasonably required to replace the item with a new item of like kind and quality.

RESERVES
Amounts required to be set aside for the eventual payment of losses and loss related expenses.

RESPONSIVE PLEADINGS
A written statement filed within a specific period (in California courts, within 20 or 30 days after service of a lawsuit) to respond to the accusations contained in the Complaint. Two such responsive pleadings are the Answer and the Demurrer. Please see those items on the preceding pages.

RETAINED LIMIT
That amount which will be paid by the member entity before the pool is obligated to make any payment from pooled funds for damages and/or defense costs.

SELF-INSURED RETENTION (SIR)
That amount which a self-insured client agrees to be responsible for before any excess coverages or policies of insurance step in to pay damages and/or defense costs. Exact provisions vary depending upon the coverages offered in differing excess insurance contracts.

SOFT-TISSUE INJURY
An injury to the skin, muscles, or connective tissues of the body. Injury to the internal organs may or may not be included in this category. Direct injury to the skeletal structures is generally not part of this category.

SPECIAL DAMAGES See DAMAGES, Special

STANDARD OF CARE
The standard of performance, skill and knowledge to which an individual holding himself out as an expert in a profession or skill or possessing certification through governmental or professional bodies will be held. The term is occasionally used more broadly to denote the standard of performance to be expected by an average, reasonable person in the conduct of his day-to-day activities. Performance below a standard of care may be deemed to be negligence.

SUBROGATION
The legal process by which an insurance company seeks recovery of the amount paid to the policyholder from a third party who has caused a loss.

SUMMARY JUDGMENT
A judgment granted without formal trial when it appears on the pleadings and other evidence to the court that there is no genuine issue of material fact for the trier of fact to decide, and the moving party is entitled to a judgment as a matter of law.

SUMMONS
Notice which accompanies the complaint which must be served upon a defendant to inform the defendant of the pending action.

TORT LAW (TORTS)
A wrongful act or omission other than a breach of contract and for which a civil action is the appropriate remedy.

VERIFIED CLAIMS
The form of claim required by the Government Code for presentation to a public entity. Technically, a claim where a person presenting such is required to certify under oath the truthfulness of the allegations contained therein.

APPENDIX B: GOVERNMENTAL IMMUNITIES

Prior to the enactment of the California Tort Claims Act of 1963, the law respecting public entity liability was a mixture of historic common law and statutory law. The general thrust was consistent with the doctrine of sovereign immunity, but the arguments advanced for that approach lacked consistency of reasoning and reflected inconsistency of approach. Various attempts to clarify and unify the statutes were made prior to 1963, but those attempts were far from adequate.

In 1963, the Legislature passed six components which comprised the Tort Claims Act. One of those components dealt with the creation of substantive liabilities and immunities for public entities and their employees. The general thrust of that effort was to establish that common law liabilities were abolished and that all liability for torts by public entities had to arise specifically by statute. Section 815 provides:

> Except as otherwise provided by statute:
>
> (a) 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.
>
> (b) The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person.

Inherent in that section is the principle that immunities prevail over liabilities.

The Government Tort Claims Act (which since 2007 has been referred to as the "Government Claims Act") provides that public entities and their employees are liable for their tortious acts or omissions only if a statute imposes such liability. As a general rule, a public entity is liable for injuries legally caused by an act or omission of an employee acting within the course and scope of his or her employment. *See,* § 815.2. The Government Claims Act also states that, except as otherwise provided by statute, a public employee is liable for injury caused by his or her act or omission to the same extent as a private person and is subject to any available defenses and immunities.

Included in this section are a number of immunities and other statutes most commonly involved in claims against public entities. Two significant words of caution must be stressed:

1) These selections, while representing a major number of immunities applicable to local entities, are a sampling. They are not represented to be a comprehensive listing.

2) Liability may be present, and payment of damages may be appropriate or required even when immunities are present that appear to address the issue under consideration. Reasons for this include the following:

   A) The plaintiff may be able to recover on another theory of statutory liability or on matters involving Constitutional protections. These fall outside the protections provided by the Tort Claims Act and include such items as Inverse Condemnation, Civil Rights, Contracts and the Right to Privacy.

   B) The immunity, upon further scrutiny, may not apply to the exact circumstances of a particular case.

   C) There may be inconsistency between two separate statutes or ambiguity which is resolved in favor of the claimant.

   D) The courts are taking an increasingly reticent or cautious approach to the enforcement of immunities, and different Courts of Appeal have taken opposite positions with respect to their interpretation of particular statutory immunities.

E) The cost of continuing to resist particular cases through litigation may not be justified in the face of reasonable settlement opportunities and well-reasoned arguments against the applicability of a particular immunity.

Bearing these items in mind, it must be clear that the immunities cannot safely be regarded as iron-clad barriers to recovery by plaintiffs. Rather, the immunities should be used skillfully as negotiation tools in a fervent effort to reduce, as much as possible, the public entity's liability exposure.

In 2007, California Supreme Court established that pertinent sections of the Government Code will hence forth be referred to as the "Government Claims Act" and not the "Tort Claims Act". It should also be noted that some agencies as defined by Section 53050 must file a statement of facts described in Section 53051 with the office of the Secretary of State and of the county clerk of each county in which the public agency then maintains an office to be able to use the California Government Claims Act as a defense in litigation. The following is a partial list of governmental immunities:

GC = Government Code
HS = Health & Safety Code
PC = Penal Code
VC = Vehicle Code
CC = Civil Code

TOPIC	**PROVISION**
Adoption of Laws and/or Failure to Adopt Employee immunity	GC 821
Alcoholic Beverages	
Liability for furnishing	CC 1714
Arrest, with or without Warrant	
Right of officer to effect arrest	PC 836
Right of officer to arrest escapee	PC 836.3
Arrest by public officer or employee	PC 836.5
Arrest by a private person	PC 837
Summoning assistance	PC 839
Notice of authority and intent to arrest	PC 841
Arrest on a warrant not in officer's possession	PC 842
Use of necessary means to effect arrest	PC 843
Citizen's arrest/citizens duties/police immunity	PC 847
Breakage of door or window by police	
during attempt to arrest	PC 844
during service of warrant	PC 1531
to liberate officer or person aiding in arrest	PC 845
Removal of weapons upon arrest	PC 846
Duties of officer arresting with warrant	PC 848
Duties of officer to take arrestee to magistrate	PC 849
Canals	
Condition	GC 831.8
Conduits	
Condition	GC 831.8
CPR, Liability of Persons Rendering Cardiopulmonary Resuscitation	CC 1714.2
Liability for use of defibrillator	CC 1714.21
Dangerous Conditions of Public Property	
Defined	GC 830

Seismic safety & fire sprinkler improvements	GC 830.1
Trivial defect	GC 830.2
Traffic control signs & roadway markings	GC 830.4
Subsequent precautions and present accident	GC 830.5
Approved design or plan immunity	GC 830.6
Failure to provide signals, markings, signs, or devices	GC 830.8
Non-Operation of control signs controlled by emergency vehicles	GC 830.9
Public entity liability for	GC 835
Notice thereof to public entity	GC 835.2
Public entity defenses for	GC 835.4
Employee limitations on liability	GC 840
Employee liability for	GC 840.2
Notice thereof to public entity employee	GC 840.4
Injury caused by condition of property	GC 840.6
Discretionary Acts	
Employee immunity	GC 820.2
Earth Movement, Gradual	
Legislative intent	GC 865
Public entity immunity and defenses	GC 866
Public entity employee immunity from liability	GC 867
Elected Officials	
Liability for intentional torts	GC 815.3
Emergency Vehicles	
Employee immunity during use	VC 17004
Private fire department	VC 17004.5
Immunity for vehicular pursuits	VC 17004.7
Exemption from other Vehicle Code sections	VC 21055
Effect of exemption	VC 21056
Prohibition against use of siren	VC 21057
Physician's emergency exemption	VC 21058
Garbage trucks exemptions	VC 21059
Street sweeping and watering exemptions	VC 21060
Duties of other motorists and pedestrians	VC 21806
Authorized emergency driver's duty of care	VC 21807
Liability for injuries sustained in emergency facilities	CC 1714.5
Employees, Public Entity	
Public entity liability	GC 815.2
Liability and defenses	GC 820
Immunity for acts of others	GC 820.8
No Vicarious liability for acts or omissions of entity or boards	GC 820.9
Immunity for instituting or prosecuting any judicial or administrative Procedure	GC 821.6
Executing or Enforcing Laws	
Public entity immunity	GC 818.2
Public entity employee immunity	GC 820.4
Public entity employee immunity	GC 820.8
Fire	
Fire protection service	GC 850
Providing fire protection facilities, equipment, and personnel	GC 850.2
Condition of fire protection facilities, equipment; injuries caused in	

Determinations relating to mental illness or addiction	GC 856
Escaped or escaping mental patient, public entity immunity for injury	GC 856.2
Failure to admit to medical facility	GC 856.4
Injuries resulting from act or omission of volunteers	GC 856.6
Minors	
Parental liability for willful misconduct (Torts)	CC 1714.1
Parental liability for discharge of firearm by minor under 18	CC 1714.3
Misrepresentation	
Public entity immunity	GC 818.8
Public entity employee immunity	GC 822.2
Money	
Stolen from custody; Employee immunity	GC 822
Narcotics	
Public entity immunity for publishing reports and records	GC 818.7
Natural Condition of Unimproved Property	
Immunity of public entity and employee	GC 831.2
Beaches considered in natural condition	GC 831.21
Immunity of public entity and employee caused by land failure	GC 831.25
Peace Officer	
Rendering assistance is a discretionary exercise	GC 820.25
Ministerial duties are a mandatory exercise	GC 820.25
Right to reasonable use of force	PC 835
Immunity from liability arising out of citizen's arrest	PC 847
Pesticides	
Use of pesticides	GC 862
Prisons, Jails & Correctional Facilities	
Public entity immune for failure to provide such a facility	GC 845.2
Prisoners	
Defined	GC 844
Injury to or by	GC 844.6
Interference by public entity with judicial determination on legality of Confinement	GC 845.4
Failure to obtain medical care for loss arising out of parole, release, or escape	GC 845.8
Arrest and release	GC 846
Property Owners, Immunity from Felonies Committed on Property	CC 847
Public entry for recreational purposes	CC 846.1

APPENDIX C: RELEVANT STATUTES

1. California Civil Code

846. Owner's Liability to Recreational Users

(a) An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on those premises to persons entering for a recreational purpose, except as provided in this section.

(b) A "recreational purpose," as used in this section, includes activities such as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding, private noncommercial aviation activities, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

(c) An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby do any of the following:

(1) Extend any assurance that the premises are safe for that purpose.

(2) Constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed.

(3) Assume responsibility for or incur liability for any injury to person or property caused by any act of the person to whom permission has been granted except as provided in this section.

(d) This section does not limit the liability which otherwise exists for any of the following:

(1) Willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity.

(2) Injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose.

(3) Any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

(e) This section does not create a duty of care or ground of liability for injury to person or property.

846.1. Public Entry for Recreational Purposes; Injury or Damage; Owner or Public Entity as Defendant; Claim for Reasonable Attorney's Fees

(a) Except as provided in subdivision (c), an owner of any estate or interest in real property, whether possessory or nonpossessory, who gives permission to the public for entry on or use of the real property pursuant to an agreement with a public or nonprofit agency for purposes of recreational trail use, and is a defendant in a civil action brought by, or on behalf of, a person who is allegedly injured or allegedly suffers damages on the real property, may present a claim to the State Board of Control for reasonable attorney's fees incurred in this civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by the owner or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the owner.

(3) The owner prevails in the civil action.

(b) Except as provided in subdivision (c), a public entity, as defined in Section 831.5 of the Government Code, that gives permission to the public for entry on or use of real property for a recreational purpose, as defined in Section 846, and is a defendant in a civil action brought by, or on behalf of, a person who is allegedly injured or allegedly suffers damages on the real property, may present a claim to the State Board of Control for reasonable attorney's fees incurred in this civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by this public entity or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the public entity.

(3) The public entity prevails in the civil action.

(c) An owner of any estate or interest in real property, whether possessory or nonpossessory, or a public entity, as defined in Section 831.5 of the Government Code, that gives permission to the public for entry on, or use of, the real property for a recreational purpose, as defined in Section 846, pursuant to an agreement with a public or nonprofit agency, and is a defendant in a civil action brought by, or on behalf of, a person who seeks to restrict, prevent, or delay public use of that property, may present a claim to the State Board of Control for reasonable attorney's fees incurred in the civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by the owner or public entity or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the owner or public entity.

(3) The owner or public entity prevails in the civil action.

(d) The State Board of Control shall allow the claim if the requirements of this section are met. The claim shall be paid from an appropriation to be made for that purpose. Reasonable attorneys' fees, for purposes of this section, may not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and may not exceed an aggregate amount of twenty-five thousand dollars ($25,000). This subdivision shall not apply if a public entity has provided for the defense of this civil action pursuant to Section 995 of the Government Code. This subdivision shall also not apply if an owner or public entity has been provided a legal defense by the state pursuant to any contract or other legal obligation.

(e) The total of claims allowed by the board pursuant to this section shall not exceed two hundred thousand dollars ($200,000) per fiscal year.

847. Immunity of Property Owner from Liability to Person Killed or Injured on Property while Committing Felony

(a) An owner, including, but not limited to, a public entity, as defined in Section 811.2 of the Government Code, of any estate or any other interest in real property, whether possessory or nonpossessory, shall not be liable to any person for any injury or death that occurs upon that property during the course of or after the commission of any of the felonies set forth in subdivision (b) by the injured or deceased person.

(b) The felonies to which the provisions of this section apply are the following: (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, or threat of great bodily harm; (5) oral copulation by force, violence, duress, menace, or threat of great bodily harm; (6) lewd acts on a child under the age of 14 years; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a non-inmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing great bodily injury; (17) exploding a destructive device or any explosive with intent to murder; (18) burglary; (19) robbery; (20) kidnapping; (21) taking of a hostage by an inmate of a state prison; (22) any felony in which the defendant personally used a dangerous or deadly weapon; (23) selling, furnishing, administering, or providing heroin, cocaine, or phencyclidine (PCP) to a minor; (24) grand theft as defined in Sections 487 and 487a of the Penal Code; and (25) any attempt to commit a crime listed in this subdivision other than an assault.

(c) The limitation on liability conferred by this section arises at the moment the injured or deceased person commences the felony or attempted felony and extends to the moment the injured or deceased person is no longer upon the property.

(d) The limitation on liability conferred by this section applies only when the injured or deceased person's conduct in furtherance of the commission of a felony specified in subdivision (b) proximately or legally causes the injury or death.

(e) The limitation on liability conferred by this section arises only upon the charge of a felony listed in subdivision (b) and the subsequent conviction of that felony or a lesser included felony or misdemeanor arising from a charge of a felony listed in subdivision (b). During the pendency of any such criminal action, a civil action alleging this liability shall be abated and the statute of limitations on the civil cause of action shall be tolled.

(f) This section does not limit the liability of an owner or an owner's agent which otherwise exists for willful, wanton, or criminal conduct, or for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

(g) The limitation on liability provided by this section shall be in addition to any other available defense.

1714. Liability for Negligence or Tort – Injuries as Result of Furnishing Alcoholic Beverages

(a) Everyone is responsible, not only for the result of his willful acts but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the Title on Compensatory Relief.

(b) It is the intent of the Legislature to abrogate the holdings in cases such as VESELY V. SAGER (5 Cal. 3d 153), BERNHARD V. HARRAH'S CLUB (16 Cal. 3d 313), and COULTER V. SUPERIOR COURT (21 Cal.3d 144) and to reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic beverages to an intoxicated person, namely that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person.

(c) No social host who furnishes alcoholic beverages to any person shall be held legally

accountable for damages suffered by such person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of such beverages.

(d) (1) Nothing in subdivision (c) shall preclude a claim against a parent, guardian, or another adult who knowingly furnishes alcoholic beverages at his or her residence to a person whom he or she knows, or should have known, to be under 21 years of age, in which case, notwithstanding subdivision (b), the furnishing of the alcoholic beverage may be found to be the proximate cause of resulting injuries or death.

(2) A claim under this subdivision may be brought by, or on behalf of, the person under 21 years of age or by a person who was harmed by the person under 21 years of age.

1714.1. Liability of Parent or Guardian for Torts of Minor

(a) Any act of willful misconduct of a minor which results in injury or death to another person or in any injury to the property of another shall be imputed to the parent or guardian having custody and control of the minor for all purposes of civil damages, and the parent or guardian having custody and control shall be jointly and severally liable with the minor for any damages resulting from the willful misconduct.

Subject to the provisions of subdivision (c), the joint and several liability of the parent or guardian having custody and control of a minor under this subdivision shall not exceed [1] twenty-five thousand dollars [2] ($25,000) for each tort of the minor, and in the case of injury to a person, imputed liability shall be further limited to medical, dental and hospital expenses incurred by the injured person, not to exceed [3] twenty-five thousand dollars [4] ($25,000). The liability imposed by this section is in addition to any liability now imposed by law.

(b) Any act of willful misconduct of a minor which results in the defacement of property of another with paint or a similar substance shall be imputed to the parent or guardian having custody and control of the minor for all purposes of civil damages, including court costs, and attorney's fees, to the prevailing party, and the parent or guardian having custody and control shall be jointly and severally liable with the minor for any damages resulting from the willful misconduct, not to exceed [5] twenty-five thousand dollars [6] ($25,000), except as provided in subdivision (c), for each tort of the minor.

(c) The amounts listed in subdivisions (a) and (b) shall be adjusted every two years by the Judicial Council to reflect any increases in the cost of living in California, as indicated by the annual average of the California Consumer Price Index. The Judicial Council shall round this adjusted amount up or down to the nearest hundred dollars. On or before January 1, 1997, and on or before January 1 of each odd-numbered year thereafter, the Judicial Council shall compute and publish the amounts listed in subdivisions (a) and (b), as adjusted according to this subdivision.

(d) The maximum liability imposed by this section is the maximum liability authorized under this section at the time that the act of willful misconduct by a minor was committed.

(e) Nothing in this section shall impose liability on an insurer for a loss caused by the willful act of the insured for purposes of Section 533 of the Insurance Code. An insurer shall not be liable for the conduct imputed to a parent or guardian by this section for any amount in excess of ten thousand dollars ($10,000).

1714.2. Liability of Person Rendering Cardiopulmonary Resuscitation

(a) In order to encourage citizens to participate in emergency medical services training programs and to render emergency medical services to fellow citizens, no person who has completed a basic cardiopulmonary resuscitation course which complies with the standards adopted by the American Heart Association or the American Red Cross for cardiopulmonary resuscitation and

emergency cardiac care, and who, in good faith, renders emergency cardiopulmonary resuscitation at the scene of an emergency, shall be liable for any civil damages as a result of any acts or omissions by such person rendering the emergency care.

(b) This section shall not be construed to grant immunity from civil damages to any person whose conduct in rendering such emergency care constitutes gross negligence.

(c) In order to encourage local agencies and other organizations to train citizens in cardiopulmonary resuscitation techniques, no local agency, entity of state or local government, or other public or private organization which sponsors, authorizes, supports, finances, or supervises the training of citizens in cardiopulmonary resuscitation shall be liable for any civil damages alleged to result from such training programs.

(d) In order to encourage qualified individuals to instruct citizens in cardiopulmonary resuscitation, no person who is certified to instruct in cardiopulmonary resuscitation by either the American Heart Association or the American Red Cross shall be liable for any civil damages alleged to result from the acts or omissions of an individual who received instruction on cardiopulmonary resuscitation by that certified instructor.

(e) This section shall not be construed to grant immunity from civil damages to any person who renders such emergency care to an individual with the expectation of receiving compensation from the individual for providing the emergency care.

1714.21 Liability of Person Using a Defibrillator

(a) For purposes of this section, the following definitions shall apply:

(1) "AED" or "defibrillator" means an automated or automatic external defibrillator.

(2) "CPR" means cardiopulmonary resuscitation.

(b) A person who has completed a basic CPR and AED use course that complies with regulations adopted by the Emergency Medical Services (EMS) Authority and the standards of the American Heart Association or the American Red Cross for CPR and AED use, and who, in good faith and not for compensation, renders emergency care or treatment by the use of an AED at the scene of an emergency shall not be liable for any civil damages resulting from any acts or omissions in rendering the emergency care.

(c) A person or entity who provides CPR and AED training to a person who renders emergency care pursuant to subdivision (b) shall not be liable for any civil damages resulting from any acts or omissions of the person rendering the emergency care.

(d) A physician who is involved with the placement of an AED and any person or entity responsible for the site where an AED is located shall not be liable for any civil damages resulting from any acts or omissions of a person who renders emergency care pursuant to subdivision (b) if that physician, person, or entity has complied with all requirements of Section 1797.196 of the Health and Safety Code that apply to that physician, person, or entity.

(e) The protections specified in this section shall not apply in the case of personal injury or wrongful death that results from the gross negligence or willful or wanton misconduct of the person who renders emergency care or treatment by the use of an AED.

(f) Nothing in this section shall relieve a manufacturer, designer, developer, distributor, installer, or supplier of an AED or defibrillator of any liability under any applicable statute or rule of law.

1714.3. Liability of Parent for Injury Caused by Discharge of Firearm by Minor under 18 Years

Civil liability for any injury to the person or property of another proximately caused by the discharge of a firearm by a minor under the age of 18 years shall be imputed to a parent or guardian having custody and control of the minor for all purposes of civil damages, and such parent or guardian shall be jointly and severally liable with such minor for any damages resulting from such act, if such parent or guardian either permitted the minor to have the firearm or left the firearm in a place accessible to the minor.

The liability imposed by this section is in addition to any liability otherwise imposed by law. However, no person, or group of persons collectively, shall incur liability under this section in any amount exceeding thirty thousand dollars ($30,000) for injury to or death of one person as a result of any one occurrence or, subject to the limit as to one person, exceeding sixty thousand dollars ($60,000) for injury to or death of all persons as a result of any one such occurrence.

1714.5. Liability for Injuries Sustained in Emergency Facilities

(a) There shall be no liability on the part of one, including the State of California, county, city and county, city or any other political subdivision of the State of California, who owns or maintains any building or premises which have been designated as a shelter from destructive operations or attacks by enemies of the United States by any disaster council or any public office, body, or officer of this state or of the United States, or which have been designated or are used as mass care centers, first aid stations, temporary hospital annexes, or as other necessary facilities for mitigating the effects of a natural, manmade, or war-caused emergency, for any injuries arising out of the use thereof for such purposes sustained by any person while in or upon said building or premises as a result of the condition of said building or premises or as a result of any act or omission, or in any way arising from the designation of such premises as a shelter, or the designation or use thereof as a mass care center, first aid station, temporary hospital annex, or other necessary facility for emergency purposes, except a willful act, of such owner or occupant or his servants, agents or employees when such person has entered or gone upon or into said building or premises for the purpose of seeking refuge, treatment, care, or assistance therein during destructive operations or attacks by enemies of the United States or during tests ordered by lawful authority or during a natural or manmade emergency.

(b) Notwithstanding any other provision of law, no disaster service worker who is performing disaster services during a state of war emergency, a state of emergency, or a local emergency, as such emergencies are defined in Section 8558 of the Government Code, shall be liable for civil damages on account of personal injury to or death of any person or damage to property resulting from any act or omission while performing disaster services anywhere within any jurisdiction covered by such emergency, except one that is willful.

(c) For purposes of this subdivision, a disaster service worker shall be performing disaster services when acting within the scope of the disaster service worker's responsibilities under the authority of the governmental emergency organization.

(d) For purposes of this subdivision, "governmental emergency organization" shall mean the emergency organization of any state, city, city and county, county, district, or other local governmental agency or public agency, which is authorized pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code).

(e) Nothing in this section shall be construed to alter any existing legal duties or obligations. The amendments to this section made by the act amending this section shall apply exclusively to any legal action filed on or after the effective date of the act.

2. California Code of Civil Procedure

335.1. Two-Year Statute of Limitations

Within two years: An action for assault, battery, or injury to or for the death of an individual caused by the wrongful act or neglect of another.

3. California Government Code

815. Public Entity Not Liable for Injury Except Where Provided by Statute; Immunity

Except as otherwise provided by statute:

(a) 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.

(b) The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person.

815.2. Act of Employee; Immunity

(a) A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.

(b) Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability.

815.3. Act of Elected Official; Intentional Torts

(a) Notwithstanding any other provision of this part, unless the elected official and the public entity are named as codefendants in the same action, a public entity is not liable to a plaintiff under this part for any act or omission of an elected official employed by or otherwise representing that public entity, which act or omission constitutes an intentional tort, including, but not limited to, harassment, sexual battery, and intentional infliction of emotional distress. For purposes of this section, harassment in violation of state or federal law constitutes an intentional tort, to the extent permitted by federal law. This section shall not apply to defamation.

(b) If the elected official is held liable for an intentional tort other than defamation in such an action, the trier of fact in reaching the verdict shall determine if the act or omission constituting the intentional tort arose from and was directly related to the elected official's performance of his or her official duties. If the trier of fact determines that the act or omission arose from and was directly related to the elected official's performance of his or her official duties, the public entity shall be liable for the judgment as provided by law. For the purpose of this subdivision, employee managerial functions shall be deemed to arise from, and to directly relate to, the elected official's official duties. However, acts or omissions constituting sexual harassment shall not be deemed to arise from, and to directly relate to, the elected official's official duties.

(c) If the trier of fact determines that the elected official's act or omission did not arise from and was not directly related to the elected official's performance of his or her official duties, upon a final judgment, including any appeal, the plaintiff shall first seek recovery of the judgment against the assets of the elected official. If the court determines that the elected official's assets are insufficient to satisfy the total judgment, including plaintiff's costs as provided by law, the court shall determine the amount of the deficiency and the plaintiff may

seek to collect that remainder of the judgment from the public entity. The public entity may pay that deficiency if the public entity is otherwise authorized by law to pay that judgment.

(d) To the extent the public entity pays any portion of the judgment against the elected official pursuant to subdivision (c) or has expended defense costs in an action in which the trier of fact determines the elected official's action did not arise from and did not directly relate to his or her performance of official duties, the public entity shall pursue all available creditor's remedies against the elected official in indemnification, including garnishment, until the elected official has fully reimbursed the public entity.

(e) If the public entity elects to appeal the judgment in an action brought pursuant to this section, the entity shall continue to provide a defense for the official until the case is finally adjudicated, as provided by law.

(f) It is the intent of the Legislature that elected officials assume full fiscal responsibility for their conduct which constitutes an intentional tort not directly related to their official duties committed for which the public entity they represent may also be liable, while maintaining fair compensation for those persons injured by such conduct.

(g) This section shall not apply to a criminal or civil enforcement action brought on behalf of the state by an elected district attorney, city attorney, or Attorney General.

(h) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

815.4. Act of Independent Contractor

A public entity is liable for injury proximately caused by a tortious act or omission of an independent contractor of the public entity to the same extent that the public entity would be subject to such liability if it were a private person. Nothing in this section subjects a public entity to liability for the act or omission of an independent contractor if the public entity would not have been liable for the injury had the act or omission been that of an employee of the public entity.

815.6. Duty Imposed by Enactment

Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.

818. Immunity from Punitive Damages

Notwithstanding any other provision of law, a public entity is not liable for damages awarded under Section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant.

818.2. Adoption of or Failure to Adopt Enactment or Enforce Law

A public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.

818.4. Issuance, Revocation of License, Certificate

A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

818.6. Failure to Make Inspection; Inadequate Inspection of Potentially Hazardous Property

A public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than its property (as defined in subdivision (c) of Section 830), for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.

818.7. Damage Resulting from Publication of Reports

No board, commission, or any public officer or employee of the state or of any district, county, city and county, or city is liable for any damage or injury to any person resulting from the publication of any reports, records, prints, or photographs of or concerning any person convicted of violation of any law relating to the use, sale, or possession of controlled substances, when such publication is to school authorities for use in instruction on the subject of controlled substances or to any person when used for the purpose of general education. However, the name of any person concerning whom any such reports, records, prints, or photographs are used shall be kept confidential and every reasonable effort shall be made to maintain as confidential any information which may tend to identify such person.

818.8. Misrepresentation by Employee of Public Entity

A public entity is not liable for an injury caused by misrepresentation by an employee of the public entity, whether or not such misrepresentation be negligent or intentional.

818.9. Advice Provided to Small Claims Court Litigants

A public entity, its employees, and volunteers shall not be liable because of any advice provided to small claims court litigants pursuant to the Small Claims Act (Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure).

820. Public Employee Liable for Act to Same Extent as Private Person Except Where Provided by Statute; Defenses

(a) Except as otherwise provided by statute (including Section 820.2), a public employee is liable for injury caused by his act or omission to the same extent as a private person.

(b) The liability of a public employee established by this part (commencing with Section 814) is subject to any defenses that would be available to the public employee if he were a private person.

820.2. Exercise of Discretion

Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.

820.21. Juvenile Court and Child Protection Workers; Exceptions to Immunity; Malice

(a) Notwithstanding any other provision of the law, the civil immunity of juvenile court social workers, child protection workers, and other public employees authorized to initiate or conduct investigations or proceedings pursuant to Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code shall not extend to any of the following, if committed with malice:

(1) Perjury

(2) Fabrication of evidence

(3) Failure to disclose known exculpatory evidence

(4) Obtaining testimony by duress, as defined in Section 1569 of the Civil Code, fraud, as defined in either Section 1572 or Section 1573 of the Civil Code, or undue influence, as defined in Section 1575 of the Civil Code

(b) As used in this section, "malice" means conduct that is intended by the person described in subdivision (a) to cause injury to the plaintiff or despicable conduct that is carried on by the person described in subdivision (a) with a willful and conscious disregard of the rights or safety of others.

820.25. Decision of Peace Officer, Law Enforcement Official to Assist Motorist Involved in Accident Deemed Exercise of Discretion; Ministerial Duty

(a) For purposes of Section 820.2, the decision of a peace officer, as defined in Sections 830.1 and 830.2 of the Penal Code, or a state or local law enforcement official, to render assistance to a motorist who has not been involved in an accident or to leave the scene after rendering assistance, upon learning of a reasonably apparent emergency requiring his immediate attention elsewhere or upon instructions from a superior to assume duties elsewhere, shall be deemed an exercise of discretion.

(b) The provision in subdivision (a) shall not apply if the act or omission occurred pursuant to the performance of a ministerial duty. For purposes of this section, "ministerial duty" is defined as a plain and mandatory duty involving the execution of a set task and to be performed without the exercise of discretion.

820.4. Execution or Enforcement of Law by Public Employee; False Arrest

A public employee is not liable for his act or omission, exercising due care, in the execution or enforcement of any law. Nothing in this section exonerates a public employee from liability for false arrest or false imprisonment.

820.6. Good Faith Act under Apparent Authority of Unconstitutional Enactment

If a public employee acts in good faith, without malice, and under the apparent authority of an enactment that is unconstitutional, invalid or inapplicable, he is not liable for an injury caused thereby except to the extent that he would have been liable had the enactment been constitutional, valid and applicable.

820.8. Injury Caused by Act or Omission of another Person

Except as otherwise provided by statute, a public employee is not liable for an injury caused by the act or omission of another person. Nothing in this section exonerates a public employee from liability for injury proximately caused by his own negligent or wrongful act or omission.

820.9. Vicarious Liability

Members of city councils, mayors, members of boards of supervisors, members of school boards, members of governing boards of other local public entities, members of locally appointed boards and commissions, and members of locally appointed or elected advisory bodies are not vicariously liable for injuries caused by the act or omission of the public entity or advisory body. Nothing in this section exonerates an official from liability for injury caused by that individual's own wrongful conduct. Nothing in this section affects the immunity of any other public official. This section shall become operative January 1, 2000.

821. Adoption of or Failure to Adopt or Enforce Enactment

A public employee is not liable for an injury caused by his adoption of or failure to adopt an enactment or by his failure to enforce an enactment.

821.2. Issuance, Revocation of License, Certificate

A public employee is not liable for an injury caused by his issuance, denial, suspension or revocation of, or by his failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where he is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

821.4. Failure to Make Inspection, Inadequate Inspection of Potentially Hazardous Property

A public employee is not liable for injury caused by his failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than the property (as defined in subdivision (c) of Section 830) of the public entity employing the public employee, for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.

821.5. Cargo Tank Vehicles/Tunnels

A public entity or a public employee acting within the scope of his employment is not liable for failing to prohibit or restrict the time that cargo tank vehicles required to display flammable liquid placards may travel through a tunnel.

821.6. Instituting, Prosecuting Judicial or Administrative Proceeding

A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause.

821.8. Entry upon Property

A public employee is not liable for an injury arising out of his entry upon any property where such entry is expressly or impliedly authorized by law. Nothing in this section exonerates a public employee from liability for an injury proximately caused by his own negligent or wrongful act or omission.

822. Money Stolen from Custody

A public employee is not liable for money stolen from his official custody. Nothing in this section exonerates a public employee from liability if the loss was sustained as a result of his own negligent or wrongful act or omission.

822.2. Misrepresentation

A public employee acting in the scope of his employment is not liable for an injury caused by his misrepresentation, whether or not such misrepresentation be negligent or intentional, unless he is guilty of actual fraud, corruption or actual malice.

825. Defense of Public Employee against Claim or Action

(a) Except as otherwise provided in this section, if an employee or former employee of a public entity requests the public entity to defend him or her against any claim or action against him or her for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity and the request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed.

If the public entity conducts the defense of an employee or former employee against any claim or action with his or her reasonable good-faith cooperation, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed. However, where the public entity conducted the defense pursuant to an agreement with the employee or former employee reserving the rights of the public entity not to pay the judgment, compromise, or settlement until it is established that the injury arose out of an act or omission occurring within the scope of his or her employment as an employee of the public entity, the public entity is required to pay the judgment, compromise, or settlement only if it is established that the injury arose out of an act or omission occurring in the scope of his or her employment as an employee of the public entity.

Nothing in this section authorizes a public entity to pay that part of a claim or judgment that is for punitive or exemplary damages.

(b) Notwithstanding subdivision (a) or any other provision of law, a public entity is authorized to pay that part of a judgment that is for punitive or exemplary damages if the governing body of that public entity, acting in its sole discretion except in cases involving an entity of the state government, finds all of the following:

(1) The judgment is based on an act or omission of an employee or former employee acting within the course and scope of his or her employment as an employee of the public entity.

(2) At the time of the act giving rise to the liability, the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent best interests of the public entity.

(3) Payment of the claim or judgment would be in the best interests of the public entity.

As used in this subdivision with respect to an entity of state government, "a decision of the governing body" means the approval of the Legislature for payment of that part of a judgment that is for punitive damages or exemplary damages, upon recommendation of the appointing power of the employee or former employee, based upon the finding by the Legislature and the appointing

authority of the existence of the three conditions for payment of a punitive or exemplary damages claim. The provisions of subdivision (a) of Section 965.6 shall apply to the payment of any claim pursuant to this subdivision.

The discovery of the assets of a public entity and the introduction of evidence of the assets of a public entity shall not be permitted in an action in which it is alleged that a public employee is liable for punitive or exemplary damages.

The possibility that a public entity may pay that part of a judgment that is for punitive damages shall not be disclosed in any trial in which it is alleged that a public employee is liable for punitive or exemplary damages, and that disclosure shall be grounds for a mistrial.

(c) Except as provided in subdivision (d), if the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(d) The subject of payment of punitive damages pursuant to this section or any other provision of law shall not be a subject of meet and confer under the provisions of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, or pursuant to any other law or authority.

(e) Nothing in this section shall affect the provisions of Section 818 prohibiting the award of punitive damages against a public entity. This section shall not be construed as a waiver of a public entity's immunity from liability for punitive damages under Section 1981, 1983, or 1985 of Title 42 of the United States Code.

(f) (1) Except as provided in paragraph (2), a public entity shall not pay a judgment, compromise, or settlement arising from a claim or action against an elected official, if the claim or action is based on conduct by the elected official by way of tortiously intervening or attempting to intervene in, or by way of tortiously influencing or attempting to influence the outcome of, any judicial action or proceeding for the benefit of a particular party by contacting the trial judge or any commissioner, court-appointed arbitrator, court-appointed mediator, or court-appointed special referee assigned to the matter, or the court clerk, bailiff, or marshal after an action has been filed, unless he or she was counsel of record acting lawfully within the scope of his or her employment on behalf of that party. Notwithstanding Section 825.6, if a public entity conducted the defense of an elected official against such a claim or action and the elected official is found liable by the trier of fact, the court shall order the elected official to pay to the public entity the cost of that defense.

(2) If an elected official is held liable for monetary damages in the action, the plaintiff shall first seek recovery of the judgment against the assets of the elected official. If the elected official's assets are insufficient to satisfy the total judgment, as determined by the court, the public entity may pay the deficiency if the public entity is authorized by law to pay that judgment.

(3) To the extent the public entity pays any portion of the judgment or is entitled to reimbursement of defense costs pursuant to paragraph (1), the public entity shall pursue all available creditors' remedies against the elected official, including garnishment, until that party has fully reimbursed the public entity.

(4) This subdivision shall not apply to any criminal or civil enforcement action brought in the name of the people of the State of California by an elected district attorney, city attorney, or attorney general.

825.2. Recovery of Claim from Public Entity

(a) Subject to subdivision (b), if an employee or former employee of a public entity pays any claim or judgment against him, or any portion thereof, that the public entity is required to pay under Section 825, he is entitled to recover the amount of such payment from the public entity.

(b) If the public entity did not conduct his defense against the action or claim, or if the public entity conducted such defense pursuant to an agreement with him reserving the rights of the public entity against him, an employee or former employee of a public entity may recover from the public entity under subdivision (a) only if he establishes that the act or omission upon which the claim or judgment is based occurred within the scope of his employment as an employee of the public entity and the public entity fails to establish that he acted or failed to act because of actual fraud, corruption or actual malice or that he willfully failed or refused to conduct the defense of the claim or action in good faith or to reasonably cooperate in good faith in the defense conducted by the public entity.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

825.4. Public Entity's Payment of Claim against Itself; Employee Not Liable to Indemnify Public Entity

Except as provided in Section 825.6, if a public entity pays any claim or judgment against itself or against an employee or former employee of the public entity, or any portion thereof, for an injury arising out of an act or omission of the employee or former employee of the public entity, he is not liable to indemnify the public entity.

825.6. Public Entity's Payment of Claim or Judgment

(a) (1) Except as provided in subdivision (b), if a public entity pays any claim or judgment, or any portion thereof, either against itself or against an employee or former employee of the public entity, for an injury arising out of an act or omission of the employee or former employee of the public entity, the public entity may recover from the employee or former employee the amount of that payment if he or she acted or failed to act because of actual fraud, corruption, or actual malice, or willfully failed or refused to conduct the defense of the claim or action in good faith. Except as provided in paragraph (2) or (3), a public entity may not recover any payments made upon a judgment or claim against an employee or former employee if the public entity conducted his or her defense against the action or claim.

(2) If a public entity pays any claim or judgment, or any portion thereof, against an employee or former employee of the public entity for an injury arising out of his or her act or omission, and if the public entity conducted his or her defense against the claim or action pursuant to an agreement with him or her reserving the rights of the public entity against him or her, the public entity may recover the amount of the payment from him or her unless he or she establishes that the act or omission upon which the claim or judgment is based occurred within the scope of his or her employment as an employee of the public entity and the public entity fails to establish that he or she acted or failed to act because of actual fraud, corruption or actual malice or that he or she willfully failed or refused to reasonably cooperate in good faith in the defense conducted by the public entity.

(3) If a public entity pays any claim or judgment, or any portion thereof, against an employee or former employee of the public entity for an injury arising out of his or her act or omission, and if the public entity conducted the defense against the claim or action in the absence of an agreement with him or her reserving the rights of the public entity against him or her, the public entity may recover the amount of that payment from him or her if he or she willfully failed or refused to reasonably cooperate in good faith in the defense conducted by the public entity.

(b) (1) Upon a felony conviction for a violation of Section 1195 of this code, or of Section 68, 86, 93, 165, 504, or 518 of the Penal Code, by an elected official or former elected official of a public entity for an act or omission of that person while in office, the elected official or former elected official shall forfeit any rights to defense or indemnification under Section 825 with respect to a claim for damages for an injury arising from that act or omission.

(2) If a public entity pays any claim or judgment, or any portion thereof, either against itself or against an elected official or former elected official of the public entity, for an injury arising out of an act or omission of the elected official or former elected official of the public entity, which act or omission constituted a felony violation of Section 1195 of this code, or of Section 68, 86, 93, 165, 504, or 518 of the Penal Code, the public entity shall recover from the elected official or former elected official the amount of that payment upon the felony conviction of the elected official or former elected official for that act or omission. Upon that conviction, the public entity shall also recover from the elected official the costs of any defense to a civil action filed against the elected official for that act or omission.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

830. "Dangerous Condition," "Protect Against," "Property of a Public Entity," "Public Property," Defined

As used in this chapter:

(a) "Dangerous condition" means a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.

(b) "Protect against" includes repairing, remedying or correcting a dangerous condition, providing safeguards against a dangerous condition, or warning of a dangerous condition.

(c) "Property of a public entity" and "public property" mean real or personal property owned or controlled by the public entity, but do not include easements, encroachments and other property that are located on the property of the public entity but are not owned or controlled by the public entity.

830.1. Seismic Safety or Fire Sprinkler Improvements

For purposes of this chapter, seismic safety improvements or fire sprinkler improvements which are owned, built, controlled, operated, and maintained by the private owner of the building in which they are installed are not public property or property of a public entity solely because the improvements were financed, in whole or in part, by means of the formation of a special assessment district.

830.2. Court Determination That Condition Not Dangerous

A condition is not a dangerous condition within the meaning of this chapter if the trial or appellate court, viewing the evidence most favorably to the plaintiff, determines as a matter of law that the risk created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used.

830.4. Failure to Provide Traffic Control Signals, Signs, Roadway Markings

A condition is not a dangerous condition within the meaning of this chapter merely because of the failure to provide regulatory traffic control signals, stop signs, yield right-of-way signs, or speed restriction signs, as described by the Vehicle Code, or distinctive roadway markings as described in Section 21460 of the Vehicle Code.

830.5. Evidence of Property in Dangerous Condition

(a) Except where the doctrine of res ipsa loquitur is applicable, the happening of the accident which results in the injury is not in and of itself evidence that public property was in a dangerous condition.

(b) The fact that action was taken after an injury occurred to protect against a condition of public property is not evidence that the public property was in a dangerous condition at the time of the injury.

830.6. Injury Caused by Plan or Design of Construction of Public Property

Neither a public entity nor a public employee is liable under this chapter for an injury caused by the plan or design of a construction of, or an improvement to, public property where such plan or design has been approved in advance of the construction or improvement by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved, if the trial or appellate court determines that there is any substantial evidence upon the basis of which (a) a reasonable public employee could have adopted the plan or design or the standards therefore or (b) a reasonable legislative body or other body or employee could have approved the plan or design or the standards therefore. Notwithstanding notice that constructed or improved public property may no longer be in conformity with a plan or design or a standard which reasonably could be approved by the legislative body or other body or employee, the immunity provided by this section shall continue for a reasonable period of time sufficient to permit the public entity to obtain funds for and carry out remedial work necessary to allow such public property to be in conformity with a plan or design approved by the legislative body of the public entity or other body or employee, or with a plan or design in conformity with a standard previously approved by such legislative body or other body or employee. In the event that the public entity is unable to remedy such public property because of practical impossibility or lack of sufficient funds, the immunity provided by this section shall remain so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of the condition not conforming to the approved plan or design or to the approved standard. However, where a person fails to heed such warning or occupies public property despite such warning, such failure or occupation shall not in itself constitute an assumption of the risk of the danger indicated by the warning.

830.8. Failure to Provide Traffic or Warning Signal

Neither a public entity nor a public employee is liable under this chapter for an injury caused by the failure to provide traffic or warning signals, signs, markings or devices described in the Vehicle Code. Nothing in this section exonerates a public entity or public employee from liability for injury proximately caused by such

failure if a signal, sign, marking or device (other than one described in Section 830.4) was necessary to warn of a dangerous condition which endangered the safe movement of traffic and which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care.

830.9. Injury Caused by Operation or Non-operation of Traffic Control Signal Controlled by Emergency Vehicle

Neither a public entity nor a public employee is liable for an injury caused by the operation or non-operation of official traffic control signals when controlled by an emergency vehicle in accordance with the provisions of subdivision (a) of Section 25258 of the Vehicle Code.

831. Injury Caused by Effect on Use of Street of Weather Conditions

Neither a public entity nor a public employee is liable for an injury caused by the effect on the use of streets and highways of weather conditions as such. Nothing in this section exonerates a public entity or public employee from liability for injury proximately caused by such effect if it would not be reasonably apparent to, and would not be anticipated by, a person exercising due care. For the purpose of this section, the effect on the use of streets and highways of weather conditions includes the effect of fog, wind, rain, flood, ice or snow but does not include physical damage to or deterioration of streets and highways resulting from weather conditions.

831.2. Injury Caused by Natural Condition of Unimproved Public Property

Neither a public entity nor a public employee is liable for an injury caused by a natural condition of any unimproved public property, including, but not limited to, any natural condition of any lake, stream, bay, river, or beach. **(NOTE: "[W]here a public entity's conduct actively increases the degree of dangerousness of a natural condition, section 831.2 immunity is not available." McCauley v. City of San Diego (1987) 190 Cal.App.3d 981, 989 fn. 7.)**

831.21. Public Beaches; Date Section Applicable

(a) Public beaches shall be deemed to be in a natural condition and unimproved notwithstanding the provision or absence of public safety services such as lifeguards, police or sheriff patrols, medical services, fire protection services, beach cleanup services, or signs. The provisions of this section shall apply only to natural conditions of public property and shall not limit any liability or immunity that may otherwise exist pursuant to this division.

(b) This section shall only be applicable to causes of action based upon acts or omissions occurring on or after January 1, 1988.

831.25. Injury Caused by Land Failure of Unimproved Public Property

(a) Neither a public entity nor a public employee is liable for any damage or injury to property, or for emotional distress unless the plaintiff has suffered substantial physical injury, off the public entity's property caused by land failure of any unimproved public property if the land failure was caused by a natural condition of the unimproved public property.

(b) For the purposes of this section, a natural condition exists, and property shall be deemed unimproved notwithstanding the intervention of minor improvements made for the preservation or prudent management of the property in its unimproved state that did not contribute to the land failure.

(c) As used in this section, "land failure" means any movement of land, including a landslide, mudslide, creep, subsidence, and any other gradual or rapid movement of land.

(d) This section shall not benefit any public entity or public employee who had actual notice of

probable damage that is likely to occur outside the public property because of land failure and who fails to give a reasonable warning of the danger to the affected property owners. Neither a public entity nor a public employee is liable for any damage or injury arising from the giving of a warning under this section.

(e) Nothing in this section shall limit the immunity provided by Section 831.2.

(f) Nothing in this section creates a duty of care or basis of liability for damage or injury to property or of liability for emotional distress.

831.3. Injury Occurring on Account of Grading or Road Maintenance; "Reconstruction or Replacement," Defined

Neither a public entity nor a public employee is liable for any injury occurring on account of the grading or the performance of other maintenance or repair on or reconstruction or replacement of any road which has not officially been accepted as a part of the road system under the jurisdiction of the public entity if the grading, maintenance, repair, or reconstruction or replacement is performed with reasonable care and leaves the road in no more dangerous or unsafe condition than it was before the work commenced. No act of grading, maintenance, repair, or reconstruction or replacement within the meaning of this section shall be deemed to give rise to any duty of the public entity to continue any grading, maintenance, repair, or reconstruction or replacement on any road not a part of the road system under the public entity's jurisdiction. As used in this section "reconstruction or replacement" means reconstruction or replacement performed pursuant to Article 3 (commencing with Section 1160) of Chapter 4 of Division 2 of the Streets and Highways Code.

831.4. Injury Caused by Unpaved Road, Trail, Path, Sidewalk

A public entity, public employee, or a grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of:

(a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas and which is not a (1) city street or highway or (2) county, state or federal highway or (3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways.

(b) Any trail used for the above purposes.

(c) Any paved trail, walkway, path, or sidewalk on an easement of way which has been granted to a public entity, which easement provides access to any unimproved property, so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of any condition of the paved trail, walkway, path, or sidewalk which constitutes a hazard to health or safety. Warnings required by this subdivision shall only be required where pathways are paved, and such requirement shall not be construed to be a standard of care for any unpaved pathways or roads.

831.5. Public Land Trust

(a) The Legislature declares that innovative public access programs, such as agreements with public land trusts, can provide effective and responsible alternatives to costly public acquisition programs. The Legislature therefore declares that it is beneficial to the people of this state to encourage private nonprofit entities such as public land trusts to carry out programs that preserve open space or increase opportunities for the public to enjoy access to and use of natural resources if the programs are consistent (1) with public safety, (2) with the protection of the resources, and (3) with public and private rights.

(b) For the purposes of Sections 831.2, 831.25, 831.4, and 831.7, "public entity" includes a public land trust which meets all of the following conditions:

(1) It is a nonprofit organization existing under the provisions of Section 501(c) of the United States Internal Revenue Code.

(2) It has specifically set forth in its articles of incorporation, as among its principal charitable purposes, the conservation of land for public access, agricultural, scientific, historical, educational, recreational, scenic, or open-space opportunities.

(3) It has entered into an agreement with the State Coastal Conservancy for lands located within the coastal zone, as defined in Section 31006 of the Public Resources Code, with the California Tahoe Conservancy or its designee for lands located within the Lake Tahoe region, as defined in subdivision (c) of Section 66953 of the Government Code, or with the State Public Works Board or its designee for lands not located within the coastal zone or the Lake Tahoe region, on such terms and conditions as are mutually agreeable, requiring the public land trust to hold the lands or, where appropriate, to provide nondiscriminatory public access consistent with the protection and conservation of either coastal or other natural resources, or both. The conservancy or the board, as appropriate, shall periodically review the agreement and determine whether the public land trust is in compliance with the terms and conditions. In the event the conservancy or the board determines that the public land trust is not in substantial compliance with the agreement, the conservancy or the board shall cancel the agreement, and the provisions of Sections 831.2, 831.25, 831.4, and 831.7 shall no longer apply with regard to that public land trust.

(c) For the purposes of Sections 831.2, 831.25, 831.4, and 831.7, "public employee" includes an officer, authorized agent, or employee of any public land trust which is a public entity.

831.6. Injury Caused by Ungranted Tidelands, Submerged Lands, Beds of Navigable Rivers, Streams, Bays, Estuaries, Inlets; Unsold Portions of School Lands

Neither the State nor an employee of the State is liable under this chapter for any injury caused by a condition of the unimproved and unoccupied portions of:

(a) The ungranted tidelands and submerged lands, and the beds of navigable rivers, streams, lakes, bays, estuaries, inlets and straits, owned by the State.

(b) The unsold portions of the 16th and 36th sections of school lands, the unsold portions of the 500,000 acres granted to the State for school purposes, and the unsold portions of the listed lands selected of the United States in lieu of the 16th and 36th sections and losses to the school grant.

831.7. Hazardous Recreational Activity

(a) Neither a public entity nor a public employee is liable to any person who participates in a hazardous recreational activity, including any person who assists the participant, or to any spectator who knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury to himself or herself and was voluntarily in the place of risk, or having the ability to do so failed to leave, for any damage or injury to property or persons arising out of that hazardous recreational activity.

(b) As used in this section, "hazardous recreational activity" means a recreational activity conducted on property of a public entity which creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury to a participant or a spectator.
"Hazardous recreational activity" also means:

(1) Water contact activities, except diving, in places where or at a time when lifeguards are not provided, and reasonable warning thereof has been given or the injured party should reasonably have known that there was no lifeguard provided at the time.

(2) Any form of diving into water from other than a diving board or diving platform, or at any place or from any structure where diving is prohibited, and reasonable warning thereof has been given.

(3) Animal riding, including equestrian competition, archery, bicycle racing or jumping, mountain bicycling, boating, cross-country and downhill skiing, hang gliding, kayaking, motorized vehicle racing, off-road motorcycling or four-wheel driving of any kind, orienteering, pistol and rifle shooting, rock climbing, rocketeering, rodeo, spelunking, sky diving, sport parachuting, paragliding, body contact sports (i.e., sports in which it is reasonably foreseeable that there will be rough bodily contact with one or more participants), surfing, trampolining, tree climbing, tree rope swinging, water skiing, white water rafting, and windsurfing. For the purposes of this subdivision, "mountain bicycling" does not include riding a bicycle on paved pathways, roadways, or sidewalks.

(c) (1) Notwithstanding the provisions of subdivision (a), this section does not limit liability which would otherwise exist for any of the following:

(A) Failure of the public entity or employee to guard or warn of a known dangerous condition or of another hazardous recreational activity known to the public entity or employee that is not reasonably assumed by the participant as inherently a part of the hazardous recreational activity out of which the damage or injury arose.

(B) Damage or injury suffered in any case where permission to participate in the hazardous recreational activity was granted for a specific fee. For the purpose of this paragraph, a "specific fee" does not include a fee or consideration charged for a general purpose such as a general park admission charge, a vehicle entry or parking fee, or an administrative or group use application or permit fee, as distinguished from a specific fee charged for participation in the specific hazardous recreational activity out of which the damage or injury arose.

(C) Injury suffered to the extent proximately caused by the negligent failure of the public entity or public employee to properly construct or maintain in good repair any structure, recreational equipment or machinery, or substantial work of improvement utilized in the hazardous recreational activity out of which the damage or injury arose.

(D) Damage or injury suffered in any case where the public entity or employee recklessly or with gross negligence promoted the participation in or observance of a hazardous recreational activity. For purposes of this paragraph, promotional literature or a public announcement or advertisement which merely describes the available facilities and services on the property does not in itself constitute a reckless or grossly negligent promotion.

(E) An act of gross negligence by a public entity or a public employee which is the proximate cause of the injury.

(2) Nothing in this subdivision creates a duty of care or basis of liability for personal injury or for damage to personal property.

(d) Nothing in this section shall limit the liability of an independent concessionaire, or any person or organization other than the public entity, whether or not the person or organization has a contractual relationship with the public entity to use the public property, for injuries or damages suffered in any case as a result of the operation of a hazardous recreational activity on public property by the concessionaire, person, or organization.

***NOTE*: With respect to skateboarding and in-line skating as hazardous recreational activities, see Health & Safety Code sections 1115800 and 1115800.1 listed below.**

831.8. Injury Caused by Condition of Reservoir, Canal, Conduit, Drain

(a) Subject to subdivisions (d) and (e), neither a public entity nor a public employee is liable under this chapter for an injury caused by the condition of a reservoir if at the time of the injury the person injured was using the property for any purpose other than that for which the public entity intended or permitted the property to be used.

(b) Subject to subdivisions (d) and (e), neither an irrigation district nor an employee thereof nor the State nor a state employee is liable under this chapter for an injury caused by the condition of canals, conduits or drains used for the distribution of water if at the time of the injury the person injured was using the property for any purpose other than that for which the district or State intended it to be used.

(c) Subject to subdivisions (d) and (e), neither a public agency operating flood control and water conservation facilities nor its employees are liable under this chapter for an injury caused by the condition or use of unlined flood control channels or adjacent groundwater recharge spreading grounds if, at the time of the injury, the person injured was using the property for any purpose other than that for which the public entity intended it to be used, and, if all of the following conditions are met:

(1) The public agency operates and maintains dams, pipes, channels, and appurtenant facilities to provide flood control protection and water conservation for a county whose population exceeds nine million residents.

(2) The public agency operates facilities to recharge a groundwater basin system which is the primary water supply for more than one million residents.

(3) The groundwater supply is dependent on imported water recharge which must be conducted in accordance with court-imposed basin management restrictions.

(4) The basin recharge activities allow the conservation and storage of both local and imported water supplies when these waters are available.

(5) The public agency posts conspicuous signs warning of any increase in water flow levels of an unlined flood control channel.

(d) Nothing in this section exonerates a public entity or a public employee from liability for injury proximately caused by a dangerous condition of property if all of the following occur:

(1) The injured person was not guilty of a criminal offense under Article 1 (commencing with Section 552) of Chapter 12 of Title 13 of Part 1 of the Penal Code in entering on or using the property.

(2) The condition created a substantial and unreasonable risk of death or serious bodily harm when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used.

(3) The dangerous character of the condition was not reasonably apparent to, and would not have been anticipated by a mature, reasonable person using the property with due care.

(4) The public entity or the public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition.

(e) Nothing in this section exonerates a public entity or a public employee from liability for injury proximately caused by a dangerous condition of property if all of the following occur:

(1) The person injured was less than 12 years of age.

(2) The dangerous condition created a substantial and unreasonable risk of death or serious bodily harm to children under 12 years of age using the property or adjacent property

with due care in a manner in which it was reasonably foreseeable that it would be used.

(3) The person injured, because of his or her immaturity, did not discover the condition or did not appreciate its dangerous character.

(4) The public entity or the public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition.

(f) Nothing in subdivision (c) exonerates a public agency or public employee subject to that subdivision from liability for injury proximately caused by a dangerous condition of public property if all of the following occur:

(1) The person injured was 16 years of age or younger.

(2) The dangerous condition created a substantial and unreasonable risk of death or serious bodily harm to children 16 years of age or younger using the property or adjacent property with due care in a manner in which it was reasonably foreseeable that it would be used.

(3) The person injured did not discover the condition or did not appreciate its dangerous character because of his or her immaturity.

(4) The public entity or public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition.

835. Injury Caused by Dangerous Condition of Property

Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property 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, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and 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) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

835.2. Notice of Dangerous Condition

(a) A public entity had actual notice of a dangerous condition within the meaning of subdivision (b) of Section 835 if it had actual knowledge of the existence of the condition and knew or should have known of its dangerous character.

(b) A public entity had constructive notice of a dangerous condition within the meaning of subdivision (b) of Section 835 only if the plaintiff establishes that the condition had existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character. On the issue of due care, admissible evidence includes but is not limited to evidence as to:

(1) Whether the existence of the condition and its dangerous character would have been discovered by an inspection system that was reasonably adequate (considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which failure to inspect would give rise) to inform the public entity whether the property was safe for the use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making of the public property or adjacent property.

(2) Whether the public entity maintained and operated such an inspection system with due care and did not discover the condition.

835.4. Injury Caused by Condition of Property – No Liability Where Act Causing Condition Reasonable, Action to Protect Against Risk Reasonable

(a) A public entity is not liable under subdivision (a) of Section 835 for injury caused by a condition of its property if the public entity establishes that the act or omission that created the condition was reasonable. The reasonableness of the act or omission that created the condition shall be determined by weighing the probability and gravity of potential injury to persons and property foreseeably exposed to the risk of injury against the practicability and cost of taking alternative action that would not create the risk of injury or of protecting against the risk of injury.

(b) A public entity is not liable under subdivision (b) of Section 835 for injury caused by a dangerous condition of its property if the public entity establishes that the action it took to protect against the risk of injury created by the condition or its failure to take such action was reasonable. The reasonableness of the action or inaction of the public entity shall be determined by taking into consideration the time and opportunity it had to take action and by weighing the probability and gravity of potential injury to persons and property foreseeably exposed to the risk of injury against the practicability and cost of protecting against the risk of such injury.

840. Public Employee Not Liable for Injury Caused by Condition of Public Property Except as Provided in Article; Immunity

Except as provided in this article, a public employee is not liable for injury caused by a condition of public property where such condition exists because of any act or omission of such employee within the scope of his employment. The liability established by this article is subject to any immunity of the public employee provided by statute and is subject to any defenses that would be available to the public employee if he were a private person.

840.2. Conditions Under Which Employee of Public Entity Liable for Injury Caused by Dangerous Condition of Public Property

An employee of a public entity is liable for injury caused by a dangerous condition of public property if the plaintiff establishes that the property of the public entity was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:

(a) The dangerous condition was directly attributable wholly or in substantial part to a negligent or wrongful act of the employee and the employee had the authority and the funds and other means immediately available to take alternative action which would not have created the dangerous condition; or

(b) The employee had the authority and it was his responsibility to take adequate measures to protect against the dangerous condition at the expense of the public entity and the funds and other means for doing so were immediately available to him, and he had actual or constructive notice of the dangerous condition under Section 840.4 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

840.4. Notice of Dangerous Condition

(a) A public employee had actual notice of a dangerous condition within the meaning of subdivision (b) of Section 840.2 if he had actual personal knowledge of the existence of the condition and knew or should have known of its dangerous character.

(b) A public employee had constructive notice of a dangerous condition within the meaning of subdivision (b) of Section 840.2 only if the plaintiff establishes (1) that the public employee had the authority and it was his responsibility as a public employee to inspect the property of the public entity or to see that inspections were made to determine whether dangerous conditions existed in the public property, (2) that the funds and other means for making such inspections or

for seeing that such inspections were made were immediately available to the public employee, and (3) that the dangerous condition had existed for such a period of time and was of such an obvious nature that the public employee, in the exercise of his authority and responsibility with due care, should have discovered the condition and its dangerous character.

840.6. Injury Caused by Condition of Property – No Liability Where Act Causing Condition Reasonable, Action to Protect Risk Reasonable

(a) A public employee is not liable under subdivision (a) of Section 840.2 for injury caused by a dangerous condition of public property if he establishes that the act or omission that created the condition was reasonable. The reasonableness of the act or omission that created the condition shall be determined by weighing the probability and gravity of potential injury to persons and property foreseeably exposed to the risk of injury against the practicability and cost of taking alternative action that would not create the risk of injury or of protecting against the risk of injury.

(b) A public employee is not liable under subdivision (b) of Section 840.2 for injury caused by a dangerous condition of public property if he establishes that the action taken to protect against the risk of injury created by the condition or the failure to take such action was reasonable. The reasonableness of the inaction or action shall be determined by taking into consideration the time and opportunity the public employee had to take action and by weighing the probability and gravity of potential injury to persons and property foreseeably exposed to the risk of injury against the practicability and cost of protecting against the risk of such injury.

844. "Prisoner," Defined

As used in this chapter, "prisoner" includes an inmate of a prison, jail or penal or correctional facility. For the purposes of this chapter, a lawfully arrested person who is brought into a law enforcement facility for the purpose of being booked, as described in Section 7 of the Penal Code, becomes a prisoner, as a matter of law, upon his or her initial entry into a prison, jail, or penal or correctional facility, pursuant to penal processes.

844.6. Injury to Prisoner

(a) Notwithstanding any other provision of this part, except as provided in this section and in Sections 814, 814.2, 845.4, and 845.6, or in Title 2.1 (commencing with Section 3500) of Part 3 of the Penal Code, a public entity is not liable for:

(1) An injury proximately caused by any prisoner

(2) An injury to any prisoner

(b) Nothing in this section affects the liability of a public entity under Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code.

(c) Except for an injury to a prisoner, nothing in this section prevents recovery from the public entity for an injury resulting from the dangerous condition of public property under Chapter 2 (commencing with Section 830) of this part.

(d) Nothing in this section exonerates a public employee from liability for injury proximately caused by his negligent or wrongful act or omission. The public entity may but is not required to pay any judgment, compromise or settlement, or may but is not required to liability under this section; except that the public entity shall pay, as provided in Article 4 (commencing with Section 825) of Chapter 1 of this part, any judgment based on a claim against a public employee who is lawfully engaged in the practice of one of the healing arts under any law of this state for malpractice arising from an act or omission in the scope of his employment, and shall pay any compromise or settlement of a claim or action, based on such malpractice, to which the public entity has agreed.

845. Failure to Establish Police Department, Provide Police Protection; Response to Burglar Alarm When Permit Not Obtained

Neither a public entity nor a public employee is liable for failure to establish a police department or otherwise to provide police protection service or, if police protection service is provided, for failure to provide sufficient police protection service.

A police department shall not fail to respond to a request for service via a burglar alarm system or an alarm company referral service solely on the basis that a permit from the city has not been obtained.

845.2. Failure to Provide Prison, Jail; Failure to Provide Sufficient Prison Equipment, Personnel

Except as provided in Chapter 2 (commencing with Section 830), neither a public entity nor a public employee is liable for failure to provide a prison, jail or penal or correctional facility or, if such facility is provided, for failure to provide sufficient equipment, personnel or facilities therein.

845.4. Interference with Right of Prisoner to Obtain Judicial Determination or Review of Legality of Confinement

Neither a public entity nor a public employee acting within the scope of his employment is liable for interfering with the right of a prisoner to obtain a judicial determination or review of the legality of his confinement; but a public employee, and the public entity where the employee is acting within the scope of his employment, is liable for injury proximately caused by the employee's intentional and unjustifiable interference with such right, but no cause of action for such injury shall be deemed to accrue until it has first been determined that the confinement was illegal.

845.6. Injury Caused by Failure to Furnish Medical Care for Prisoner in Custody

Neither a public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody; but, except as otherwise provided by Sections 855.8 and 856, a public employee, and the public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care. Nothing in this section exonerates a public employee who is lawfully engaged in the practice of one of the healing arts under any law of this state from liability for injury proximately caused by malpractice or exonerates the public entity from its obligation to pay any judgment, compromise, or settlement that it is required to pay under subdivision (d) of Section 844.6.

845.8. Injury Caused by Paroled or Escaped Prisoner, Escaped Arrested Person, Person Resisting Arrest

Neither a public entity nor a public employee is liable for:

(a) Any injury resulting from determining whether to parole or release a prisoner or determining the terms and conditions of his parole or release or from determining whether to revoke his parole or release.

(b) Any injury caused by:

(1) An escaping or escaped prisoner;

(2) An escaping or escaped arrested person; or

(3) A person resisting arrest. Leg. H. (amended by Stats. 1970, Ch. 1099.)

846. Failure to Make Arrest or to Retain Arrested Person in Custody

Neither a public entity nor a public employee is liable for injury caused by the failure to make an arrest or by the failure to retain an arrested person in custody.

850. Failure to Establish Fire Department

Neither a public entity nor a public employee is liable for failure to establish a fire department or otherwise to provide fire protection service.

850.2. Injury Resulting from Failure to Provide Fire Department Personnel, Equipment

Neither a public entity that has undertaken to provide fire protection service, nor an employee of such a public entity, is liable for any injury resulting from the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities.

850.4. Injury Resulting from Condition of Fire Protection Equipment, Facilities, Fighting Fires

Neither a public entity, nor a public employee acting in the scope of his employment, is liable for any injury resulting from the condition of fire protection or firefighting equipment or facilities or, except as provided in Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code, for any injury caused in fighting fires.

850.6. Fire Protection Provided Outside Area Regularly Served; Claims Presented to State Board of Control

(a) Whenever a public entity provides fire protection or firefighting service outside of the area regularly served and protected by the public entity providing such service, the public entity providing such service is liable for any injury for which liability is imposed by statute caused by its act or omission or the act or omission of its employee occurring in the performance of such fire protection or firefighting service. Notwithstanding any other law, the public entity receiving such fire protection or such firefighting service is not liable for any act or omission of the public entity providing the service or for any act or omission of an employee of the public entity providing the service; but the public entity providing such service and the public entity receiving such service may by agreement determine the extent, if any, to which the public entity receiving such service will be required to indemnify the public entity providing the service.

(b) Notwithstanding any other provision of this section, any claims against the state shall be presented to the Department of General Services in accordance with Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1.

850.8. Injury Sustained as Result of Transportation of Person Injured by Fire to Physician or Hospital

Any member of an organized fire department, fire protection district, or other firefighting unit of either the state or any political subdivision, any employee of the Department of Forestry and Fire Protection, or any other public employee when acting in the scope of his or her employment, may transport or arrange for the transportation of any person injured by a fire, or by a fire protection operation, to a physician and surgeon or hospital if the injured person does not object to the transportation.

Neither a public entity nor a public employee is liable for any injury sustained by the injured person as a result of or in connection with that transportation or for any medical, ambulance, or hospital bills incurred by or in behalf of the injured person or for any other damages, but a public employee is liable for injury proximately caused by his or her willful misconduct in transporting the injured person or arranging for the transportation.

854. "Medical Facility," Defined

As used in this chapter, unless the context otherwise requires, "medical facility" includes a hospital, infirmary, clinic, dispensary, mental institution, or similar facility.

854.2. "Mental Institution," Defined

As used in this chapter, "mental institution" means any state hospital for the care and treatment of the mentally disordered or the mentally retarded, the California Rehabilitation Center referred to in Section 3300 of the Welfare and Institutions Code, or any county psychiatric hospital.

854.3. "County Psychiatric Hospital," Defined

As used in this chapter, "county psychiatric hospital" means the hospital, ward, or facility provided by the county pursuant to the provisions of Section 7100 of the Welfare and Institutions Code.

854.4. "Mental Illness or Addiction," Defined

As used in this chapter, "mental illness or addiction" means any condition for which a person may be detained, cared for, or treated in a mental institution, in a facility designated by a county pursuant to Chapter 2 (commencing with Section 5150) of Part 1 of Division 5 of the Welfare and Institutions Code, or in a similar facility.

854.5. "Confine," Defined

As used in this chapter, "confine" includes admit, commit, place, detain, or hold in custody.

854.8. Injury Caused by Patient of Mental Institution; Injury to Patient of Mental Institution

(a) Notwithstanding any other provision of this part, except as provided in this section and in Sections 814, 814.2, 855, and 855.2, a public entity is not liable for:

(1) An injury proximately caused by a patient of a mental institution

(2) An injury to an inpatient of a mental institution

(b) Nothing in this section affects the liability of a public entity under Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code.

(c) Except for an injury to an inpatient of a mental institution, nothing in this section prevents recovery from the public entity for an injury resulting from the dangerous condition of public property under Chapter 2 (commencing with Section 830) of this part.

(d) Nothing in this section exonerates a public employee from liability for injury proximately caused by his negligent or wrongful act or omission. The public entity may but is not required to pay any judgment, compromise or settlement, or may but is not required to indemnify any public employee, in any case where the public entity is immune from liability under this section; except that the public entity shall pay, as provided in Article 4 (commencing with Section 825) of Chapter 1 of this part, any judgment based on a claim against a public employee who is lawfully engaged in the practice of one of the healing arts under any law of this state for malpractice arising from an act or omission in the scope of his employment, and shall pay any compromise or settlement of a claim or action, based on such malpractice, to which the public entity has agreed.

855. Injury Caused by Failure to Provide Adequate Equipment or Personnel Required by Statute or Department of Health Services

(a) A public entity that operates or maintains any medical facility that is subject to regulation by the State Department of Health Services, Social Services, Developmental Services, or Mental Health is liable for injury proximately caused by the failure of the public entity to provide adequate or sufficient equipment, personnel or facilities required by any statute or any regulation of the State Department of Health Services, Social Services, Developmental Services, or Mental Health prescribing minimum standards for equipment, personnel or facilities, unless the public entity establishes that it exercised reasonable diligence to comply with the applicable statute or regulation.

(b) A public entity that operates or maintains any medical facility that is not subject to regulation by the State Department of Health Services, Social Services, Developmental Services, or Mental Health is liable for injury proximately caused by the failure of the public entity to provide adequate or sufficient equipment, personnel or facilities substantially equivalent to those required by any statute or any regulation of the State Department of Health Services, Social Services, Developmental Services, or Mental Health prescribing minimum standards for equipment, personnel or facilities applicable to a public medical facility of the same character and class, unless the public entity establishes that it exercised reasonable diligence to conform with such minimum standards.

(c) Nothing in this section confers authority upon, or augments the authority of, the State Department of Health Services, Social Services, Developmental Services, or Mental Health to adopt, administer or enforce any regulation. Any regulation establishing minimum standards for equipment, personnel or facilities in any medical facility operated or maintained by a public entity, to be effective, must be within the scope of authority conferred by law.

855.2. Interference with Right of Inmate of Medical Facility to Obtain Judicial Determination or Review of Legality of Confinement

Neither a public entity nor a public employee acting within the scope of his employment is liable for interfering with the right of an inmate of a medical facility operated or maintained by a public entity to obtain a judicial determination or review of the legality of his confinement; but a public employee, and the public entity where the employee is acting within the scope of his employment, is liable for injury proximately caused by the employee's intentional and unjustifiable interference with such right, but no cause of action for such injury shall be deemed to accrue until it has first been determined that the confinement was illegal.

855.4. Injury Resulting from Decision to Perform or Not Perform Act to Promote Public Health by Preventing or Controlling Disease.

(a) Neither a public entity nor a public employee is liable for an injury resulting from the decision to perform or not to perform any act to promote the public health of the community by preventing disease or controlling the communication of disease within the community if the decision whether the act was or was not to be performed was the result or not such discretion be abused.

(b) Neither a public entity nor a public employee is liable for an injury caused by an act or omission in carrying out with due care a decision described in subdivision (a).

855.6. Injury Caused by Failure to Make Physical or Mental Examination to Determine Presence of Disease or Mental Condition

Except for an examination or diagnosis for the purpose of treatment, neither a public entity nor a public employee acting within the scope of his employment is liable for injury caused by the failure to make a physical or mental examination, or to make an adequate physical or mental examination, of any person for the purpose of determining whether such person has a disease or physical or mental condition that would constitute a hazard to the health or safety of himself or others.

855.8. Injury Resulting from Diagnosing or Failing to Diagnose Mental Illness or Addiction

(a) Neither a public entity nor a public employee acting within the scope of his employment is liable for injury resulting from diagnosing or failing to diagnose that a person is afflicted with mental illness or addiction or from failing to prescribe for mental illness or addiction.

(b) A public employee acting within the scope of his employment is not liable for administering with due care the treatment prescribed for mental illness or addiction.

(c) Nothing in this section exonerates a public employee who has undertaken to prescribe for mental illness or addiction from liability for injury proximately caused by his negligence or by his wrongful act in so prescribing.

(d) Nothing in this section exonerates a public employee from liability for injury proximately caused by his negligent or wrongful act or omission in administering any treatment prescribed for mental illness or addiction.

856. Injury Resulting from Determining Whether to Confine Person for Mental Illness or Addiction, Terms of Confinement, Parole or Release; Injury as Result of Carrying Out or Not Carrying Out Confinement

(a) Neither a public entity nor a public employee acting within the scope of his employment is liable for any injury resulting from determining in accordance with any applicable enactment:

(1) Whether to confine a person for mental illness or addiction.

(2) The terms and conditions of confinement for mental illness or addiction.

(3) Whether to parole, grant a leave of absence to, or release a person confined for mental illness or addiction.

(b) A public employee is not liable for carrying out with due care a determination described in subdivision (a).

(c) Nothing in this section exonerates a public employee from liability for injury proximately caused by his negligent or wrongful act or omission in carrying out or failing to carry out:

(1) A determination to confine or not to confine a person for mental illness or addiction.

(2) The terms or conditions of confinement of a person for mental illness or addiction.

(3) A determination to parole, grant a leave of absence to, or release a person confined for mental illness or addiction.

856.2. Injury Caused by or to Escaped Person Confined for Mental Illness or Addiction

(a) Neither a public entity nor a public employee is liable for:

(1) An injury caused by an escaping or escaped person who has been confined for mental illness or addiction.

(2) An injury to, or the wrongful death of, an escaping or escaped person who has been confined for mental illness or addiction.

(b) Nothing in this section exonerates a public employee from liability:

(1) If he acted or failed to act because of actual fraud, corruption, or actual malice.

(2) For injuries inflicted as a result of his own negligent or wrongful act or omission on an escaping or escaped mental patient in recapturing him.

856.4. Injury Resulting from Failure to Admit Person to Public Medical Facility

Except as provided in Section 815.6, neither a public entity nor a public employee acting in the scope of his employment is liable for an injury resulting from the failure to admit a person to a public medical facility.

856.6. Injury Resulting from Act or Omission by Public Entity, Employee, or Volunteer Participating in National Influenza Program of 1976; "Community Program," "Volunteer," Defined

(a) A public entity, public employee, or volunteer, participating in the National Influenza Program of 1976, shall not be liable for an injury caused by an act or omission in the promotion of a community program or the administration of vaccine in a community program, including the residual effects of the vaccine, unless the act or omission constitutes willful misconduct.

(b) All promotions of a community program and oral and written information provided for purposes of consent to a person requesting inoculation shall contain notice of the provisions of subdivision (a) of this section. In the event the person to be inoculated is a minor, the parents or legal guardian of said minor must be informed orally or in writing of the provisions of subdivision (a) of this section and said parents or legal guardian must consent in writing to the inoculation of said minor person. The State Department of Health shall prescribe a form to be used in community programs which notifies a person of the provisions of subdivision (a) and contains a provision by which the person acknowledges that he has been so notified and understands the legal effect of the subdivision.

(c) As used in the section:

(1) "Community program" means a public program conducted by a state, city, county, or district health agency under the National Influenza Program of 1976 or a public or private organization which has entered into a contract with a state, city, county, or district health agency, with the approval of the State Department of Health, to provide services pursuant to the National Influenza Program of 1976.

(2) 'Volunteer" means a licensed health professional, licensed health facility, organization, or individual participating in a community program.

(d) Notwithstanding any other provision of law, an individual authorized by the State Department of Health may administer influenza vaccine under the supervision of a licensed health professional in a community program using a jet injection apparatus.

860. "Tax," Defined

As used in this chapter, "tax" includes a tax, assessment, fee or charge.

860.2. Injury Caused by Proceeding for Assessment or Collection of Tax, Act or Omission in Interpretation or Application of Tax Law

Neither a public entity nor a public employee is liable for an injury caused by:

(a) Instituting any judicial or administrative proceeding or action for or incidental to the assessment or collection of a tax.

(b) An act or omission in the interpretation or application of any law relating to a tax.

860.4. Law Relating to Refund, Rebate, Exemption, Cancellation, Amendment or Adjustment of Taxes Not Affected by Chapter

Nothing in this chapter affects any law relating to refund, rebate, exemption, cancellation, amendment or adjustment of taxes.

862. Liability for Injuries Caused by The Use of Pesticides

(a) As used in this section, "pesticide" means:

(1) An "economic poison" as defined in Section 12753 of the Agricultural Code;

(2) An "injurious material" the use of which is regulated or prohibited under Chapter 3 (commencing with Section 14001) of Division 7 of the Agricultural Code; or

(3) Any material used for the same purpose as material referred to in paragraphs (1) and (2).

(b) A public entity is liable for injuries caused by its use of a pesticide to the same extent as a private person except that no presumption of negligence arises from the failure of a public entity or a public employee to comply with a provision of a statute or regulation relating to the use of a pesticide if the statute or regulation by its terms is made inapplicable to the public entity or the public employee.

(c) Sections 11761 to 11765 of the Agricultural Code, relating to reports of loss or damages from the use of pesticides, apply in an action against a public entity under this section.

865. Legislative Findings and Declarations

The Legislature hereby finds and declares that:

(a) The gradual movement of land, such as in prehistoric slide areas, or as a result of subsidence due to the depletion of underground or subterranean supporting substances, such as minerals, petroleum sources, water, and similar substances, can result in danger to persons or property. Although the movement is gradual and expressed in terms of numbers of inches, feet or meters per day, week or year, at some point the forces that are exerted by the movement will sever underground utilities, such as water, sewer, gas, electricity or telephone services and can cause the destruction of aboveground structures whose foundations become undermined or where support is denied altogether. Unlike an earthquake or rapid rockslide or landslide, these gradual earth movements permit possible intervention to arrest the movement and avoid harm which is posed to persons or property. If there is an adequate manifestation of the problem before actual harm to persons or property, it is possible to make some determinations as to a method of remedial action which can abate the hazard. However, any undertaking to arrest the earth movement may not be successful or may have within it the potential for hastening the movement and the damages resulting from such movement. Regardless of how slight that potential for aggravating the damages, local public entities are unwilling to undertake action to alleviate the hazard if such undertaking may invite potential liability.

(b) It is the intent of the Legislature in enacting this chapter to create an incentive for local public entities, upon learning of the particular earth movement which will result in possible damage to substantial areas of property and constitute a threat of injury to persons, to undertake remedial action to abate the earth movement or protect against the danger therefrom without fear of incurring liability as a result of undertaking such action.

866. Liability of Public Entity for Injury Resulting from Impending Peril or Attempt to Abate Impending Peril; Gradual Earth Movements, "Local Public Entity," Defined

(a) Subject to the provisions of subdivisions (b) and (c), in the event of public necessity and to avoid impending peril to persons or property as a result of gradual earth movement, a local public entity is not liable for damages for injury to persons or property resulting from such impending peril or from any action taken to abate such peril providing the legislative body of the local public entity has, on the basis of expert opinion or other reasonable basis, done all of the following:

(1) On the basis of adequate evidence such as expert opinion or otherwise, found the existence of such impending peril.

(2) Determined appropriate remedial action to halt, stabilize, or abate such impending peril.

(3) Undertaken to implement such remedial action.

As used in this chapter, "gradual earth movements" includes, but is not limited to, perceptible changes in the earth either in a subterranean area or at the surface, or both, which if not arrested or contained will over a gradual period of time result in damage to or destruction of underground or aboveground property or harm to persons. However, "gradual earth movement" does not include movement which is caused by activity undertaken by a local public entity for purposes other than the abatement of peril caused by gradual earth movement.

As used in this chapter, "local public entity" has the meaning set forth in Section 900.4.

(b) If the local public entity is unable to complete the steps described in paragraphs (1) to (3), inclusive, of subdivision (a) because of the cessation of the hazard or because such actions cannot be completed before the occurrence of the hazard sought to be avoided, or because such legislative body of such entity shall reasonably determine that such remedial action will not abate such danger, the immunity provided herein shall nevertheless apply to such actions by such local public entity.

(c) The immunity provided herein is in addition to any other immunity of the local public entity provided by law or statute, including this part, and any claim of liability based upon the impending peril or any action of the local public entity is subject to such immunities and any defenses that would be available to the local public entity if it were a private person.

867. No Liability of Employee of Local Public Entity for Damages for Injury Resulting from Impending Peril or Abatement of Peril

An employee of a local public entity is not liable for damages for injury to persons or property resulting from an impending peril or from any action taken to abate such peril pursuant to Section 866.

895. "Agreement," Defined

As used in this chapter "agreement" means a joint powers agreement entered into pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, an agreement to transfer the functions of a public entity or an employee thereof to another public entity pursuant to Part 2 (commencing with Section 51300) of Division 1 of Title 5 of the Government Code, and any other agreement under which a public entity undertakes to perform any function, service or act with or for any other public entity or employee thereof with its consent, whether such agreement is expressed by resolution, contract, ordinance or in any other manner provided by law; but "agreement" does not include an agreement between public entities which is designed to implement the disbursement or subvention of public funds from one of the public entities to the other, whether or not it provides standards or controls governing the expenditure of such funds.

895.2. Joint and Several Liability; Time Limit for Presenting Claim for Injury

Whenever any public entities enter into an agreement, they are jointly and severally liable upon any liability which is imposed by any law other than this chapter upon any one of the entities or upon any entity created by the agreement for injury caused by a negligent or wrongful act or omission occurring in the performance of such agreement.

Notwithstanding any other law, if a judgment is recovered against a public entity for injury caused in the performance of an agreement, the time within which a claim for such injury may be presented or an action commenced against any other public entity that is subject to the liability determined by the judgment under the provisions of this section begins to run when the judgment is rendered.

895.4. Provision for Contribution, Indemnification by Public Entities Party to Agreement

As part of any agreement, the public entities may provide for contribution or indemnification by any or all of the public entities that are parties to the agreement upon any liability arising out of the performance of the agreement.

895.6. Pro Rata Share of Judgment

Unless the public entities that are parties to an agreement otherwise provide in the agreement, if a public entity is held liable upon any judgment for damages caused by a negligent or wrongful act or omission occurring in the performance of the agreement and pays in excess of its pro rata share in satisfaction of such judgment, such public entity is entitled to contribution from each of the other public entities that are parties to the agreement. The pro rata share of each public entity is determined by dividing the total amount of the judgment by the number of public entities that are parties to the agreement. The right of contribution is limited to the amount paid in satisfaction of the judgment in excess of the pro rata share of the public entity so paying. No public entity may be compelled to make contribution beyond its own pro rata share of the entire judgment.

4. California Health & Safety Code

115800. Skateboard Parks; Skateboarding; Hazardous Recreational Activity; Conditions

(a) No operator of a skateboard park shall permit any person to ride a skateboard therein, unless that person is wearing a helmet, elbow pads, and kneepads.

(b) With respect to any facility, owned or operated by a local public agency, that is designed and maintained for the purpose of recreational skateboard use, and that is not supervised on a regular basis, the requirements of subdivision (a) may be satisfied by compliance with the following:

(1) Adoption by the local public agency of an ordinance requiring any person riding a skateboard at the facility to wear a helmet, elbow pads, and knee pads.

(2) The posting of signs at the facility affording reasonable notice that any person riding a skateboard in the facility must wear a helmet, elbow pads, and knee pads and that any person failing to do so will be subject to citation under the ordinance required by paragraph (1).

(c) "Local public agency" for purposes of this section includes, but is not limited to, a city, county, or city and county.

(d) For purposes of this section, “other wheeled recreational device” means nonmotorized bicycles, scooters, in-line skates, roller skates, or wheelchairs.

(e) (1) Riding a skateboard or other wheeled recreational device, or any concurrent combination of these activities at a facility or park owned or operated by a public entity as a public skateboard park, as provided in paragraph (3), shall be deemed a hazardous recreational activity within the meaning of Section 831.7 of the Government Code if all of the following conditions are met:

(A) The person riding the skateboard or other wheeled recreational device is 12 years of age or older.

(B) The riding of the skateboard or other wheeled recreational device that caused the injury was stunt, trick, or luge riding.

(C) The skateboard park is on public property that complies with subdivision (a) or (b).

(2) In addition to subdivision (c) of Section 831.7 of the Government Code, this section does not limit the liability of a public entity with respect to any other duty imposed pursuant to existing law, including the duty to protect against dangerous conditions of public property pursuant to Chapter 2 (commencing with Section 830) of Part 2 of Division 3.6 of Title 1 of the Government Code. However, this section does not abrogate or limit any other legal rights, defenses, or immunities that may otherwise be available at law.

(3) (A) Except as provided in subparagraph (B), for public skateboard parks that were constructed on or before January 1, 1998, this subdivision shall apply to hazardous recreational activity injuries incurred on or after January 1, 1998, and before January 1, 2001. For public skateboard parks that are constructed after January 1, 1998, this subdivision shall apply to hazardous recreational activity injuries incurred on or after January 1, 1998. For purposes of this subdivision, a skateboard facility that is a movable facility shall be deemed constructed on the first date it is initially made available for use at a location by the local public agency.

(B) For public skateboard parks that were constructed after January 1, 1996, and before January 1, 1998, this subdivision shall apply to hazardous recreational activity injuries incurred on or after January 1, 2012.

(4) The appropriate local public agency shall maintain a record of all known or reported injuries incurred by a person riding a skateboard or other wheeled recreational device in a public skateboard park or facility. The local public agency shall also maintain a record of all claims, paid and not paid, including any lawsuits and their results, arising from those incidents that were filed against the public agency. Copies of the records of claims and lawsuits shall be filed annually, no later than January 30 each year, with the Assembly Committee on Judiciary and the Senate Committee on Judiciary.

(5) (A) Except as provided in subparagraph (B), this subdivision shall not apply on or after January 1, 2001, to public skateboard parks that were constructed on or before January 1, 1998 but shall continue to apply to public skateboard parks that are constructed after January 1, 1998.

(B) On and after January 1, 2012, this subdivision shall apply to public skateboard parks that were constructed on or after January 1, 1996.

(6) For purposes of injuries that occur while operating one of the other wheeled recreational devices described in subdivision (d) in a skateboard facility, this subdivision shall apply to any claim for injuries occurring on or after January 1, 2016.

(f) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

115800.1. In-line Skating; Hazardous Recreational Activity; Conditions

(a) In-line skating by an adult shall be deemed a hazardous recreational activity within the meaning of Section 831.7 of the Government Code if all these conditions are met:

(1) The local public agency has, by legislative action, designated specific public property as a recreational area, boardwalk, or park in which in-line skating is permitted.

(2) The designated area, boardwalk, or park is adequately posted with notices advising the public that in-line skating in the designated area by adults is deemed to be a hazardous recreational activity and that the public entity may not be liable for injuries incurred by persons participating in the hazardous recreational activity in the designated area, boardwalk, or park.

(b) Nothing in Section 831.7 of the Government Code or this section shall be deemed to limit the duty of a public entity to maintain public property or premises in a safe manner.

(c) The appropriate local public agency shall maintain a record of all known or reported injuries incurred by an in-line skater on designated public property and other public property. The local public agency shall also maintain a record of all claims, paid and not paid, including any lawsuits and their results, arising from those incidents that were filed against the public agency. Beginning in 1999, copies of these records shall be filed annually, no later than January 30 each year, with the Judicial Council, which shall submit a report to the Legislature on or before March 31, 2000, on the incidences of while in-line skating on designated public property and other public property.

(d) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

5. California Penal Code

834. Who May Make and Acts Constituting

An arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person.

834a. Duty to Refrain from Resisting Arrest

If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest.

835. Restraint Limited to Necessity

An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subjected to such restraint as is reasonable for his arrest and detention.

835a. Use of Force

(a) The Legislature finds and declares all of the following:

(1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.

(2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

(3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

(4) That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

(b) Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

(c) (1) Notwithstanding subdivision (b), a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.

(B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

(2) A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

(d) A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or to prevent escape or to overcome resistance. For the purposes of this subdivision, “retreat” does not mean tactical repositioning or other de-escalation tactics.

(e) For purposes of this section, the following definitions shall apply:

(1) “Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.

(2) A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

(3) “Totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.

192. Deadly Force

Homicide is justifiable when committed by peace officers and those acting by their command in their aid and assistance, under either of the following circumstances:

(a) In obedience to any judgment of a competent court

(b) When the homicide results from a peace officer's use of force that is in compliance with Section 835a

836. Arrest by Peace Officer; Good Faith Effort to Explain Citizen's Arrest; Arrest of Person Violating Protective Order

(a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

(b) Any time a peace officer is called out on a domestic call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest. This information shall include advising the victim how to safely execute the arrest.

(c) (1) When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued under Section 527.6 of the Code of Civil Procedure, the Family Code, Section 136.2, 646.91, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, Section 213.5 or 15657.03 of the Welfare and Institutions Code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer shall, consistent with subdivision (b) of Section 13701, make a lawful arrest of the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

(3) In situations where mutual protective orders have been issued under Division 10 (commencing with Section 6200) of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the dominant aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the dominant aggressor involved in the incident. The dominant aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the dominant aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether

either person involved acted in self-defense.

(d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an assault or battery upon a current or former spouse, fiancé, fiancée, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect currently is having or has previously had an engagement or dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories, or any other person related to the suspect by consanguinity or affinity within the second degree, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(e) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant, arrest a person for a violation of Section 12025 when all of the following apply:

(1) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section 12025.

(2) The violation of Section 12025 occurred within an airport, as defined in Section 21013 of the Public Utilities Code, in an area to which access is controlled by the inspection of persons and property.

(3) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of Section 12025.

836.3. Arrest by Peace Officer; Warrant; Escapee

A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person who, while charged with or convicted of a misdemeanor, has escaped from any county or city jail, prison, industrial farm or industrial road camp or from the custody of the officer or person in charge of him while engaged on any county road or other county work or going to or returning from such county road or other county work or from the custody of any officer or person in whose lawful custody he is in when such escape is not by force or violence.

836.5. Arrest by Public Officer or Employee.

(a) A public officer or employee, when authorized by ordinance, may arrest a person without a warrant whenever he has reasonable cause to believe that the person to be arrested has committed a misdemeanor in the presence of the officer or employee that is a violation of a statute or ordinance which the officer or employee has the duty to enforce.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any public officer or employee acting pursuant to subdivision (a) and within the scope of his authority for false arrest or false imprisonment arising out of any arrest which is lawful or which the public officer or employee, at the time of the arrest, had reasonable cause to believe was lawful. No such officer or employee shall be deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or overcome resistance.

(c) In any case in which a person is arrested pursuant to subdivision (a) and the person arrested

does not demand to be taken before a magistrate, the public officer or employee making the arrest shall prepare a written notice to appear and release the person on his promise to appear, as prescribed by Chapter 5C (commencing with Section 853.5). The provisions of that chapter shall thereafter apply with reference to any proceeding based upon the issuance of a written notice to appear pursuant to this authority.

(d) The governing body of a local agency, by ordinance, may authorize its officers and employees who have the duty to enforce a statute or ordinance to arrest persons for violations of such statute or ordinance as provided in subdivision (a).

(e) For the purpose of this section, "ordinance" includes an order, rule, or regulation of any air pollution control district.

(f) For purposes of this section, a "public officer or employee" includes an officer or employee of a nonprofit transit corporation wholly owned by a local agency and formed to carry out the purposes of the local agency.

837. Arrest by Private Person

A private person may arrest another:

1. For a public offense committed or attempted in his presence
2. When the person arrested has committed a felony, although not in his presence
3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

839. Summoning Assistance

Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

841. Notice of Authority and Intent to Arrest

The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person making the arrest has reasonable cause to believe that the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or the person to be arrested is pursued immediately after its commission, or after an escape.

The person making the arrest must, on request of the person he is arresting, inform the latter of the offense for which he is being arrested.

842. Arrest by a Peace Officer – Warrant not in Officer's Possession

An arrest by a peace officer acting under a warrant is lawful even though the officer does not have the warrant in his possession at the time of the arrest, but if the person arrested so requests it, the warrant shall be shown to him as soon as practicable.

843. Use of Necessary Means to Effect Arrest on a Warrant

When the arrest is being made by an officer under the authority of a warrant, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all necessary means to effect the arrest.

844. Breaking Doors or Windows to Make Arrest

To make an arrest, a private person, if the offense is a felony, and in all cases a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing the person to be, after having demanded admittance and explained the purpose for which admittance is desired.

845. Breaking Doors or Windows to Liberate Officer or Person Aiding in Arrest

Any person who has lawfully entered a house for the purpose of making an arrest, may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself, and an officer may do the same, when necessary for the purpose of liberating a person who, acting in his aid, lawfully entered for the purpose of making an arrest, and is detained therein.

846. Removal of Weapons Upon Arrest

Any person making an arrest may take from the arrested person all offensive weapons which he may have about his person and must deliver them to the magistrate before whom he is taken.

847. Duty of Private Person to Deliver Arrested Person to Magistrate or Peace Officer; Limitations on Liability of Peace Officer, Federal Criminal Investigator, or Law Enforcement Officer for False Arrest or Imprisonment

A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him or her to a peace officer. There shall be no civil liability on the part of, and no cause of action shall arise against, any peace officer or federal criminal investigator or law enforcement officer described in subdivision (a) or (d) of Section 830.8, acting within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest when any one of the following circumstances exist:

(a) [1] The arrest was lawful or when [2] the peace officer, at the time of [3] the arrest had reasonable cause to believe [4] the arrest was lawful [5].

(b) When [6] the arrest was made pursuant to a charge made, upon reasonable cause, of the commission of a felony by the person to be arrested [7].

(c) When [8] the arrest was made pursuant to the requirements of [9] Section 142, 838, or 839.

848. Officer to Proceed as Warrant Directs

An officer making an arrest, in obedience to a warrant, must proceed with the person arrested as commanded by the warrant, or as provided by law.

849. Duty of Officer to Take Accused Before Magistrate – Release from Custody

(a) When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person shall be laid before such magistrate.

(b) Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever:

(1) He or she is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested

(2) The person arrested was arrested for intoxication only, and no further proceedings are desirable

(3) The person was arrested only for being under the influence of a controlled substance or drug and such person is delivered to a facility or hospital for treatment and no further proceedings are desirable

(c) Any record of arrest of a person released pursuant to paragraphs (1) and (3) of subdivision (b) shall include a record of release. Thereafter, such arrest shall not be deemed an arrest, but a detention only.

1531. Breaking Doors or Windows to Execute Warrant

The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

6. California Vehicle Code

17000. Definitions

As used in this chapter:

(a) "Employee" includes an officer, employee, or servant, whether or not compensated, but does not include an independent contractor

(b) "Employment" includes office or employment

(c) "Public entity" includes the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state

17001. Liability of Public Entity

A public entity is liable for death or injury to person or property proximately caused by a negligent or wrongful act or omission in the operation of any motor vehicle by an employee of the public entity acting within the scope of his employment.

17002. Extent of Public Liability

Subject to Article 4 (commencing with Section 825) of Chapter 1 of Part 2 of Division 3.6 of Title 1 of the Government Code, a public entity is liable for death or injury to person or property to the same extent as a private person under the provisions of Article 2 (commencing with Section 17150) of this chapter.

17004. Liability of Public Employee While Responding to Emergency Call

A public employee is not liable for civil damages on account of personal injury to or death of any person or damage to property resulting from the operation, in the line of duty, of an authorized emergency vehicle while responding to an emergency call or when in the immediate pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm or other emergency call.

17004.5. Private Fire Department – Same Immunity from Liability as Public Entity

Any private firm or corporation, or employee thereof, which maintains a fire department and has entered into a mutual aid agreement pursuant to Section 13855, 14095, or 14455.5 of the Health and Safety Code shall have the same immunity from liability for civil damages on account of personal injury to or death of any person or damage to property resulting from the operation of an authorized emergency vehicle while

responding to, but not upon returning from, a fire alarm or other emergency call as is provided by law for the district and its employees with which the firm or corporation has entered into a mutual aid agreement, except when the act or omission causing the personal injury to or death of any person or damage to property occurs on property under the control of such firm or corporation.

17004.7. Liability in Conduct of Vehicular Pursuit; Standards for Conduct

(a) The immunity provided by this section is in addition to any other immunity provided by law. The adoption of a policy by a public agency pursuant to this section is discretionary.

(b) (1) A public agency employing peace officers which adopts a written policy on vehicular pursuits complying with subdivision (c) is immune from liability for civil damages for personal injury to or death of any person or damage to property resulting from the collision of a vehicle being operated by an actual or suspected violator of the law who is being, has been, or believes he or she is being or has been, pursued by a peace officer employed by the public entity in a motor vehicle.

(2) Promulgation of the written policy under paragraph (1) shall include, but is not limited to, a requirement that all peace officers of the public agency certify in writing that they have received, read, and understand the policy. The failure of an individual officer to sign a certification shall not be used to impose liability on an individual officer or a public entity.

(c) A policy for the safe conduct of motor vehicle pursuits by peace officers shall meet all of the following minimum standards:

(1) Determine under what circumstances to initiate a pursuit. The policy shall define a "pursuit," articulate the reasons for which a pursuit is authorized and identify the issues that should be considered in reaching the decision to pursue. It should also address the importance of protecting the public and balancing the known or reasonably suspected offense, and the apparent need for immediate capture against the risks to peace officers, innocent motorists, and others to protect the public.

(2) Determine the total number of law enforcement vehicles authorized to participate in a pursuit. Establish the authorized number of law enforcement units and supervisors who may be involved in a pursuit, describe the responsibility of each authorized unit and the role of each peace officer and supervisor, and specify if and when additional units are authorized.

(3) Determine the communication procedures to be followed during a pursuit. Specify pursuit coordination and control procedures and determine assignment of communications responsibility by unit and organizational entity.

(4) Determine the role of the supervisor in managing and controlling a pursuit. Supervisory responsibility shall include management and control of a pursuit, assessment of risk factors associated with a pursuit, and termination of pursuit.

(5) Determine driving tactics and the circumstances under which the tactics may be appropriate.

(6) Determine authorized pursuit intervention tactics. Pursuit intervention tactics include, but are not limited to, blocking, ramming, boxing, and roadblock procedures. The policy shall specify under what circumstances and conditions each approved tactic is authorized to be used.

(7) Determine the factors to be considered by a peace officer and supervisor in determining speeds throughout a pursuit. Evaluation shall take into consideration public safety, peace officer safety, and safety of the occupants in a fleeing vehicle.

(8) Determine the role of air support, where available. Air support shall include coordinating the activities of resources on the ground, reporting on the progress of a pursuit, and providing peace officers and supervisors with information to evaluate whether or not to continue the pursuit.

(9) Determine when to terminate or discontinue a pursuit. Factors to be considered include, but are not limited to, all of the following:

(A) Ongoing evaluation of risk to the public or pursuing peace officer

(B) The protection of the public, given the known or reasonably suspected offense and apparent need for immediate capture against the risks to the public and peace officers

(C) Vehicular or pedestrian traffic safety and volume

(D) Weather conditions

(E) Traffic conditions

(F) Speeds

(G) Availability of air support

(H) Procedures when an offender is identified and may be apprehended at a later time or when the location of the pursuit vehicle is no longer known

(10) Determine procedures for apprehending an offender following a pursuit. Safety of the public and peace officers during the law enforcement effort to capture an offender shall be an important factor.

(11) Determine effective coordination, management, and control of interjurisdictional pursuits. The policy shall include, but shall not be limited to, all of the following:

(A) Supervisory control and management of a pursuit that enters another jurisdiction

(B) Communications and notifications among the agencies involved

(C) Involvement in another jurisdiction's pursuit

(D) Roles and responsibilities of units and coordination, management, and control at the termination of an interjurisdictional pursuit

(12) Reporting and post pursuit analysis as required by Section 14602.1. Establish the level and procedures of post pursuit analysis, review, and feedback. Establish procedures for written post pursuit review and follow-up.

(d) "Regular and periodic training" under this section means annual training that shall include, at a minimum, coverage of each of the subjects and elements set forth in subdivision (c) and that shall comply, at a minimum, with the training guidelines established pursuant to Section 13519.8 of the Penal Code.

(e) The requirements of subdivision (c) represent minimum policy standards and do not limit an agency from adopting additional policy requirements. The requirements in subdivision (c) are consistent with the 1995 California Law Enforcement Vehicle Pursuit Guidelines developed by the Commission on Peace Officer Standards and Training pursuant to Section 13519.8 of the Penal Code that will assist agencies in the development of their pursuit policies. Nothing in this section precludes the adoption of a policy that limits or restricts pursuits.

(f) A determination of whether a public agency has complied with subdivisions (c) and (d) is a question of law for the court.

21055. Authorized Emergency Vehicles

The driver of an authorized emergency vehicle is exempt from Chapter 2 (commencing with Section 21350), Chapter 3 (commencing with Section 21650), Chapter 4 (commencing with Section 21800), Chapter 5 (commencing with Section 21950), Chapter 6 (commencing with 22100), Chapter 7 (commencing with Section 22348), Chapter 8 (commencing with Section 22450), Chapter 9 (commencing with Section 22500), and Chapter 10 (commencing with Section 22650) of this division, and Article 3 (commencing with Section 38305) and Article 4 (commencing with Section 38312) of Chapter 5 of Division 16.5, under all of the following conditions:

(a) If the vehicle is being driven in response to an emergency call or while engaged in rescue operations or is being used in the immediate pursuit of an actual or suspected violator of the law or is responding to, but not returning from, a fire alarm, except that fire department vehicles are exempt whether directly responding to an emergency call or operated from one place to another as rendered desirable or necessary by reason of an emergency call and operated to the scene of the emergency or operated from one fire station to another or to some other location by reason of the emergency call.

(b) If the driver of the vehicle sounds a siren as may be reasonably necessary and the vehicle displays a lighted red lamp visible from the front as a warning to other drivers and pedestrians.

A siren shall not be sounded by an authorized emergency vehicle except when required under this section.

21056. Duty of Authorized Emergency Vehicle Driver

Section 21055 does not relieve the driver of a vehicle from the duty to drive with due regard for the safety of all persons using the highway, nor protect him from the consequences of an arbitrary exercise of the privileges granted in that section.

21057. Prohibition against Use of Siren or Illegal Speed by Police or Traffic Officer; Exceptions

Every police and traffic officer is hereby expressly prohibited from using a siren or driving at an illegal speed when serving as an escort of any vehicle, except when the escort or conveyance is furnished for the preservation of life or when expediting movements of supplies and personnel for any federal, state, or local governmental agency during a national emergency, or state of war emergency, or state of emergency, or local emergency as defined in Section 8558 of the Government Code.

21058. Physician's Emergency Exemption from Speed Laws

A physician traveling in response to an emergency call shall be exempt from the provisions of Sections 22351 and 22352 if the vehicle so used by him displays an insigne approved by the department indicating that the vehicle is owned by a licensed physician. The provisions of this section do not relieve the driver of the vehicle from the duty to drive with due regard for the safety of all persons using the highway, nor protect the driver from the consequences of an arbitrary exercise of the privileges of this section.

21059. Garbage Trucks; Exemptions from Passing and Parking Laws

Sections 21211, 21650, 21660, 22502, 22504, and subdivision (h) of Section 22500 do not apply to the operation of a rubbish or garbage truck while actually engaged in the collection of rubbish or garbage within a business or residence district, if the front turn signal lamps at each side of the vehicle are being flashed simultaneously and the rear turn signal lamps at each side of the vehicle are being flashed simultaneously.

This provision shall not apply when the vehicle is being driven to and from such work, nor does it relieve

the driver of such a vehicle from the duty to drive with due regard for the safety of all persons using the highway or protect him or her from the consequences of an arbitrary exercise of the privilege granted.

21060. Street Sweeping and Watering Vehicles; Exemptions

Between the hours of 1 a.m. and 5 a.m., Sections 21650, 21660, 22502, 22504, and subdivision (h) of Section 22500 do not apply to the operation of a street sweeper vehicle or watering vehicle, operated by a local authority, while the vehicle is actually sweeping streets or watering landscaping or vegetation within a business or residence district. The exemption is not applicable unless the turn signal lamps at each side of the front and rear of the street sweeper vehicle or watering vehicle are being flashed simultaneously.
This provision shall not apply when the vehicle is being driven to and from such work, nor does it relieve the driver of such a vehicle from the duty to drive with due regard for the safety of all persons using the highway or protect the driver from the consequences of an arbitrary exercise of the privilege granted.

21806. Yielding Right-of-Way to Authorized Emergency Vehicles

Upon the immediate approach of an authorized emergency vehicle which is sounding a siren and which has at least one lighted lamp exhibiting red light that is visible, under normal atmospheric conditions, from a distance of 1,000 feet to the front of the vehicle, the surrounding traffic shall, except as otherwise directed by a traffic officer, do the following:

(a) (1) Except as required under paragraph (2), the driver of every other vehicle shall yield the right-of-way and shall immediately drive to the right-hand edge or curb of the highway, clear of any intersection, and thereupon shall stop and remain stopped until the authorized emergency vehicle has passed.

(2) A person driving a vehicle in an exclusive or preferential use lane shall exit that lane immediately upon determining that the exit can be accomplished with reasonable safety.

(b) The operator of every streetcar shall immediately stop the streetcar, clear of any intersection, and remain stopped until the authorized emergency vehicle has passed.

(c) All pedestrians upon the highway shall proceed to the nearest curb or place of safety and remain there until the authorized emergency vehicle has passed.

21807. Authorized Emergency Vehicle Driver's Duty of Care

The provisions of Section 21806 shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons and property.

APPENDIX D: FORMS

Form	Description	Discussed in Manual, page(s)
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Form B	Claim Form	5, 7
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Form I	Notice of Full Payment of Claim	10
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FORM A

LIABILITY INCIDENT REPORT AND VERIFIED CLAIM LOG										
Claim #	Claimant(s)	Date of Loss	Date of Claim	Delivery Method	Type of Response	Date of Response	Date of Application for Late Claim	Type of Loss	Amount Paid	Date Closed

FORM B

CITY OF _____

CLAIM FORM

Claim Against _____ (Name of Entity)

Claimant's Name _____

Claimant's DOB _____ Claimant's SS# _____

Claimant's Address: _____

Address where Notices related to this Claim shall be sent, if different from above:

_____

Date of incident/accident: _____ Date injury/ damage/ loss discovered: _____

Location of incident/accident: _____

What did entity or employee do to cause this loss, damage, or injury?

_____

_____

(Use the back of this form or separate sheet if necessary to answer this question in detail.)

Names of the Entity's employees who caused this injury, damage, or loss (if known): _____

_____

What are Claimant's specific injuries, damages, or losses? _____

_____

What amount of money is claimant seeking, or if the amount is in excess of $10,000, which is the appropriate court of jurisdiction? ***Note***: If Superior and Municipal Courts are consolidated, you must represent whether it is a "limited civil case" [see Government Code 910(f)]

_____

_____

_____

How was this amount calculated (please itemize)? _____

_____

_____

Date Signed: _____ Signature: _____

If signed by a representative:

Representative's Name _____ Phone # _____

Address _____

Relationship to Claimant _____

FORM C

NOTICE OF INSUFFICIENCY OF CLAIM AND RETURN WITHOUT ACTION

Date: _____ Date of Claim: _____

To: _____

This is to advise you that your Claim has been reviewed, evaluated, and found to be deficient for the reason(s) circled below:

1. The Claim fails to state the name and mailing address of the claimant.
2. The Claim is not signed.
3. The Claim fails to state the mailing address to which the person desires notices to be sent.
4. The Claim does not provide enough information to determine when, where, and/or how the incident/accident occurred.
5. The Claim does not provide enough information to determine what the loss, damage, or injury is.
6. The Claim does not provide enough specific information to determine what, if anything, the public entity did or failed to do to create liability exposure.
7. The Claim does not comply with Government Code 910(f) as to the amount sought or the court of appropriate jurisdiction.
8. The Claim does not provide the name(s) of any of our employees who may be responsible for the incident/accident.
9. The Claim does not comply with Government Code 910.4(a) in that all claims against a public entity shall be submitted on a claim form supplied by the public entity.

The Claim will not be acted upon for fifteen (15) days from the date of this Notice to allow for your amendment of this Claim.

WARNING: A claim that is deficient or does not contain sufficient information, as required by law, may not be considered to have been filed in a timely manner and may prevent the prosecution of a lawsuit based on the incident/accident which is the subject of this Claim.

PROOF OF SERVICE

On _____, I served the within NOTICE OF SUFFICIENCY OF CLAIM on the claimant by placing a true copy thereof enclosed in sealed envelope in the outgoing mail addressed as requested by the claimant.

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

Executed in _____(City), California, on _____(Date)

_____ _____

(Type or Print Name) (Signature)

FORM D

NOTICE OF RETURN, WITHOUT ACTION, OF A CLAIM REQUIRED TO BE FILED WITHIN SIX (6) MONTHS

To: _____ Date: _____

Dear: _____

The Claim you presented to _____ on _____
(Name of Entity) (Date)
is being returned to you because it was not presented within six (6) months after the incident/ accident as required by law. (See Sections 901 and 911.2 of the Government Code.) Because the Claim was not presented within the time allowed by law, no action was taken on the Claim.

Your only recourse at this time is to apply, without delay, to _____
(Name of Entity)
for leave to present a late Claim. (See Sections 911.4 to 912.2, inclusive, and Section 946.6 of the Government Code.) Under some circumstances, leave to present a late claim will be granted (See Section 911.6 of the Government Code.)

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately. If you dispute the Entity's conclusion that your claim was untimely, the following warning may apply.

WARNING: Subject to certain exceptions, you only have six (6) months from the date this notice was personally delivered or deposited into the mail to file a court action on this claim. (See Government Code Section 945.6.)

PROOF OF SERVICE

On _____, I served the within NOTICE OF RETURN, WITHOUT ACTION, OF A CLAIM REQUIRED TO BE FILED WITHIN SIX (6) MONTHS on the claimant by placing a true copy thereof enclosed in sealed envelope in the outgoing mail addressed as requested by the claimant.

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

Executed in _____(City), California, on _____(Date)

_____ _____
(Type or Print Name) (Signature)

FORM E

NOTICE OF RETURN, WITHOUT ACTION, OF A CLAIM REQUIRED TO BE FILED WITHIN ONE (1) YEAR OR AN APPLICATION FOR LEAVE TO PRESENT A LATE CLAIM

Date: _____ To: _____

Dear _____

The Claim or Application for Leave to Present a Late Claim you presented on _____ to _____ (Name of Entity) is being returned to you without action because it was not presented within one (1) year of the incident/accident that is the subject of the Claim as is required by law. (See Sections 901, 911.2 and 911.4 of the Government Code.)

_____ _____

(Type or Print Name) (Signature)

FORM F

NOTICE OF ACTION ON CLAIM

Date: _____ To: _____

Notice is hereby given that the Claim which you presented to (Name of Entity) on (Date) was handled as circled below:

1. Rejected on (Date).
2. Allowed for full amount of Claim. A warrant for the full amount will be sent within days from this notice.
3. Allowed in the amount of $ _____ only and rejected as to the balance. Please contact the person whose name appears at the bottom of this document within _____ days to arrange payment.
4. Rejected by operation of law on _____ (Date).

WARNING

Subject to certain exceptions, you have six (6) months from the date this Notice of Action on Claim was personally delivered or deposited in the mail to file a court action on this Claim. (Gov't Code Section 945.6.)

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

This Notice of Action on Claim applies only to claims under state law and shall not extend any time limits as may be imposed upon the claimant(s) for pursuit of the claimant(s)' rights under federal laws, statutes, or other sources of rights of recovery in favor of claimant(s).

Please also be advised that pursuant to Sections 128.5 et seq. and 1038 of the California Code of Civil Procedure, the Entity will seek to recover all costs of defense in the event a legal action is filed on the matter and it is determined that the action was not filed in good faith and with reasonable cause, or as otherwise determined to justify the imposition of attorney's fees and costs of suit pursuant to such sections, as well as any other sections or laws inuring to the benefit of the Entity, its officers, officials, employees, agents, or representatives.

PROOF OF SERVICE

On _____, I served the within NOTICE OF ACTION ON CLAIM on the claimant by placing a true copy thereof enclosed in sealed envelope in the outgoing mail addressed as requested by the claimant.

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

Executed in _____ (City), California, on _____ (Date)

_____ _____

(Type or Print Name) (Signature)

FORM G

NOTICE OF REJECTION OF CLAIM

Notice is hereby given that the Claim which you presented to _____ (Name of Entity) on _____ (Date) was rejected on _____(Date).

WARNING

Subject to certain exceptions, you have six (6) months from the date this Notice of Rejection of Claim was personally delivered or deposited in the mail to file a court action on this Claim. (See Government Code Section 945.6.)

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

This Notice of Rejection of Claim applies only to claims under state law and shall not extend any time limits as may be imposed upon the claimant(s) for pursuit of the claimant(s)' rights under federal laws, statutes, or other sources of rights of recovery in favor of claimant(s).

Please also be advised that pursuant to Sections 128.5 et seq. and 1038 of the California Code of Civil Procedure, the (Name of Entity) will seek to recover all costs of defense in the event a legal action is filed on the matter and it is determined that the action was not filed in good faith and with reasonable cause, or as otherwise determined to justify the imposition of attorney's fees and costs of suit pursuant to such sections, as well as any other sections or laws inuring to the benefit of the (Name of Entity), its officers, officials, employees, agents, or representatives.

PROOF OF SERVICE

On _____, I served the within NOTICE OF REJECTION OF CLAIM on the claimant by placing a true copy thereof enclosed in sealed envelope in the outgoing mail addressed as requested by the claimant.

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

Executed in _____ (City), California, on _____ (Date)

_____ _____

(Type or Print Name) (Signature)

FORM H

SAMPLE RESOLUTION

[*Entity Name*] RESOLUTION NO._____
RESOLUTION OF THE CITY COUNCIL/BOARD OF [*NAME OF ENTITY*] DELEGATING TO THE [*POSITION*] AUTHORITY TO ADMINISTER AND MANAGE CLAIMS AND ACTIONS AGAINST THE [*NAME OF ENTITY*] OR ITS OFFICERS OR EMPLOYEES AND CLAIMS AND ACTIONS OF THE [*NAME OF ENTITY*]

BE IT RESOLVED by the City Council/Board of the (*Name of Entity*) as follows:

1. The (*Position*) is hereby authorized to allow, deny, allow in part, settle, or compromise any claims or action for money or damages against the (*Name of Entity*) or its officers or employees, provided its disposition is not otherwise directed by the City Council/Board or by statute, ordinance, resolution, insurance policy, or self-insurance pooling agreement, subject to the following conditions:

a. The amount to be paid pursuant to such allowance, settlement, or compromise does not exceed (amount up to $50,000).

b. If the amount to be paid exceeds (amount up to $50,000), the approval of the City Council/Board of (*Name of Entity*) is first obtained.

c. If the claim is in litigation, the concurrence of the City Attorney or other legal Counsel retained by (*Name of Entity*) representing the (*Name of Entity*) or its officers or employees is obtained.

2. The (*Position*) is hereby authorized to collect, settle, compromise, release, or dismiss any claim of the (*Name of Entity*), provided its disposition is not otherwise directed by City Council/Board or by statute, ordinance, resolution, insurance policy, or self-insurance pooling agreement, subject to the following conditions:

a. The amount of the claim does not exceed (amount up to $50,000) or, if it does, the amount to be paid is not less than ninety (90) percent of the amount of the claim.

b. If the amount of the claim exceeds (amount up to $50,000), and the amount to be paid is less than ninety (90) percent of the amount of the claim, the approval of the City Council/Board of (*Name of Entity*) is first obtained.

c. If the claim is in litigation, the concurrence of the City Attorney or other legal counsel retained by (*Name of Entity*) representing (*Name of Entity*) is obtained.

3. The (Position) is hereby authorized and directed to perform all functions of the City Council/Board of the (Name of Entity) which are provided for in Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) Division 3.6, Title 1, California Government Code, or, if applicable, Municipal Code, subject to the conditions and limitations set forth above.

4. The (Position) is hereby authorized to delegate his/her authority as set forth above, or any part thereof, subject to such conditions as he/she may deem appropriate, to any subordinate officer or employee of the (Name of Entity).

ADOPTED this _____ day of _____, 20_____
by the following votes:

AYES: _____
NOES: _____
ABSENT: _____

ATTEST:

_____ _____
Clerk of Council Board (Print Name) (Signature)

_____ _____
Mayor (Print Name) (Signature)

APPROVED AS TO FORM:

_____ _____
City Attorney/Counsel (Print Name) (Signature)

FORM I

NOTICE OF FULL PAYMENT OF CLAIM

Notice is hereby given that the Claim which you presented to (*Name of Entity*) on (*Date*) was allowed for full amount of Claim. A warrant for the full amount will be sent within _____days from this notice.

WARNING

Please also be advised that pursuant to Sections 128.5 et seq. and 1038 of the California Code of Civil Procedure, the (*Name of Entity*) will seek to recover all costs of defense in the event a legal action is filed on the matter and it is determined that the action was not filed in good faith and with reasonable cause, or as otherwise determined to justify the imposition of attorney's fees and costs of suit pursuant to such sections, as well as any other sections or laws inuring to the benefit of the (*Name of Entity*), its officers, officials, employees, agents, or representatives.

PROOF OF SERVICE

On _____(Date), I served the within NOTICE OF FULL PAYMENT OF CLAIM on the claimant by placing a true copy thereof enclosed in a sealed envelope in the outgoing mail addressed as requested by the claimant.

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

Executed in _____ (City), California, on _____(Date)

_____ _____

(Type or Print Name) (Signature)

FORM J

NOTICE OF PARTIAL PAYMENT OF CLAIM

Notice is hereby given that the Claim which you presented to (Name of Entity) on (Date) was allowed in the amount of $_____ only and rejected as to the balance. Please contact the person whose name appears at the bottom of this document within _____ days to arrange payment.

WARNING

Subject to certain exceptions, you have six (6) months from the date this Notice of Partial Payment of Claim was personally delivered or deposited in the mail to file a court action on this Claim. (See Government Code Section 945.6.)

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

This Notice of Partial Payment of Claim applies only to claims under state law and shall not extend any time limits as may be imposed upon the claimant(s) for pursuit of the claimant(s)' rights under federal laws, statutes, or other sources of rights of recovery in favor of claimant(s).

Please also be advised that pursuant to Sections 128.5 et seq. and 1038 of the California Code of Civil Procedure, the (Name of Entity) will seek to recover all costs of defense in the event a legal action is filed in the matter and it is determined that the action was not filed in good faith and with reasonable cause, or as otherwise determined to justify the imposition of attorney's fees and costs of suit pursuant to such sections, as well as any other sections or laws inuring to the benefit of the (Name of Entity), its officers, officials, employees, agents, or representatives.

PROOF OF SERVICE

On _____(Date), I served the within NOTICE OF PARTIAL PAYMENT OF CLAIM on the claimant by placing a true copy thereof enclosed in a sealed envelope in the outgoing mail addressed as requested by the claimant.

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

Executed in _____ (City), California, on _____(Date)

_____ _____

(Type or Print Name) (Signature)

FORM K

NOTICE OF REJECTION BY OPERATION OF LAW

Notice is hereby given that the Claim which you presented to _____ (*Name of Entity*) on _____(*Date*) was rejected by operation of law on _____ *(Date)*.

WARNING

Subject to certain exceptions, you have six (6) months from the date this Notice of Rejection by Operation of Law was personally delivered or deposited in the mail to file a court action on this Claim. (See Government Code Section 945.6.)

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

This Notice of Rejection by Operation of Law applies only to claims under state law and shall not extend any time limits as may be imposed upon the claimant(s) for pursuit of the claimant(s)' rights under federal laws, statutes, other sources of rights of recovery in favor of claimant(s).

Please also be advised that pursuant to Sections 128.5 et seq. and 1038 of the California Code of Civil Procedure, the (Name of Entity) will seek to recover all costs of defense in the event a legal action is filed in the matter and it is determined that the action was not filed in good faith and with reasonable cause, or as otherwise determined to justify the imposition of attorney's fees and costs of suit pursuant to such sections, as well as any other sections or laws ensuring to the benefit of the (Name of Entity), its officers, officials, employees, agents, or representatives.

PROOF OF SERVICE

On _____ (Date), I served the within NOTICE OF REJECTION BY OPERATION OF LAW on the claimant by placing a true copy thereof enclosed in a sealed envelope in the outgoing mail addressed as requested by the claimant.

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

Executed in _____ (City), California, on _____(Date)

_____ _____

(Type or Print Name) (Signature)

FORM L

NOTICE OF BOARD ACTION ON APPLICATION FOR LEAVE TO PRESENT A LATE CLAIM

Date: _____

Dear _____:

Please be advised that on _____ (*Date*), the _____ (*Name of Entity*) took the action circled below with regard to the application for leave to present a late claim filed with the Entity and presented to the Board on _____ (*Date*).

1. The application has been granted and your Claim accepted for processing. After your Claim is evaluated, you will receive additional notice from this office as to the status of your Claim.

2. The application has been denied.

WARNING

If you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code Section 945.4 (Claims Presentation Requirement). See Government Code Section 946.6. Such petition must be filed with the Court within six (6) months from the date your application for leave to present a late claim was denied.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

If your application has been denied, this denial applies only to claims under state law and shall not extend any time limits as may be imposed upon the claimant(s) for pursuit of the claimant(s)' rights under federal laws, other statutes or resources of rights of recovery in favor of claimant(s).

Please also be advised that pursuant to Sections 128.5 et seq. and 1038 of the California Code of Civil Procedure, the (*Name of Entity*) will seek to recover all costs of defense in the event a legal action is filed in the matter and it is determined that the action was not filed in good faith and with reasonable cause, or as otherwise determined to justify the imposition of attorney's fees and costs of suit pursuant to such sections, as well as any other sections or laws inuring to the benefit of the (*Name of Entity*), its officers, officials, employees, agents, or representatives.

PROOF OF SERVICE

On _____ (Date), I served the within NOTICE OF BOARD ACTION on the claimant by placing a true copy thereof enclosed in a sealed envelope in the outgoing mail addressed as requested by the claimant.

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

Executed in _____ (City), California, on _____ (Date)

_____ _____

(Type or Print Name) (Signature)

FORM M

DECLARATION OF SERVICE BY MAIL

State of California, County of _____

I am employed in the County of _____, State of California. I am over the age of eighteen (18) and not a party to the within cause or claim. My business address is _____.

Alternative No. 1

❑ I served the foregoing document _____ (Name of Document) by depositing a true copy thereof in the United States mail in _____ (Location), State of California, on _____, enclosed in a sealed envelope, with fully prepaid postage thereon, addressed as follows: (Name and Address of Claimant)

_____

_____

Alternative No. 2

❑ I am familiar with the practice of _____'s (Name of Entity) collection and processing of correspondence for mailing within the United States Postal Service. Under that practice, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing. I placed the foregoing document _____ _____(Name of Document) by placing a true copy thereof for collection and mailing, in the course of ordinary business practice, with other correspondence of _____ (Name of Entity), located at_ _____(Entity Address), on _____, enclosed in a sealed envelope, with fully prepaid postage thereon, addressed as follows: (Name and Address of Claimant)

_____

_____.

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

Executed in _____(City), California, on _____(Date)

_____ _____

(Type or Print Name) (Signature)

FORM N

NOTICE OF RECEIPT OF LAWSUIT

Date: _____

To: _____(Name of Employee)

Please be advised that a lawsuit entitled _____ (Name of Lawsuit) filed in _____ (Name of Court) was served on this entity on _____ (Date).

You are named as a defendant in the lawsuit, but we have no information that you have been personally served. Please notify this office immediately if you receive a copy of the lawsuit by any manner which leads you to suspect that you may have been personally served. Also, please notify this office if you receive a copy of the lawsuit along with a "Notice and Acknowledgement of Receipt" form.

DO NOT sign the form but forward it to this office immediately along with a copy of the lawsuit. The defense of this lawsuit has been assigned to the law firm of (Name of Firm). A representative of that firm may contact you personally to gain information necessary to prepare the defense of the suit. Please cooperate fully with that individual.

Thank you for your anticipated assistance and cooperation in this matter.

_____ _____

(Type or Print Name) (Signature)

FORM O

NOTICE OF SUBSTITUTE SERVICE

Date: _____

To: _____

Please be advised that this entity has received a copy of the attached lawsuit, which has been left at the entity in your name. It appears that the plaintiff is attempting to have you personally served by a method called "substitute service". In order to complete service on you, the plaintiff must mail a copy to you here at the entity, or at your residence. Notify this office immediately if you do receive a copy of the suit via U.S. mail.

Unless we hear from you otherwise, it will be assumed that you did not receive a copy of the suit by mail and, therefore, have not been properly served with the lawsuit. No answer will be made to the lawsuit on your behalf until we hear otherwise from you. If you are not properly served and are not otherwise made a party to the suit, you are probably not personally liable for any damages that may be determined to be appropriate. If, however, you have been properly served, but fail to notify this office so a defense can be prepared for you, and a default judgment is taken against you, you may not be entitled to indemnification from this entity. (Government Code 825.) Please note that this entity is not required to pay for punitive or exemplary damages.

The defense of this lawsuit has been assigned to the law firm of (Name of Firm). A representative of that firm may contact you personally to gain information necessary to prepare the defense of the suit. Please cooperate fully with that individual.

Thank you for your anticipated assistance and cooperation in this matter.

_____ _____

(Type or Print Name) (Signature)

FORM P

NOTICE OF PERSONAL SERVICE OR ATTEMPTED PERSONAL SERVICE TENDER OF DEFENSE

Date: _____
To: _____

On _____, I received the following: (Circle the appropriate number):

1. A copy of the attached summons and complaint served on me in person.
2. A copy of the attached summons and complaint by U.S. Mail together with a Notice and Acknowledgement of Receipt form. I am also sending you the unsigned original of the Notice and Acknowledgement of Receipt. I have not signed and returned anything to the person who mailed the documents.
3. A copy of the attached summons and complaint by U.S. Mail without a Notice and Acknowledgement Form of Receipt.

Pursuant to Government Code Section 825, I hereby request that this letter and the enclosed documents be forwarded to the appropriate defense counsel so that a determination can be made as to whether I have been properly served with this lawsuit. If I have been, I request that I be provided a defense with regard to this lawsuit and indemnified as to any judgment, settlement, or compromise arising out of this lawsuit.

_____ _____

(Type or Print Name) (Signature)

FORM Q

ACCEPTANCE OF TENDER OF DEFENSE AND REQUEST FOR INDEMNIFICATION

Date: _____

To: _____

Your request for defense and indemnification arising out of the case entitled _____ _____(Name of Case) filed in _____ (Name of Court) has been accepted. Please note that this entity is not required to pay for punitive or exemplary damages.

Government Code Section 825 requires your good faith cooperation in the defense of this suit. Your failure to provide that cooperation could prejudice your right to indemnification for any judgment, settlement, or compromise arising out of this lawsuit.

The defense of this lawsuit has been assigned to the law firm of _____ _____ (Name of Firm). A representative of that firm may contact you personally to gain information necessary to prepare the defense of the suit. Please cooperate fully with that individual.

Thank you for your anticipated assistance and cooperation in this matter.

_____ (Type or Print Name)

_____ (Signature)

FORM R

TENTATIVE ACCEPTANCE OF TENDER OF DEFENSE AND REQUEST FOR INDEMNIFICATION WITH RESERVATION OF RIGHTS

Date: _____

To: _____

Your request for defense and indemnification arising out of the case entitled (Name of Case) filed in (Name of Court) has been tentatively accepted. However, this entity reserves its right to not pay any judgment, compromise, or settlement until it is established that the damage or injury complained of arose out of an act or omission occurring within the scope of your employment with this entity. Rather, this acceptance may be revoked at any time by notice to you that your tender of defense and request for indemnification is denied. Please note that this entity is not required to pay for punitive or exemplary damages.

Government Code Section 825 requires your good faith cooperation in the defense of this suit. Your failure to provide that cooperation could prejudice your right to indemnification for any judgment, settlement, or compromise arising out of this lawsuit.

The defense of this lawsuit has been assigned to the law firm of (Name of Firm). A representative of that firm may contact you personally to gain information necessary to prepare the defense of the suit. Please cooperate fully with that individual.

Thank you for your anticipated assistance and cooperation in this matter.

_____ _____

(Type or Print Name) (Signature)

FORM S

DENIAL OF TENDER OF DEFENSE AND REQUEST FOR INDEMNIFICATION

Date: _____

To: _____

Your request for defense and indemnification arising out of the case entitled _____ (Name of Case) filed in _____(Name of Court) has been denied.

It has been determined that the damage, loss, or injury, which is the basis of the lawsuit, did not arise out of an act or omission by you which occurred within the scope of your employment with this entity.

_____ _____

(Type or Print Name) (Signature)

FORM T

SERIOUS INCIDENT LOSS NOTICE FORM
Use this form to report any serious incident

PERSONAL AND CONFIDENTIAL IN ANTICIPATION OF LITIGATION

FROM: _____

TO: _____ (Third Party Administrator)

ENTITY CLAIM #: _____(__) *
DATE/TIME OF LOSS: _____
DEPARTMENT LOCATION CODE: _____
* If one incident has multiple claimants, use same claim # but add letter suffix and enter each in log.

COMMENTS TO ADJUSTER: _____

_____

CLAIMANT/INJURED'S NAME: _____
ADDRESS: _____ PHONE: _____

CLAIMANT'S ATTORNEY: _____
ADDRESS: _____PHONE: _____

WITNESS NAME: _____

ENTITY EMPLOYEE INVOLVED/CONTACT: _____
ADDRESS: _____PHONE: _____

LOCATION OF OCCURRENCE: _____

DESCRIPTION OF OCCURRENCE/DAMAGE: _____

_____

DESCRIPTION OF CLAIMANT'S INSURANCE: _____

_____

POLICE/CHP REPORT #: _____ENTITY VEHICLE/DRIVER #: _____

ENCLOSURES: (circle) POLICE REPORT PHOTOS INTERNAL REPORTS OTHER

Date: _____ Submitted By: _____ Phone: (___)_____

FORM U

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This Settlement Agreement and General Release (the "Agreement") is entered into between the CITY OF _____ the CITY's past or present CITY Council members, officers, agents, employees, deputies, representatives, servants, successors, assigns, predecessors, departments, divisions, or attorneys (hereinafter the "CITY") and _____ (hereinafter "CLAIMANT") (hereinafter the CITY and CLAIMANT are also collectively referred to as the "PARTIES" or "PARTY") for the following purposes and with reference to the following facts.

I. RECITALS

A. WHEREAS, on or about, (date) _____, CLAIMANT served the CITY with a government claim alleging that he/she (describe incident) _____ _____ _____;

B. WHEREAS, CLAIMANT allegedly suffered personal injuries including, but not limited to, loss of employment, personal humiliation, ridicule, physical and emotional distress (specifics) _____;

C. WHEREAS, CLAIMANT allegedly suffered property damage arising out of the incident in the amount of $_____ for _____;

D. WHEREAS, on or about _____, CLAIMANT, based on the above claim served a settlement demand on the CITY.

E. WHEREAS, CLAIMANT'S _____ settlement demand also included allegations (identify additional allegations, if any, in any demand) _____ _____;

F. WHEREAS, from approximately (date) _____ to the (date) _____ the Parties have been informally negotiating settlement of the (date) _____ government claim, including the allegations raised in the (date) _____ settlement demand;

G. WHEREAS, CLAIMANT has not filed a complaint in either State or Federal Court against the CITY;

H. WHEREAS, the purpose of this Agreement is to settle and compromise all disputes and controversies existing between the CITY on the one hand, and CLAIMANT on the other, including, but not limited to the allegations raised in the (date) _____ government claim and (date) _____ settlement demand, and any other "claims" by CLAIMANT, including but not limited to all claims arising out of, or in any way related to the above and/or from any other facts or causes existing prior to the execution date of this Agreement, whether known or unknown, without limitation, and, those described in more detail hereafter.

NOW THEREFORE, and in consideration for the promises contained herein, the Parties agree as follows:

II. CONSIDERATION

Pursuant to the terms and conditions contained in this Agreement, within ___ days of the CITY Attorney's receipt of (1) a copy of this Agreement fully executed by CLAIMANT and his/her counsel; and (2) fully executed W9s from CLAIMANT and his/her counsel, the CITY agrees to pay CLAIMANT the gross sum of _____ ($.00). The amount shall be paid by check to the CLAIMANT and _____, Attorney at Law, and an IRS Form 1099 shall issue to CLAIMANT.

III. TERMS AND CONDITIONS

1. **No Admission of Wrongdoing.** This Agreement shall not in any way be construed as an admission by the CITY or CLAIMANT of any unlawful or wrongful acts or other liability whatsoever against each other or against any other person or entity. The CITY and CLAIMANT specifically disclaim any liability to, or wrongful acts against each other, or against any other person or entity, on the part of themselves, any related person or any related predecessor corporation or its or their agents, representatives or successors in interest and assigns.

2. **Mutual Release.** CLAIMANT does hereby, on behalf of himself/herself and his/her heirs, representatives, successors, administrators and assigns irrevocably and unconditionally release, acquit and discharges the CITY and any of its related persons, corporations, past or present officers, directors, governing bodies, employees, agents, predecessors, attorneys, divisions, affiliates, representatives, successors in interest and assigns and/or all persons acting by, through, under or in concert with any of the CITY, and all other persons or entities that could have been named as CITY in the claims (hereinafter "CITY Releasees"), absolutely and forever from any and all claims, charges, complaints, lawsuits, liabilities, claims for relief, obligations, promises, agreements, contracts, interests, controversies, injuries, damages, actions, causes of actions, suits, rights, demands, costs, losses, debts, liens, judgments, indebtedness, and expenses (including attorneys' fees and costs actually incurred), and all other claims and rights of action of all kinds and descriptions, whether KNOWN OR UNKNOWN, suspected or unsuspected, actual or potential, which CLAIMANT now has, owns or holds, or claims to have, own or hold against the CITY or CITY Releasees, at common law or under any statute, rule, regulations, order or law, whether federal, state, or local, or on any grounds whatsoever, with respect to any act, omission, event, matter, claim, damage, loss, or injury arising out of the (date of loss) _____ incident, including but not limited to, the allegations set forth in the (date) _____ government claim and (date) _____ settlement demand, and/or with respect to any other claims, matters, or events arising prior to the execution of this Agreement by the Parties. The CITY, also hereby, for themselves, their legal or other representatives, agents, attorneys, successors-in-interest and assigns, irrevocably and unconditionally release, acquit and forever discharge CLAIMANT and his/her legal or other representatives, agents, attorneys, successors-in-interest and assigns from any and all lawsuits, claims, actions, demands or other legal responsibilities of any kind which CITY may have based on or pertaining to CLAIMANT'S arrest and incarceration.

3. **Known and Unknown Claims (Scope of the Release).** For the purpose of implementing a full and complete release and discharge of the CITY, CLAIMANT expressly understands and agrees that he/she is waiving any rights he/she has, may have had, or may have, to pursue any and all remedies available to him/her under any cause of action against the CITY and CITY Releasees, including, without limitation, any claims for personal injury, bodily injury, or property damage.

4. **Civil Code Section 1542 Waiver**. The CITY, on behalf of itself and CITY Releasees, and CLAIMANT, on behalf of herself and her heirs, agents, representatives, successors, and assigns, hereby waive any and all rights that they may have pursuant to California Civil Code section 1542, which reads as follows:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

a) The Parties hereby expressly waive the provisions of California Civil Code section 1542 and further expressly waive any right to invoke said provisions now or at any time in the future arising out of the potential federal and state law claims that could be brought based on the allegations set forth in the December 22, 2015 tort claim and January 25, 2016 settlement demand.

b) The Parties recognize and acknowledge that factors which have induced them to enter into this Agreement may turn out to be incorrect or to be different from what they had previously anticipated, and they hereby expressly assume any and all of the risks thereof and further expressly assume the risks of waiving the rights provided by California Civil Code section 1542.

5. **Liens.** CLAIMANT agrees that any and all known liens against him/her, which relate in any manner to the damages or considerations which are the subject of this Agreement have been paid and satisfied in full or will be satisfied from the proceeds of the settlement. CLAIMANT further agrees that all liens, if any, will be paid by him/her without any payment by any of the parties or entities who are being released by this Agreement and that he/she will hold the Releasees harmless and indemnify it/them from any claims related to this case that might be brought by those lien holders. Without limiting my responsibility, this includes liens of governmental entities, Medicare or insurance liens and any liens of attorneys.

6. **MEDICARE.** CLAIMANT acknowledges that he/she is a current Medicare beneficiary [or may become one in the foreseeable future]. The Parties have considered Medicare's interests in maintaining Medicare's secondary payer status in connection with this settlement. Nevertheless, CLAIMANT maintains no future medical expenses will be incurred by reason of this matter. If CLAIMANT is incorrect, he/she agrees to satisfy any future medical expenses from the settlement proceeds paid pursuant to the settlement of this matter. CLAIMANT agrees that the payment identified above is intended to ensure that he/she has funds for future medical care, which are primary to any Medicare obligation consistent with U.S.C. 1395y(b) and 42 C.F.R. 411. CLAIMANT'S doctor's letter indicating that he/she will not require future medical care for any medical condition related in any way to this matter is attached hereto as Exhibit A.

CLAIMANT agrees to indemnify and hold harmless the Releasees and Releasees' insurers or public entity risk sharing pools participating in this matter for any failure to satisfy Medicare's interests with respect to the settlement payment.

OR (No Doctor Release)

CLAIMANT acknowledges that he/she is a current Medicare beneficiary, [or may become one in the foreseeable future]. The Parties have considered Medicare's interests in maintaining Medicare's secondary payer status in connection with this settlement. In that regard, CLAIMANT

agrees that the following amount of the settlement, $_____ is allocated to future medical expenses to be incurred by reason of this matter. CLAIMANT agrees to satisfy such future medical expenses from the settlement proceeds paid pursuant to the settlement of this matter. CLAIMANT agrees that the payment identified above is intended to ensure that he/she has funds for future medical care, which are primary to any Medicare obligation consistent with U.S.C. 1395y(b) and 42 C.F.R. 411.

CLAIMANT agrees to indemnify and hold harmless the Releasees and Releasees' insurers or public entity risk sharing pools participating in this matter for any failure to satisfy Medicare's interests with respect to the settlement payment.

OR (Substantial Medical)

CLAIMANT acknowledges that he/she is a current Medicare beneficiary, [or may become one in the foreseeable future]. The Parties have considered Medicare's interests in maintaining Medicare's secondary payer status in connection with this settlement. In that regard, CLAIMANT agrees that the following amount of the settlement, $_____ is allocated to future medical expenses to be incurred by reason of this matter. This portion of the settlement proceeds will be placed in an account for the purpose of satisfying such future medical expenses as they are incurred. The establishment of the Medicare Set Aside Account (MSA) and use of the funds in the MSA are intended to ensure CLAIMANT has the funds for future medical care, which are primary to any Medicare obligation consistent with U.S.C. 1395y(b) and 42 C.F.R. 411. The terms and conditions of the Account are set forth in Exhibit A attached hereto.

CLAIMANT agrees to indemnify and hold harmless the Releasees and Releasees' insurers or public entity risk sharing pools participating in this matter for any failure to satisfy Medicare's interests with respect to the settlement payment.

7. **Indemnification.** CLAIMANT agrees to defend, indemnify and hold harmless the CITY for any liability or costs arising out of the failure to withhold taxes and the characterization of the settlement sum. CLAIMANT acknowledges that CITY has not provided any tax advice upon which CLAIMANT has relied. CLAIMANT agrees to defend, indemnify and hold harmless the CITY against any claims or litigation arising out of the allegations set forth in the (date) _____ government claim and (date) _____ settlement demand.

8. **Warranty of No Other Claims.** CLAIMANT represents that, other than the claims and demands identified herein, he/she has not filed any lawsuits, complaints, claims, applications or charges against CITY or any related persons or corporations or against any of its or their past or present officers, directors, governing bodies, employees, agents, predecessors, attorneys, divisions, affiliates, representatives, successors in interest and assigns and/or all persons acting by, through, under or in concert with any of them, with any state or federal court, or local, state or federal agency, or administrative or quasi-administrative tribunal or person, based on any events occurring on or prior to the date of execution of this Agreement.

9. **Pending and Future Legal or Administrative Actions.** CLAIMANT specifically agrees that he/she shall not in the future file, instigate or encourage the filing of any lawsuits, complaints, charges or any other proceedings in any state or federal court or before any local, state or federal agency, administrative tribunal, quasi-administrative tribunal or person, claiming that CITY has violated any local, state or federal laws, statutes, ordinances or regulations or claiming that CITY has engaged in any tortious, other state, or other federal based misconduct of any kind, based upon any events occurring on or prior to the date of execution of this Agreement unless required by subpoena or court order. Further, CLAIMANT agrees that immediately upon executing this

Agreement, he/she will withdraw in writing and cause to be dismissed with prejudice in their entirety any and all complaints, charges or claims against CITY and CITY Releasees regardless of whether they are specifically referred to herein. Nothing in this Agreement prohibits or prevents CLAIMANT from filing a charge or participating, testifying or assisting in any investigation, hearing or other proceeding before any federal, state, or local government agency. However, to the maximum extent permitted by law, CLAIMANT agrees that if such an administrative claim is made, CLAIMANT shall not be entitled to recover any individual monetary relief or other individual remedies.

10. **Attorney Fees and Costs.** Each Party shall bear its own costs, expenses and attorneys'/representatives' fees incurred in connection with the proceedings and/or events resulting in and/or preceding this Agreement, or in connection with any other claims made or investigated by either Party against the other in any forum (civil, criminal, administrative or quasi-administrative), and each of the Parties hereto expressly waives any claim for recovery of any such costs, expenses or attorneys'/representatives' fees from the other Party. Attorneys/representatives for all Parties to this Agreement do likewise expressly waive any claim for recovery of costs, expenses and/or attorney's/representatives' fees from the opposing Party(ies).

11. **Warranty of Non-Assignment.** CLAIMANT represents that he/she has not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein against the CITY.

12. **Cooperation.** Each Party hereto agrees to do all things and execute and deliver all instruments and documents necessary to fulfill and effect the provisions of this Agreement and to protect the respective rights of the Parties to this Agreement.

13. **Subsequent Breach Does Not Constitute Waiver.** No waiver by any Party of any breach of any term or provision of this Agreement shall be construed to be, nor be a waiver of any preceding, concurrent or succeeding breach of the same or any other term or provision hereof. No waiver shall be binding unless in writing and signed by the Party to be charged or held bound.

14. **Non-Disparagement.** The Parties agree that each will not make any disparaging statement or engage in any other form of disparagement, derogatory activity, or other similar behavior with respect to any other party or Related parties, including, but not limited to, Council Members, employees and agents, from the date of this Agreement forward, without limitation.

15. **Execution of Agreement.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy or facsimile transmission of the Agreement, including signatures, shall be deemed to constitute evidence of the Agreement having been executed.

16. **Jurisdiction and Venue.** This Agreement is made and entered into in the State of California and shall be governed, interpreted, and enforced under the laws of the State of California. The Parties agree that jurisdiction and/or venue of any action involving the validity, interpretation, or enforcement of this Agreement or any of its terms, provisions, or obligations, or claiming breach thereof, shall exist exclusively in a court or government agency located within the_____, State of California. The Parties further agree that this Agreement may be used as evidence in any subsequent proceeding in which any of the Parties allege a breach of this Agreement or seeks to enforce its terms, conditions, provisions, or obligations.

17. **Voluntary.** Each Party hereto represents and agrees that she or it has carefully read and fully understands all of the provisions of this Agreement. Each party has or had had the opportunity to consult with his/her or its attorney before entering into the agreement. Each Party

represents and agrees that he/she or it is voluntarily, without any duress or undue influence on the part of or on behalf of any Party, entering into this Agreement.

18. **Entire Agreement.** This Agreement contains all of the terms and conditions agreed upon by the Parties hereto regarding the subject matter of this Agreement. Any prior agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Agreement, not expressly set forth in this Agreement, are of no force or effect.

19. **Severability.** In the event that any one or more provisions of this Agreement shall be declared to be illegal, invalid, unenforceable and/or void by a court of competent jurisdiction, such provision or portion of this Agreement shall be deemed to be severed and deleted from this Agreement but this Agreement shall in all other respects remain unmodified and continue in force and effect.

PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE BY CLAIMANT OF ALL KNOWN AND UNKNOWN CLAIMS.

IN WITNESS WHEREOF, the Parties hereto have executed the Settlement Agreement and General Release.

Dated: _____ By: _____,

CLAIMANT

Dated: _____ By: _____,

Attorney for CLAIMANT

CITY OF _____

Dated: _____ By: _____

CITY Manager (or person with authority to sign)

My term expires _____, 20_____. _____

NOTARY PUBLIC

FORM V

RELEASE OF ALL PROPERTY CLAIMS

(California Form)

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, being of lawful age, for sole consideration of _____ Dollars ($_____) to be paid to _____ do/does hereby and for my/ours/its heirs, executors, administrators, successors and assignees release, acquit and forever discharge _____ and his, her, their, or its agents, employees, servants, successors, heirs, executors, administrators and all other persons, firms, corporations, associations or partnerships of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever, which the undersigned now has/have or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage and the consequences thereof resulting or to result from the accident, casualty or event which occurred on or about the _____of_____, 20_____ at or near _____.

It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim and that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released, and that said releases deny liability therefore and intend merely to avoid litigation and buy their peace.

It is further understood and agreed that all rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States are hereby expressly waived. Said section reads as follows:

> "1542. Certain claims not affected by general release. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

The undersigned declare(s) and represent(s) that no promise, inducement or agreement not herein expressed has been made to the undersigned, and that this Release contains the entire agreement between the parties hereto, and that the terms of this Release are contractual and not a mere recital.

FOR YOUR PROTECTION CALIFORNIA LAW REQUIRES THE FOLLOWING TO APPEAR ON THIS FORM:

Insurance Code 1871.2 False or fraudulent claim; penalty. Any person who knowingly presents false or fraudulent claim for payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

Signed, sealed and delivered this day of _____, 20____.

CAUTION: READ BEFORE SIGNING BELOW

Witness _____ Claimant _____

Witness _____ Claimant _____

Witness _____ Claimant _____

STATE OF _____ SS# _____

COUNTY OF _____

On the day of _____, 20___, before me personally appeared _____ to me known to be the person(s) named herein and who executed the foregoing Release and acknowledged to me that voluntarily executed the same.

My term expires _____, 20_____. _____
NOTARY PUBLIC

FORM W

SAMPLE EXPLANATION LETTER

[Addressee]

RE: Claim Presented to the [Entity] Dear Mr./Mrs. _____:

On _____, you presented a claim for damages to the [Position] for_____. You allege through your claim that you slipped and fell on the steps leading to the parking structure _____. Your claim states the top step had a white strip, but the other steps did not and that this caused a visual problem with the steps looking like a ramp to you. As a result of the slip and fall, you suffered terrible chest and wrist pains.

The [Entity] has now completed its investigation of your claim and has determined the following: There is no prior service call on record concerning the condition of the stairs in that general area, nor is there any public report detailing the alleged incident. Your call to the Building Manager is the first notice this [Entity] has had of someone falling in that area, and we promptly investigated the area after receiving your claim to assess the condition of the stairs. As a result of the investigation, please find enclosed Notice of Rejection of Claim.

The State of California has granted to public jurisdictions certain immunities not available to private persons concerning damage claims. Under Section 835.2 (a) and (b) of the California Government Code, the [Entity] must have had actual or constructive notice of a dangerous condition. To perfect your claim against the [Entity], the burden of proof is upon you to establish that a dangerous condition was created by the negligent act of a(n) [Entity] employee or that the [Entity] had actual or constructive notice of any dangerous condition.

Actual notice requires evidence the public entity (1) had actual knowledge of the existence of the condition and (2) knew or should have known of its dangerous character. Actual notice is not present in this circumstance. There are no prior reports indicating any problems with the stairs. In fact, this [Entity's] first notice of even a possible problem came when you filed your claim. The [Entity] immediately investigated the area and found nothing out of the ordinary, as there are white strips at the top and bottom steps at each flight of stairs, the stairs are _____ wide, and there are handrails on both sides of the stairs.

Constructive notice exists if "the condition had existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character." (Government Code § 835.2(b)). Generally, this means that an [Entity] will be charged with constructive notice of substantial defects which have existed for some time and which are so conspicuous that a reasonable inspection would have disclosed them. In this instance, the City does not even know how long the sidewalk has been in its present condition and the alleged defects are not substantial.

The State of California, through the Improvement Act of 1911, has made the maintenance of sidewalks the responsibility of adjoining property owners. Section 5610 of the Streets and Highways Code states: "The owners of lots or portions of lots fronting on any portion of a public street or place when that street or place is improved or if and when the area between the property line of the adjacent property and the street line is maintained as a park or parking strip, shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property....."

The question of whether the duty still exists on the part of the landowner to repair the sidewalk when the damage is caused by street trees has been answered by the California Attorney General in his opinion CV73-3191L. The Attorney General's opinion concludes that "the provisions of § 5610 of the Streets and Highways Code do not exempt an owner of property abutting the sidewalk from the duty otherwise specified in that section to maintain the sidewalk, and from liability for cost of repairs thereto, even where the damage to the sidewalk is caused by the growing roots of trees that are public property of the City within which the sidewalk exists."

The [Entity] does place temporary patches on sidewalks of asphaltic concrete material until property owners can repair or replace the sidewalk. The patches alleviate displacement in the various levels of sidewalk. The [Entity] will continue to respond if you contact them concerning raised portions of sidewalk in front of your home.

The [Entity] is sorry to learn through your claim that you slipped and fell. However, we honestly cannot see a basis for the taxpayers of this [Entity] funding this claim. If you have any questions concerning this decision, please do not hesitate to contact me.

Very truly yours,

Name

Enclosure: Notice of Rejection of Claim

cc: Building Manager (with enclosure)

FORM X

SAMPLE NOTICE OF RECEIPT OF CLAIM

Dear Mr. _____:

The City Clerk of _____has received a claim from you for money or damages presented to the _____ [Entity], a municipal corporation.

Your claim will be investigated and evaluated. You will be contacted by the undersigned or another representative of the _____ [Entity] in writing upon completion of the review with the findings and the results within 45 days.

The purpose of this notice is to acknowledge receipt of your claim and is not intended to imply acceptance, lateness, insufficiency or denial of your claim.

Should you have further reason to contact the _____ [Entity] concerning this matter, please telephone me at _____.

Sincerely,

[Name]

FORM Y

SAMPLE GOVERNMENT CODE SECTION 935 ORDINANCE

Pursuant to the authority contained in Section 935 of the Government Code of the State of California, the following claims procedures are established for those claims for money or damages not now governed by state or local laws.

Notwithstanding the exemptions set forth in Section 905 of the Government Code of the State of California, all claims for damages or money against a local public entity, when a procedure for processing such claims is not otherwise provided by state or local laws, shall be presented within the time limitations and in the manner prescribed by Sections 910 through 915.2 of the Government Code of the State.

Such claims shall further be subject to the provisions of Section 945 through 946 of the Government Code of the State relating to the prohibition of suits in the absence of the presentation of claims and action thereon by the Council.

This ordinance shall take effect thirty (30) days after its adoption. Within five days after its adoption, it shall be published once in a newspaper of general circulation.

The foregoing ordinance was introduced at a regular meeting of _____ held on the ___ day of _____, 20____ and passed and adopted at a regular meeting of _____ held on the____ day of _____, 20___, by the following vote:

AYES: _____
NOES: _____
ABSENT: _____
ABSTAINING: _____

APPROVED: _____

ATTEST: _____

FORM Z

ADVISEMENT OF LAW LETTER

TO: _____
FROM: _____
DATE: _____
SUBJECT: _____

Dear _____:

This is to confirm and assure you that the [Entity] has undertaken your legal defense in the civil action filed against you under the title _____, in which you are named as a defendant party.

We are defending you at the request of the [Entity], pursuant to agreements. We intend to take whatever steps are necessary to defend, compromise, or settle the action on your behalf.

We must emphatically call your attention to the fact, however, that the complaint in this action contains a claim against you, individually, for the recovery of punitive or exemplary damages, in addition to any compensatory damages which are claimed as compensation for the injuries alleged in the complaint.

The [Entity] will not pay on your behalf any judgment for punitive or exemplary damages.

We wish to inform you that under existing law, the [Entity] is, notwithstanding the inability of the [Entity] to cover punitive damage judgments, authorized to pay on your behalf all or part of any judgment which might ensue for punitive damages under limited circumstances. Those circumstances include a final determination that the act or omission on which liability would be founded was within the course and scope of your employment with the [Entity], and that you acted, or failed to act, in good faith, without actual malice, and in the apparent best interest of the [Entity].

Also, that at the time of payment, the payment of the claim or judgment would be in the best interest of the [Entity] itself. We must emphasize that the law at present does not obligate the [Entity] to pay such a claim, but leaves coverage to its sole discretion, to be determined only after a judgment for punitive or exemplary damages has been awarded.

You are simply advised that in the event of an adverse judgment, you may have recourse to petition the [Entity] for a determination as to payment of punitive or exemplary damages.

Our investigation of this case at this point in time does not reveal any reason to deny coverage of the claim against you for compensatory damages under our self-funded liability program, notwithstanding the claim for punitive damages, and we have engaged legal counsel to defend you at the [Entity's] expense. Please be advised the [Entity] has assigned the defense of this claim to:

You should expect to hear promptly from assigned legal counsel, who will ask for and be entitled to your complete cooperation in the defense of this claim.

Under the circumstances, you are free to consult at your own expense with independent legal counsel of your own choice as to your legal status and your rights with respect to the existing claim for punitive or exemplary damages. If you do engage at any time during the conduct of this defense any independent legal counsel, please put your attorney or attorneys immediately in direct contact with the attorney named above.

If you have any questions, please do not hesitate to contact the undersigned. It is our wish to render you the best possible service on behalf of the [Entity].

Thank you.

Sincerely,

[Name]

Firm Overview

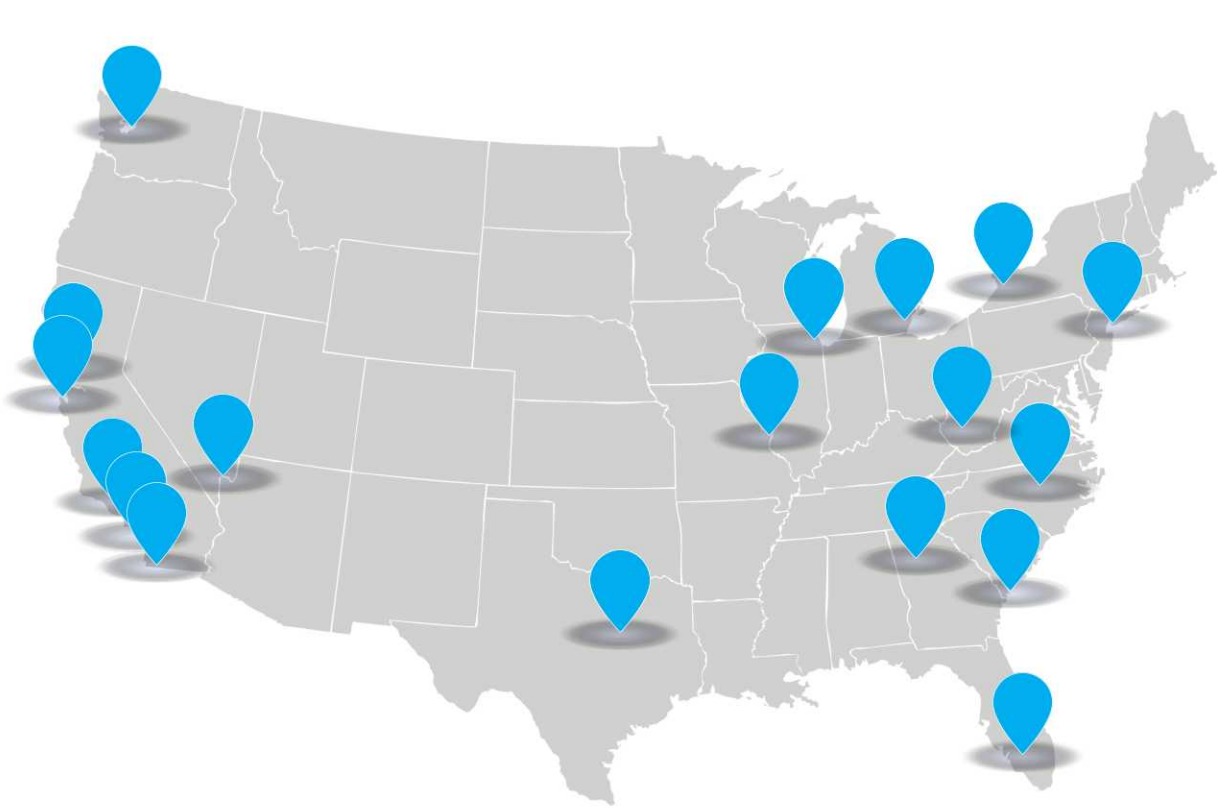
STRATEGY | COORDINATION | INNOVATION | RESULTS

DEFENSE STRATEGISTS + TRIAL LAWYERS

Hawkins Parnell & Young is a national defense litigation firm. Our 250-strong litigation team will work with you to develop a winning defense strategy and, if necessary, bring cases to verdict in all 50 states.

Locations

ATLANTA
BUFFALO
CHARLESTON
CHICAGO
DALLAS
DETROIT
LAS VEGAS*
LOS ANGELES
NAPA
NEW YORK CITY
ORANGE COUNTY*
SEATTLE*
SAN DIEGO*
SAN FRANCISCO
SOUTH FLORIDA
RALEIGH
WEST VIRGINIA



** Coming January 1, 2023*

Bar Admissions

ALABAMA	MARYLAND	PENNSYLVANIA
ALASKA*	MASSACHUSETTS	SOUTH CAROLINA
ARIZONA*	MICHIGAN	TENNESSEE
CALIFORNIA	MINNESOTA	TEXAS
COLORADO	MISSOURI	VIRGINIA
CONNECTICUT	NEVADA*	WASHINGTON DC
FLORIDA	NEW JERSEY	WASHINGTON
GEORGIA	NEW YORK	WEST VIRGINIA
HAWAII	NORTH CAROLINA	WISCONSIN
ILLINOIS	OHIO	
KENTUCKY	OREGON*	

** Coming January 1, 2023*

Overview

Hawkins Parnell has defended many of the largest corporations and industry leaders from various sectors in high-risk litigation and business disputes, including half of the Fortune 500. We serve clients as local, regional, and national counsel. With a deep bench of first-chair trial lawyers, we have litigated cases in all 50 states, Puerto Rico, and the U.S. Virgin Islands. Although trial success has always been a hallmark of Hawkins Parnell, our attorneys routinely advise clients in risk management to avoid litigation. We focus on learning the specific needs of our clients and ensure we meet those needs in every case. Hawkins Parnell has the expertise and experience to provide a full range of litigation options, from quick and confidential settlements to verdicts and appeals. With Hawkins Parnell's well-known and respected ability and willingness to take a case to verdict in any court, our clients often achieve desirable outcomes in the earliest stages of litigation.

We have developed close partnerships with the largest insurance carriers in the country. Because of our success in defending them and their insureds, and because we have the resources to manage litigation under complex agreements, we have been selected to be on many of their litigation panels. Insurance providers often rely on our lawyers for strategic insight on global issues faced by either themselves or their insureds, asking us to serve on committees and panels not related to a single case or client.

Hawkins Parnell is relied upon to handle complex insurance issues. We litigate issues arising from general liability, management, professional liability, fraud, health, life, property, and casualty. We serve as counsel in cases requiring confidential and sensitive investigations into various allegations ranging from insurance fraud, special investigative units, and property loss to executive misconduct, harassment, and potential criminal activity. Our lawyers understand the unique challenges of these claims.

ADMINISTRATIVE & REGULATORY

Clients rely on Hawkins Parnell to vigorously represent their interests when they are in the crosshairs of regulators and administrative agencies. We are well-versed in the intricacies of regulatory and administrative law. With former government lawyers and general counsels, our integrated team comprises attorneys with broad subject-matter experts who have been in the trenches of the most scrutinized industries. Our attorneys have a wide range of experience in healthcare, labor, occupational safety, environment, insurance, and finance.

COMMERCIAL

We represent a diverse portfolio of clients in complex commercial disputes coast-to-coast. Clients rely on Hawkins Parnell's experience to help navigate their companies through challenging commercial disputes in an increasingly difficult business environment. We are proactive in developing strategies to reduce risk and avoid litigation while protecting the brand and business interests.

With a deep bench of first-chair trial and appellate lawyers, we have defended businesses in commercial litigation in state and federal courts throughout the United States. Our team has vast experience in business torts, commercial issues, contract disputes, intellectual property, fiduciary law, construction, real estate disputes, product liability, equitable relief, and restrictive covenants. We understand that each client has unique needs and objectives. While an amicable and prompt resolution is often the objective, commercial disputes frequently escalate to litigation. Our expertise is invaluable when the strategy shifts in this direction – we provide a sophisticated, aggressive defense to protect a client's commercial interests and reputation.

CONSTRUCTION

Hawkins Parnell represents clients in all areas of the construction, architectural, and engineering sectors, including design professionals, developers, general contractors, subcontractors, public and private owners, construction managers, surveyors, suppliers, and sureties. Our lawyers provide sound advice in every phase of the construction process, from project delivery to contract formation, performance, administration, project monitoring, and close-out. We understand project deal structure and other construction issues, including public and private partnerships, joint ventures and entity structures, women and minority participation requirements, and related issues. With experience working directly for owners, developers, and contractors, our lawyers have the knowledge, skills, and business acumen to deliver industry-specific legal services.

Our team is skilled in early and alternative dispute resolution to resolve construction and design disputes. When issues cannot be resolved, Hawkins Parnell vigorously defends clients in litigation or arbitration. Our lawyers have significant experience bringing complex, multi-party, and high-exposure construction matters to a favorable conclusion.

EMPLOYEE BENEFITS, FIDUCIARY LIABILITY, & ERISA

Hawkins Parnell brings extraordinary depth in perspective in advising on matters arising in connection with ERISA plans and defending shareholder, employment, and benefits litigation throughout the country. Our attorneys handle diverse issues ranging from mainstream benefit claims litigation to complex class actions involving employee ownership plan valuations and breach of ERISA fiduciary complaints involving the U.S. Department of Labor or private litigants. We draw upon this breadth of experience to provide clients with comprehensive, cost-effective services nationwide. We represent employers, insurers, fiduciaries, plans, sponsors, trustees, shareholders, plan administrators, and third-party administrators in federal courts and government regulatory proceedings. We provide sophisticated preventive strategies to limit risk exposure in our counseling efforts and aggressive defense for a cost-effective resolution in matters that have escalated to litigation.

LABOR & EMPLOYMENT

Clients recognize Hawkins Parnell for providing elite, professional, and cost-effective legal representation in litigation, investigatory, and advisory matters involving the employment relationship. We serve Fortune 500 corporations, privately held entities, public employers, and senior company executives as national and regional counsel. Our lawyers have litigated and handled administrative matters in more than 45 states. We have extensive experience in the manufacturing, retail, transportation, healthcare, financial/investment, and professional services industries. We also advise and represent city governments, school districts, and other political bodies throughout the country. Our attorneys include alums from some of the country's largest firms and former general counsel and chief litigation counsel from numerous industry-leading companies. We leverage those experiences working with in-house counsel, litigation managers, and human resources departments to provide cost-effective legal services.

- **Class Action, Collective Action, and Mass Plaintiff Cases:** Hawkins Parnell has substantial experience litigating complex class-action and collective action cases under the Fair Labor Standards Act and similar state laws. Our lawyers have defended large employment discrimination and wage-hour matters for decades. We have deep insight into the unique challenges such cases bring concerning discovery, document management, business disruption, and settlement.

- **Wage and Hour:** Our experience handling major wage and hour cases is extensive. We litigate and advise clients concerning the difficult wage and hour issues that employers face. In addition to the class and collective action cases, our lawyers regularly represent employers in single-plaintiff FLSA cases before state and federal compliance agencies such as the federal Department of Labor, California's Division of Labor Standards Enforcement, and similar state agencies across the country. In addition, the team regularly advises clients on wage and hour compliance issues, assisting them in avoiding the costly litigation that can ensue and conducting compliance audits of positions and departments.
- **Discrimination, Retaliation, and Harassment:** We defend and advise employers facing claims of illegal discrimination, retaliation, and harassment under federal and state laws. We have served as defense counsel in hundreds of cases and arbitrations alleged under Title VII, the Age Discrimination in Employment Act, the Americans With Disabilities Act, the Family and Medical Leave Act, and similar state and local laws and whistleblower statutes. Our lawyers have handled many serious matters under such statutes.
- **Employee Violence and Sexual Assault:** Hawkins Parnell handles serious and tragic matters involving employee violence, including illegal video surveillance and sexual assaults committed by employees. Our attorneys' experience in this area has enabled us to handle such cases efficiently, effectively, and without excess negative publicity.
- **Employment Contracts, Restrictive Covenants, Trade Secrets, and Confidential Information:** The group is experienced in drafting, evaluating, and enforcing employment contracts, restrictive covenant agreements, and non-disclosure agreements across the country. Our lawyers advise and assist employers in protecting and retaining their most important and confidential trade secret information, customer goodwill, and employees. Hawkins Parnell also advises employers considering hiring an employee subject to non-compete covenants as to the enforceability of those covenants and the attendant risks of hiring such individuals. We pride ourselves on providing accurate risk assessments and thinking creatively to allow employers to hire qualified employees without violating legal obligations.
- **Internal Investigations:** The group also conducts sensitive internal investigations for employers into allegations of employee misconduct, including theft, harassment, and violence. We have undertaken confidential investigations into allegations of executive misconduct implicating Sarbanes-Oxley, racial and sexual harassment, and potential criminal activity. Clients trust our lawyers to investigate fairly and thoroughly, leveraging experience and judgment to find the truth.
- **Traditional Labor and Collective Bargaining:** We have extensive experience representing management in union organizing campaigns, handling arbitrations before the National Labor Relations Board under collective bargaining agreements, and defending unfair labor practices charges.

PROFESSIONAL LIABILITY

Hawkins Parnell aggressively defends against all kinds of claims against professionals and those for whom they work, including malpractice, breach of

fiduciary duty, misrepresentation, sexual misconduct, professional grievances, and licensure issues. Our clients include Fortune 500 senior directors, officers, and professionals of every stripe. There are few professions in which we do not have experience, as our team has represented:

- Accountants
- Aestheticians
- Appraisers
- Architects & Engineers
- Attorneys
- Cemetery Managers
- Claims professionals & TPAs
- Counselors & Psychologists
- Dentists, Oral Surgeons, & Orthodontists
- Directors & Officers
- Funeral homes & directors
- Home Inspectors
- Hospitals
- Hoteliers
- Insurance Agents, Brokers and Underwriters
- Massage & Physical Therapists
- Nurses
- Physicians
- Property Managers
- Real Estate Agents & Brokers
- School Administrators & Teachers
- Social Workers
- Surveyors

We understand the unique interests at risk and issues in professional liability cases. Our team has tried hundreds of these cases to verdict in state and federal courts and alternative dispute venues and litigated thousands more. We utilize this experience to protect those special interests and bring closure to litigation and claims in cost-effective and often creative ways.

GENERAL & PREMISES LIABILITY

Hawkins Parnell has defended businesses in high-risk general and premises liability litigation for over 50 years. We have successfully defended clients in litigation involving various claims alleging negligence, dangerous conditions, property damage, and environmental issues, including catastrophic accidents, wrongful death, construction defect, toxic exposures, contamination, false arrest, and liability for criminal assaults. We have represented clients from individuals and small local establishments to multinational corporations and the Summer Olympic Games in general and premises liability claims.

TRANSPORTATION

Hawkins Parnell represents global logistics companies, national and regional motor carriers, automotive manufacturers, mobility companies, car rental companies, railroads, airlines, and their insurers in catastrophic injury, wrongful death, environmental, and property cargo damage claims. Our attorneys have tried complex, high-stakes transportation cases across the U.S. We have broad experience with crashworthiness, spinal cord injuries, traumatic brain injuries, and cervical and lumbar disc herniations and fractures.

The firm has reconstructionists, engineers, and other experts nationwide and relationships with counsel throughout the country for an immediate response wherever and whenever an accident occurs. Our lawyers know the regulatory framework and unique challenges of transportation claims in litigation and the business disruption they can cause. We are prepared to defend these matters vigorously in litigation and actively work to limit the associated risks.

PRODUCT LIABILITY

Hawkins Parnell has defended complex product liability litigation for more than five decades, serving as local, regional, and national counsel throughout the United States for trials and appeals. The team has broad experience in fact development and exposure analysis for manufacturers, distributors, retailers, and end-users in nearly every product category, including pharmaceutical, medical, industrial, chemical, consumer, and commercial products. We focus on the representation of manufacturers in cases alleging errors in the design, manufacture, assembly, testing, and selling of products.

TOXIC TORT & ENVIRONMENTAL

Hawkins Parnell is among the nation's leading litigators in toxic tort and environmental litigation. Over the past five decades, we have represented every type of defendant, from the mine to the finished product. Having litigated in all 50 states, we have tried over 500 cases to verdict as lead counsel and have taken the lead or participated in over 10,000 fact and expert depositions.

- **Toxic Torts:** Our attorneys have litigated a significant number of toxic exposure cases involving a voluminous range of chemicals and substances, including ammonia, asbestos, benzene, butadiene, chlorine, dioxin, hexavalent chrome, ethylene oxide, lead, ceramic fiber, silicon, talc, toluene, petroleum-based and chlorinated solvents, and man-made waste.
- **Environmental:** We handle a vast range of matters, including property damage claims caused by chemical and sewage spills and pollution; exposure cases seeking damages for injuries allegedly caused by air, ground, and water pollution; workplace cases against employers, contractors, and suppliers for exposure to allegedly hazardous substances; waste-site claims against contributors of waste to the sites; and cases involving injuries allegedly caused by exposure to chemicals, air quality, carbon monoxide, welding rod poisoning, CERCLA, refined products, and other toxic substances. We understand how to maneuver a successful result working through complicated and diverse issues, including insufficient documentation of waste origination, complex disputes over cost-causation, concurrent toxic tort litigation, and the presence of numerous potentially responsible parties. We regularly advise and counsel concerning hazardous waste treatment, storage, and disposal under RCRA. Hawkins Parnell has also successfully negotiated administrative orders and consent decrees to clean up hazardous waste sites under Superfund.

Diversity, Equity, and Inclusion

At Hawkins Parnell, diversity of perspective matters. We focus on hiring, staffing, promotion, and education to facilitate equity and inclusion. We seek top talent among diverse groups in terms of race, gender, age, religion, sexual orientation, gender identity, and social background. We rely on the uniqueness of each employee to create an environment where everyone can do their best work and contribute different ideas that will produce the best outcomes for our clients. We actively educate firm members about our distinctions to foster a workplace that welcomes, celebrates, and reflects our diverse communities.

- Hawkins Parnell has a DEI steering committee with significant influence. The committee, led by a diverse executive committee member, comprises a combination of equity partners and diverse non-equity partners to identify, recommend, and execute diversity initiatives.
- We are in the 2022-2023 cohort of the Midsize Mansfield Rule certification. The goal is to increase the representation of diverse lawyers in leadership by broadening the pool of women, LGBTQ+ lawyers, lawyers with disabilities, and racial/ethnic minority lawyers considered for job openings, leadership opportunities, equity partner promotions, and opportunities to connect with clients.
- 50% of the firm's executive committee members are diverse.
- Since 2013, more than 50% of attorneys elected to partner have been from underrepresented groups.
- We require training on unconscious bias and behavioral interviewing to ensure that hiring and selection decisions are based on clear objective criteria.
- Our management conducts audits to ensure internal and external equity among compensation levels of all employees in every position category.
- We provide attorneys 12 weeks of paid parental leave and offer benefits to nursing mothers such as breast milk storage and shipment services.
- The firm provides mentorship to associates, pairing partners with associates to guide personal and professional development.
- Hawkins Parnell strives to ensure work assignments and team composition consider diversity. The firm also invests in continuing education and marketing to broaden professional growth and networking opportunities. We aim to include and support diverse attorneys in business development opportunities, pitches, and client communications. We are working on a system to track these metrics.
- Hawkins Parnell participates in a minority intern program. The students are compensated and receive substantive work experience and legal exposure.
- Our attorneys hold leadership positions in international, national, state, and local bar associations and other non-profit organizations dedicated to legal education and mentoring opportunities in diverse and underrepresented communities. We have driven the creation of committees and led events that promote diversity, equity, and inclusion; we also sponsor and participate in programs related to these initiatives.

"The firm is willing to aggressively pursue creative approaches to achieve extraordinary results."

Fortune 500 Client Comment
U.S. News - Best Lawyers

HAWKINS PARNELL

FIRM	ADDRESS	PHONE	EMAIL	ATTORNEYS		
Allen, Glaessner, Hazelwood & Werth	180 Montgomery St. 12th Floor, San Francisco, CA 94104	(415) 697-2000	MHazelwood@aghwlaw.com DAllen@aghwlaw.com PGlaessner@aghwlaw.com	Mark Hazelwood Dale Allen Peter Glaessner		
Practice Areas: Police. Dangerous Condition/Premises Liability, Direct Negligence						
Bertrand, Fox, Elliot Osman & Wentzel	2749 Hyde Street San Francisco, CA 94109 1300 Clay Street, Ste. 58 Oakland, CA 9461	(415) 353-0999 (510) 466-6380	GFox@BFESF.com ROsman@BFESF.com EElliot@bfesf.com MWenzel@bfesf.com	Greg Fox Richard Osman Gene Elliott - ADA Michael Wenzel		
Practice Areas: Police. Dangerous Condition/Premises Liability, Direct Negligence, Sexual Abuse and Molestation						
Clapp Moroney Vucinich Beeman & Scheley	1111 Bayhill Dr. San Bruno, CA 94066	(650) 989-5400	JVucinich@ClappMoroney.com	Jeffrey Vucinich		
Practice Areas: Police. Dangerous Condition/Premises Liability, Direct Negligence						
Law Offices of Dawn Ceizler	165 Lennon Lane, Ste. 101 Walnut Creek, CA 94598	(925) 932-8225	dc@ceizler.com	Dawn Ceizler		
Practice Areas: Dangerous Condition/Premises Liability, Direct Negligence, Civil Rights						
Hayes, Scott, Bonino, Ellingson, McKay LLC	203 Redwood Shores Pkwy 4th Floor, Ste. 480 Redwood City, CA 94065	(650) 486-2869	mbonino@hayesscott.com	Mark Bonino		
Practice Areas: Appellate						

Kaufman, Dolowich & Voluck, LLP	425 California Str., Ste. 2100 San Francisco, 94104	(415) 926-7600	ahamoy@kdvlaw.com agaus@kdvlaw.com rserrano@kdvlaw.com	Aimee Hamoy Arthur Gaus Roger Serrano		
Practice Areas: Police liability, Civil Rights, Dangerous Condition/Premises Liability, ADA						
Howard, Rome, Martin, Ridley	1900 O'Farrell Str., Ste 280 San Mateo, CA 94403,	(650) 365-7715	tmaster@hrmrlaw.com sridley@hrmrlaw.com lrauch@hrmrlaw.com bgundert@hrmrlaw.com	Todd Master Shawn Ridley Lisa Rauch Bob Gundert		
Practice Areas: Dangerous Condition/Premises Liability, Direct Negligence, Inverse Condemnation, Civil Rights, Police						
Leone and Alberts	1390 Willow Pass Rd., Suite 700 Concord, CA 94520	(925) 974-8600	bduus@leonealberts.com	Brian Duus		
Practice Areas: Dangerous Condition/Premises Liability, Direct Negligence						
McDowell - Cotter	2070 Pioneer Court San Mateo, CA 94403	(650) 324-9300	drosenbaum@mcdlawyers.net jemmaneel@mcdlawyers.net	David Rosenbaum Jennifer Emmaneel		
Practice Areas: Dangerous Condition/Premises Liability, Direct Negligence						
Matheny, Sears, Linkert and Jaime	3638 American River Dr., Sacramento, CA 95864	(916)978-3434	RBangle@mathenysears.com	Ray Bangle		
Practice Areas: Dangerous Condition/Premises Liability, Direct Negligence, Civil Rights						
McNamara, Ney, Beatty, Slattery, Borges & Ambacher	3480 Buskirk Ave Suite 250 Pleasant Hill, CA 94523	(925) 939-5330	James.Fitzgerald@Mcnamaralaw.com Noah.Blechman@Mcnamaralaw.com	James Fitzgerald Noah Blechman		
Practice Areas: Police						

Orbach Huff & Henderson, LLP	6200 Stoneridge Mall Pleasanton, CA 94588	(510)350-3582	kgilbert@ohhlegal.com caguilar@ohhlegal.com nfine@ohhlegal.com ccreech@ohhlegal.com rhom@ohhlegal.com	Kevin Gilbert Carolyn Aguilar Nicholas Fine Christopher Creech Randolph Hom		
Practice Areas: Police, Civil Rights, Dangerous Condition, ADA						
RIVERA HEWITT PAUL LLP	11341 Gold Express Drive Suite 160 Gold River, CA 95670	(916) 922-1200	SHewitt@rhplawyers.com JPaul@rhplawyers.com DChopra@rhplawyers.com CJanof@rhplawyers.com WMotooka@rhplawyers.com JNathan@rhplawers.com	Shannan Hewitt Jonathan Paul Dalbir Chopra Christopher Janof Wendy Motooka Jill Nathan		
Practice Areas: Police, Civil Rights, Dangerous Condition/Premises Liability, ADA						
Suzanne M Nicholson, Attorney at Law	770 L Street, Suite 950 Sacramento, CA 95814	(916) 361-6551	suzanne@smnlegal.com	Suzanne Nicholson		
Practice Areas: Appellate						
Law Office of Matthew Orebic	1870 San Antonio Ave. Berkeley, CA 94707	(510) 808-2000	Matthew@OrebicLaw.com	Matthew Orebic		
Practice Areas: Dangerous Condition/Premises Liability, Direct Negligence, Inverse Condemnation, Civil Rights, Police						
Rankin, Stock & Heaberlin	96 N. 3rd Street, Ste. 500 San Jose, CA 95112	(408) 293-0463	Jon@RankinStock.com David@RankinStock.com	Jon Heaberlin David Stock		
Practice Areas: Dangerous Condition/Premises Liability, Direct Negligence, Civil Rights						

Hawkins Parnell & Young, LLP	345 California City St. Ste 2850 San Francisco. CA 94105	(415) 979-2073	DLewis@hpylaw.com	Danielle Lewis		
Practice Areas: Dangerous Conditions/Premises Liability, Direct Negligence, Civil Rights						