

MUNICIPAL TORT AND CIVIL RIGHTS LITIGATION UPDATE



Alana Rotter

Partner
Greines, Martin, Stein & Richland LLP
arotter@gmsr.com
310.859.7811

Neil Okazaki

Deputy City Attorney / Police Legal Advisor
City of Corona
neil.okazaki@coronaca.gov
951.739-4987



CIVIL RIGHTS

Law Enforcement Liability



Golick v. State of California 82 Cal. App. 5th 1127 (2022)



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Golick v. State of California – Facts

- Pathway Home contracted with the State and provided mental health services at the Veterans Home.
- An interagency agreement between the State and the Sheriff's Department obligated the latter to "respond to all calls for service" at the Veterans Home, including "criminal, non-criminal, and traffic-related calls."
- A veteran who was terminated from the program held three employees hostage and exchanged gunfire with a sheriff's deputy.
- During 10-second shooting sequence, the deputy fired 13 rounds and the veteran fired 22 rounds.
- About eight hours later, an FBI SWAT team found the man and the three employee hostages dead.



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Golick v. State of California – Ninth Circuit

- Trial Court sustained demurrers, and the Court of Appeal affirmed.
- County defendants owed no duty of care under the special relationship doctrine because a contractual obligation to respond to service calls does not equate to a contractual duty to protect the deceased employees from patients.
- The sheriff's deputy did not increase the risk of harm. Allegations that the deputy's conduct agitated the veteran and prompted him to kill his hostages were speculative.
- Plaintiffs did not allege that the hostages detrimentally relied on anything that the deputy said or did.



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Golick v. State of California – Impact

Reminder that absent exceptional circumstances, officers owe a duty of care to the public at large, as opposed to an individual.

If someone had been injured during the exchange of gunfire, the question of civil liability might be different. The deaths were allegedly precipitated by law enforcement's conduct but were not the result of deadly force.



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Verdun v. City of San Diego 51 F.4th 1033 (9th Cir. 2022)



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Verdun v. City of San Diego – Facts

- In 2021, the Sixth Circuit held in *Taylor v. City of Saginaw, Michigan*, 11 F.4th 483 (6th Cir. 2021) that chalking tires for purposes of parking enforcement was search under the 4th Amendment.
- City of San Diego utilized tire chalk since at least the 1970s as an efficient and cost-effective way to determine a car's violation of time limits on City parking spots.
- The City's parking officer places a chalk mark on every vehicle parked in a given area of the City; parking officers do not single out particular vehicles.



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Verdun v. City of San Diego – Ninth Circuit

- Majority questioned whether tire chalking is a search.
- Assuming *arguendo* that it is, the administrative search doctrine permits the chalking.
- Warrantless searches that are reasonable under the circumstances are permitted where not for the primary purpose of crime control.
- Chalking tires is minimally intrusive and serves the “strong governmental interest in managing traffic and parking.”



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Verdun v. City of San Diego – Impact

**STRONGLY
WORDED
DISSENT.**

CIRCUIT SPLIT.

**CALIFORNIA
CITIES CAN
CONTINUE
CHALKING.**



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Peck v. Montoya, 51 F.4th 877 (9th Cir. 2022)



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Peck v. Montoya – Facts

- Officer-involved shooting of a 60-year-old legally blind man.
- While on the phone with his contractor, the man showed his real estate agent a gun and said he wanted to kill his contractor.
- Deputies learned during a prolonged stalemate - which included swearing at the officers and the man pulling down his pants and “mooning” the deputies – that the gun was in the house.
- Seeing movement in the house, the deputies fatally shot him through the window.



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Peck v. Montoya – Ninth Circuit

- As to the three officers who did not shoot, the Ninth Circuit pointed out that “individual actions” do “not themselves rise to the level of a constitutional violation” under Section 1983 unless the official is an “integral participant” in the unlawful act.
- The shooting was completely unplanned, and they did not have any reason to know that their actions—providing armed backup—would cause a constitutional violation.



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Peck v. Montoya – Impact

- The case provides an analysis of the integral-participant doctrine in the Ninth Circuit.
- They did not meet a liability test for officers who (1) “knew about and acquiesced in” the violation as part of a “common plan” or (2) “set in motion” acts by others that they “knew or reasonably should have known” would cause others to violate the Constitution.



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Villalobos v. City of Santa Maria 85 Cal.App.5th 383 (2nd Dist. 2022)



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Villalobos v. City of Santa Maria – Facts

- Officers responded to a report of a man who was said to have walked into a bank with a knife.
- Police attempted to talk with the man, but the negotiations failed, and the suspect continued to hold the knife in a threatening manner, according to police.
- Officers fired several rounds of less lethal munitions but did not succeed in subduing the man. The suspect then started stabbing himself, after which he charged at officers with the knife.

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Villalobos v. City of Santa Maria – Court of Appeal

- Should the negotiation process have continued? -- “Despite stabbing himself three times in the abdomen and slashing his throat with the knife, Decedent was unable to kill himself. So he provoked the police into killing him.”
- Less lethal? – There is no precedent requiring the use of all feasible alternatives where deadly force is justified.



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Villalobos v. City of Santa Maria – Impact

- Reaffirms the principle that law enforcement officers are not required to use less intrusive means when confronted with a situation in which deadly force could justifiably be used.

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Murguia v. Langdon, 61 F.4th 1096 (9th Cir. 2023)



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Murguia v. Langdon— Facts

- Dad of twins called 911 seeking emergency mental health assistance for his ex-wife.
- Tulare County deputy sheriffs arrived at the home where they separated Dad from Mom and the twins; they then allowed Mom and a neighbor take the twins to church and prevented Dad from following.
- A City of Visalia police officer drove Mom and the twins from the church to a shelter.
- Tulare police officers, acting in part on information provided by a social worker, transported Mom and the twins from the shelter to a motel, where Mom drowned the twins.

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Murguia v. Langdon— Ninth Circuit

- Special-relationship exception did not apply because the defendants did not have custody of the twins.
- The state-created danger exception did apply to the Tulare police officer who arranged a motel room and left Mom isolated there with the twins.
- Also social worker liability.
- Dissent: Cannot be a constitutional violation in the absence of any abuse of power entrusted to the state. There was negligence, mistakes of judgment, and the failure to provide safety and security to the children.



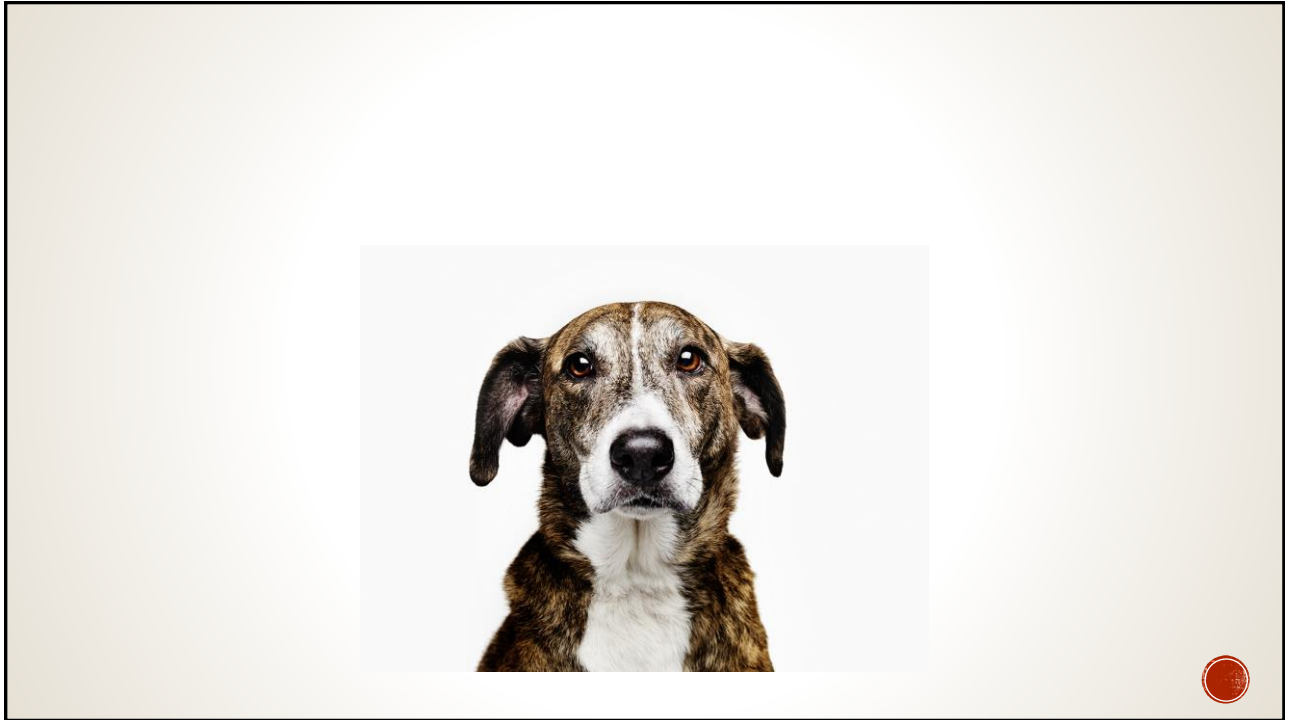
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Murguia v. Langdon – Impact

- Useful primer on the special-relationship and state-created danger bases for substantive due process liability to provide safety and security to the children.
- Judge Ikuta's dissent (like other dissents she has written) highlights how the Ninth Circuit has deviated from Supreme Court precedent. This can bolster a Supreme Court certiorari petition.



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CIVIL RIGHTS

First Amendment /
Substantive Due Process

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Sinclair v. City of Seattle, 61 F.4th 674 (9th Cir. 2023)



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Sinclair v. City of Seattle - Facts

- Seattle police and mayor relinquished control of a 16-block area during George Floyd protests (“Capital Hill Occupied Protest” or “CHOP”)
- Plaintiff’s adult son was shot and killed by someone while visiting CHOP
- Plaintiff sued the City for violating her Fourteenth Amendment right to companionship of her adult son
- District court granted motion to dismiss



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Sinclair v. City of Seattle – Ninth Circuit

- Under binding Circuit precedent, parents have a Fourteenth Amendment substantive due process right to companionship of their adult children
- District court correctly granted motion to dismiss: Plaintiff's allegations establish some elements of the substantive due process claim, but not the requisite "particularized" danger to her son
- Concurrence urges en banc review to align Ninth Circuit with majority rule among other circuits, that there is no Fourteenth Amendment right to adult children's companionship



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Sinclair v. City of Seattle – Impact

- Highlights that Ninth Circuit recognizes a claim that most other circuits don't – parents can sue for loss of companionship of adult children
- Stay tuned for possible en banc review or a cert petition
- Highlights danger of withdrawing police protection from an area of the city, but also the difficulty for plaintiffs to establish particularized harm

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No on E v. Chiu, 62 F.4th 529 (9th Cir. 2023)



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No on E v. Chiu - Facts

- San Francisco ordinance requires disclosures of “secondary contributors” to committees spending money to support or oppose candidates for elective office or ballot measures
- Independent expenditure committee argued that disclosure requirement violated First Amendment free speech rights
- District court denied committee’s motion for preliminary injunction



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No on E v. Chiu – Ninth Circuit

- Affirms denial of preliminary injunction
- Jurisdiction: Not moot because capable of repetition but evading review
- Merits: Plaintiffs have no likelihood of success on the merits, because the disclosure requirement is substantially related to a sufficiently important governmental interest and any burden on First Amendment rights is modest



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No on E v. Chiu – Impact

- Comprehensive overview of First Amendment analysis for election disclosure requirements
- Helpful as roadmap for crafting secondary-contributor disclosure requirements
- Legality of ordinance may turn on how much space in an ad would be consumed by the required disclosures – so consider creating exceptions or otherwise tailoring requirements for small/short ads



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Spirit of Aloha Temple v. County of Maui 49 F.4th 1180 (9th Cir. 2022)



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Spirit of Aloha Temple – Facts

- Non-profit sought special use permit to hold church services, and spiritual and religious ceremonies on its premises.
- County zoning commission denies application based on failure to comply with a zoning guideline.
- Non-profit sues County, alleging among other things that the zoning regulations are an impermissible prior restraint on First Amendment-protected rights.
- District court grants summary judgment for County on prior restraint claim.



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Spirit of Aloha Temple - Ninth Circuit

- Reverses, with a partial dissent.
- *Standing*. Non-profit can bring a facial challenge to zoning regulation that's aimed at expressive conduct (special use permit required for religious activity)
- *Prior restraint*. Zoning regulation violates First Amendment because it vests planning commission with "unbridled discretion" to deny a permit for religious activity
- *Partial dissent*. Judge Clifton would have held that the challenged regulation "sufficiently fetters government decisionmakers," and thus is constitutional



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Spirit of Aloha Temple — Impact

- Helpful overview of when plaintiffs can—and can't—bring a facial challenge to an ordinance or regulation
- Counsels reviewing existing or proposed land use regulations and other permit requirements that may impact First Amendment-protected conduct, to ensure they adequately cabin the decisionmaker's discretion



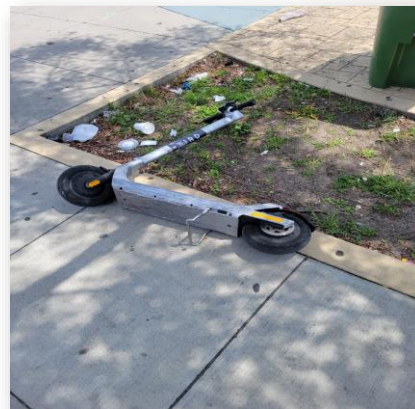
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MUNICIPAL TORT LIABILITY



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Hacala v. Bird Rides, Inc., __Cal.App.5th
___, 2023 WL 2851729 (2023)



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Hacala v. Bird Rides, Inc. – Facts

- Pedestrian is injured when she trips over a Bird e-scooter parked on a City of Los Angeles sidewalk
- Pedestrian and her family sue the City and Bird for negligence
- Trial court sustains demurrers as to the City and Bird without leave to amend



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Hacala v. Bird Rides, Inc. – Court of Appeal

- Reverses in part, with a partial dissent.
- *City*. City is immune under the Government Code, because alleged failure to enforce permit conditions was a discretionary act. No dangerous condition liability because sidewalks aren't defective simply because third parties may mis-park scooters
- *Bird*. Scooter company may be sued for negligently failing to exercise ordinary care in managing its scooters, and on a public nuisance theory
- *Partial dissent*. Justice Lavin would have affirmed as to both Bird and the City



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Hacala v. Bird Rides, Inc.— Impact

- Similar issues are likely to arise in other cities, given the prevalence of e-scooters
- Demonstrates broad public entity immunity for discretionary acts
- Helpful review of dangerous condition liability based on third-party acts



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Greenwood v. City of Los Angeles, Inc., 89 Cal.App.5th 851 (2023)



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Greenwood v. City of Los Angeles – Facts

- Deputy city attorney for the City of Los Angeles alleged that accumulated trash outside her office building caused typhus outbreak
- Deputy sued the City on a dangerous condition theory
- Trial court sustains demurrer



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Greenwood v. City of Los Angeles – Court of Appeal

- Affirms demurrer grant based on Government Code section 855.4 immunity
- City's decision not to take steps to stop spread of typhus next to City Hall was an exercise of discretion
- Section 855.4 immunity did not require showing that City acted with due care – sufficient that it was an exercise of discretion
- *Concurrence*. Justice Bendix wrote separately to distinguish between public entities responses to a disease outbreak (covered by section 855.4) and their general responsibility to keep facilities safe and sanitary (possibly not covered by section 855.4)



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Greenwood v. City of Los Angeles – Impact

This fact pattern is likely to become increasingly common, given the prevalence of camps of unhoused people in urban areas

Demonstrates contours of section 855.4 immunity for this type of claim



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California-American Water Company v. Marina Coast Water District, 86 Cal.App.5th 1272 (2022) 



46

Cal-Am Water Co. – Facts

- Entities got into dispute over water supply project that fell apart
- One of the entities (Cal-Am) presented a Government Claims Act claim to another entity (Marina), contending Marina was responsible for causing the project to fail
- When Cal-Am sued, Marina asserted that the presented claim had been substantively deficient
- Trial court granted summary judgment for Marina, rejecting Cal-Am's argument that Marina expressly or impliedly waived reliance on the Claims Act



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Cal-Am Water Co. - Court of Appeal

- Reverses summary judgment
- Triable issue as to whether Marina expressly waived its right to require claims-presentation rule compliance
- Triable issue as to whether Marina impliedly waived its right to require claims-presentation rule compliance
- Implied waiver does not require any showing that plaintiff detrimentally relied on the waiver



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Cal-Am Water Co. – Impact

- Public entity's agent (including its lawyer) can expressly waive requirement that plaintiff comply with Claims Act
- Will also be cited for proposition that a public entity can impliedly waive requirement of Claims Act compliance
- Likely to encourage plaintiffs to assert waiver arguments, especially since waiver does not require proving detrimental reliance (as estoppel would)
- For a defendant: If asserting a Claims Act defense, do it promptly
 - Court of Appeal highlighted defendant's 2.5 year delay



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Marin v. Department of Transportation, 88 Cal.App.5th 529 (2023)



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Marin v. Dep't of Trans. – Facts

- Department of Transportation engaged contractor for construction work along a stretch of Interstate 580 in Oakland
- A drunk driver's car entered closed lanes on the roadway, and struck and killed an employee of the contractor
- Deceased employee's family sued the Department for creating a dangerous condition and for negligence
- Trial court granted summary judgment based on the *Privette* doctrine



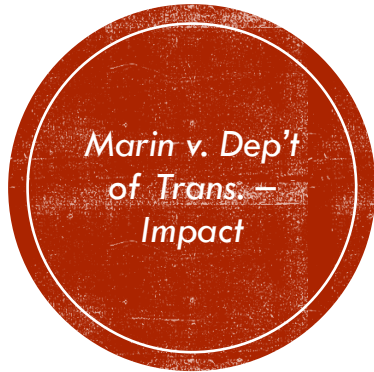
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Marin v. Dep't of Trans. - Court of Appeal

- Affirms summary judgment
- *Privette* limits liability of one who hires an independent contractor, for injuries to the contractor's employee
- Department delegated safety matters to the contractor, and did not exercise retained control in a way that affirmatively contributed to the injury
- Procedural note: If no reasoned explanation for sustaining evidentiary objections, objections may be deemed waived



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The *Privette* doctrine insulates hirers from liability, if its criteria are met

Know the *Privette* criteria, and counsel accordingly

Keep summary judgment evidentiary objections focused, and attempt to obtain reasoned rulings on them

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Fajardo v. Dailey, 85 Cal.App.5th 221 (2022)



54

Fajardo v. Dailey – Facts

- Plaintiff tripped and fell on asphalt patch between two slabs of sidewalk
- Defendant moved for summary judgment: Alleged dangerous condition was a “trivial defect”—height differential approximately an inch.
- Plaintiff opposes: Height differential more than an inch, asphalt patch at least 11 years old and had jagged, uneven edges and cracks
- Trial court grants summary judgment – height differential of up to 1.5 inches may be trivial, and “obvious and distinctive nature of the asphalt patch” reinforces that defect was trivial



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Fajardo v. Dailey – Court of Appeal

- Reverses.
- *Evidence.* Defense’s unauthenticated photographs inadmissible, and defense expert’s declaration had “no evidentiary value” because he failed to explain basis for his conclusions
- *Legal standard.* Size alone is not dispositive of dangerousness; court must consider whether surrounding circumstances increased danger
- *Application.* Even if defense met her moving burden, plaintiff’s evidence created triable fact issue on whether defect was trivial



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Fajardo v. Dailey – Impact

Clear discussion of trivial defect doctrine in the context of sidewalk accidents.

Reminder of the importance of authenticating evidence, and providing a foundation for expert opinions in declarations



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Flores v. City of San Diego, 83 Cal.App.5th 360 (2022)



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Flores v. City of San Diego – Facts

- Plaintiffs sue City after son/boyfriend died in motorcycle crash while being pursued by police
- City moves for summary judgment, in part based on Vehicle Code section 17004.7
- Section 17004.7 immunity requires showing that agency (1) adopted written policy on vehicle pursuits, (2) promulgated policy, and (3) trained officers, all in compliance with section 17004.7
- Trial court grants summary judgment for City



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Flores v. City of San Diego – Court of Appeal

- Reverses summary judgment, sending case back to trial court
- City adopted compliant vehicle pursuit policy
- But, City failed to prove that it adequately trained officers on the policy – must meet POST Regulation 1081's training guidelines, including minimum time standards



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Flores v. City of San Diego – Impact

- Useful overview of section 17004.7 immunity criteria
- Establishes that sufficiency of training on a vehicle pursuit policy is not just about *content* of the training—training must also meet POST *time* standards, including at least one hour of vehicle pursuit policy training in the year before an accident.
- If using a video for instruction, ensure the video is long enough
- Documents how much time officers spent on training



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Thompson v. County of Los Angeles, 85 Cal.App.5th 376 (2022)



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Thompson v. County of Los Angeles – Facts

- County social workers concluded child was at risk of harm and took him into custody.
- Juvenile court released child to his parents.
- Parents sued County for negligence and intentional infliction of emotional distress
- Trial court sustained demurrer based on governmental immunity



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Thompson v. County of Los Angeles – Court of Appeal

- Affirms grant of demurrer.
- Public entities are immune from liability for injury “[e]xcept as otherwise provided by statute . . .” (Gov. Code, § 815)
- Gov. Code § 815.6 not a basis for liability:
- Requires an enactment that creates an “mandatory duty”
- Policy manual requirement that social workers make “necessary collateral contacts” bestows too much discretion to be a mandatory duty



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Thompson v. County of Los Angeles – Impact

Illustrates default of broad immunity for public entities.

Highlights high standard plaintiffs face in identifying a “mandatory duty”

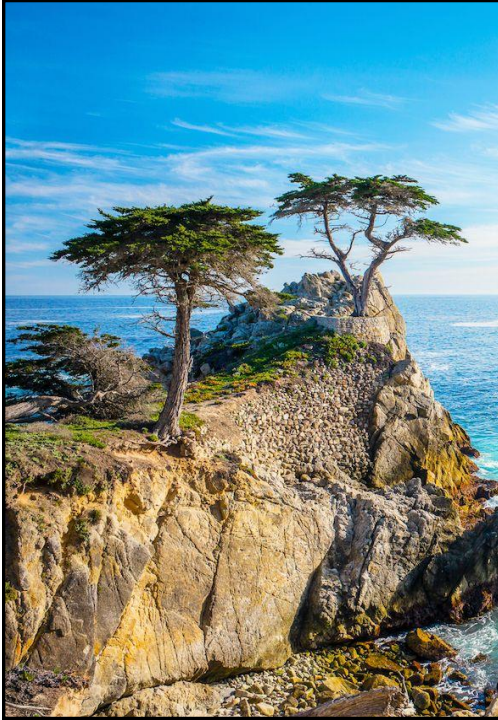


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CASES TO WATCH FOR



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THANK YOU !

Alana Rotter

Partner

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arotter@gmsr.com

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