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DEBORAH NORRIE,
Clerk of the Court
By K. Green KG
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF PLUMAS

UNLIMITED JURISDICTION

CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION, Plaintiff, v. EUNICE E. HOWELL, INDIVIDUALLY AND DOING BUSINESS AS HOWELL'S FOREST HARVESTING, et al., Defendants.	CASE NO. CV09-00205 (lead file) (non-lead cases CV09-00231, CV09-00245, CV09-00306, CV10-00255, CV10-00264) **[~~PROPOSED~~] ORDER GRANTING DEFENDANTS SIERRA PACIFIC, LANDOWNERS, AND W.M. BEATY'S MOTION FOR JUDGMENT ON THE PLEADINGS AND DENYING CAL FIRE'S EX PARTE APPLICATION FOR LEAVE TO AMEND AGAINST THESE DEFENDANTS**
AND CONSOLIDATED ACTIONS.	Trial Date: July 29, 2013

On July 15, 2013, Defendant Sierra Pacific Industries filed a trial brief arguing that Cal Fire had not stated a cognizable cause of action for recovery of its fire suppression costs in its Second Amended Complaint and that judgment should be entered on the pleadings.

On July 22, 2013, Plaintiff Cal Fire filed an ex parte application for leave to file a Third Amended Complaint. Cal Fire noticed its ex parte application for hearing on July 24, 2013, which the Court had previously set aside for pre-trial hearings in advance of trial.

On July 22, 2013, the Court issued a "Notice to Counsel" indicating, among other things, its willingness to hear any motions for judgment on the pleadings during the pre-trial hearings.

On July 24, 2013, Sierra Pacific, Beaty and Landowners (collectively "Defendants") moved for judgment on the pleadings on Cal Fire's Second Amended Complaint. Cal Fire opposed the motion. Defendants also argued that Cal Fire should not be given permission to amend its pleading, whether through its proposed Third Amended Complaint or otherwise, because such amendment would be futile.

On the morning of July 25, Cal Fire filed a written opposition to the motion for judgment on the pleadings. Later in that day, Defendants submitted a written reply brief.

For the reasons explained herein, Defendants' motion for judgment on the pleadings is granted and Cal Fire's ex parte application to amend is denied as to Defendants Sierra Pacific Industries, Beaty and Landowners.

FINDINGS AND CONCLUSIONS

A. Cal Fire Cannot Recover Its Fire Suppression Costs Pursuant to Common Law Causes of Action.

Cal Fire asserts various common law causes of action in its Second Amended Complaint: general negligence (all Defendants), negligent management and use of property (Beaty and Landowner Defendants), negligent hiring (Sierra Pacific), negligent supervision (Howell, Sierra Pacific, Beaty, Defendant Landowners), negligence: peculiar risk (Sierra Pacific), and money owed (all Defendants). Defendants contend Cal Fire cannot recover its fire suppression costs through these causes of action and that any recovery must be pursuant to statute, specifically, Health and Safety Code sections 13009 and 13009.1.

A government entity may not recover the costs for police, fire and other emergency services absent authorizing legislation. See *County of San Luis Obispo v. Abalone Alliance* (1986) 178 Cal.App.3d 848, 859; *City of Los Angeles v. Shpegel-Dimsey, Inc.* (1988) 198 Cal.App.3d 1009, 1018. Indeed, "'in the absence of a statute expressly authorizing recovery of public expenditures (i.e., police, fire and other emergency services), 'the cost of public services for protection from fire or safety hazards is to be borne by the public as a whole, not assessed against the tortfeasor whose negligence creates the need for the service.'" *Shpegel-Dimsey, supra,* 198 Cal.App.3d at 1018 (citing *Abalone Alliance, supra,* 178 Cal.App.3d at 859). For this reason, the State "can ***never sue in tort*** in its political or governmental capacity" to collect fire suppression costs. *Ibid.* (emphasis added) (noting, however, that "'as the owner of property [the State] may resort to the same tort actions as any individual . . . for injuries to the property'") (quoting *Abalone Alliance, supra,* 178 Cal.App.3d at 859).

Two statutes allow Cal Fire to recover its fire suppression and related costs: Health and Safety Code sections 13009 and 13009.1. As courts have recognized, these two statutes provide the only basis upon which Cal Fire may recover its fire suppression costs. [1] See *Shpegel-Dimsey, supra,* 198 Cal.App.3d at 1018 ("the right to recover all fire suppression costs resulting from negligence in allowing a fire to spread is now strictly limited to that provided in Health and Safety Code section 13009") (citing *Southern Cal. Edison, supra,* 56 Cal.App.3d at 603). Thus, Cal Fire cannot recover its fire suppression costs pursuant to common law causes of action.[2] See *ibid.* ("It is well settled that "an action to recover fire suppression costs . . . is a creature of statute.") (citing *People v. Southern Cal. Edison Co.* (1976) 56 Cal.App.3d 593, 603).

B. **<u>Cal Fire Cannot Recover Its Fire Suppression Costs from Sierra Pacific, Beaty or Landowner Defendants.</u>**

Cal Fire contends Defendant Howell ignited the Moonlight Fire when one of its bulldozers operated by Defendant Kelly Crismon struck a rock. Defendants deny this allegation. Cal Fire argues that Sierra Pacific Industries, Beaty and the Landowner Defendants are liable for actions

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[1] While this Court is not bound by this Court's prior rulings regarding the denial of a motion for summary judgment, the Court does note that Judge Kaufman, in ruling on extensively briefed cross-motions for summary adjudication, held that Cal Fire cannot recover its suppression costs pursuant to common law causes of action, and instead, must proceed under the Health and Safety Code. (Minute Order on CDF's motion, May 2, 2013.) As the Court explained: "A public agency has no common law right to recover costs incurred in the exercise of its police powers. Instead, the right to recover fire suppression costs is a creature of statute, which must expressly authorize the recovery of public expenditure. More specifically, the right to recover all fire suppression costs resulting from negligence in allowing a fire to spread is now strictly limited to that provided in Health and Safety Code section 13009." *Ibid.* (internal citations omitted).

[2] Additionally, Cal Fire cannot recover in tort because it does not seek to recover tort damages and its losses are purely economic in nature. In tort actions for negligence, liability is limited to damages for physical injuries and property damage; no recovery is allowed for pure economic loss. *See Aas v. Superior Court* (2000) 24 Cal.4th 627, 636-638 (superseded by statute on other grounds).

of Howell. Specifically, Cal Fire suggests that Health and Safety Code sections 13009 and 13009.1 extend liability beyond the person who actually ignited the fire, allowed it to be set or to escape. Defendants dispute this contention and argue that neither Health and Safety Code section 13009 nor 13009.1 authorize the recovery of fire suppression from Sierra Pacific, Beaty and the Landowners under the circumstances alleged by Cal Fire.

Section 13009(a) provides: "Any person . . . who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him or her to escape onto any public or private property . . . is liable for the fire suppression costs incurred in fighting the fire and for the cost of providing rescue or emergency services, and those costs shall be a charge against that person. The charge shall constitute a debt of that person, and is collectible . . . in the same manner as in the case of an obligation under a contract, expressed or implied." Subsection (a) of section 13009.1 contains nearly identical language, except that it authorizes the collection of investigative and related costs.[3]

When interpreting statutory language, courts generally follows a three-step sequence. *MacIsaac v. Waste Management Collection and Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1083. First, the court looks "to the plain meaning of the statutory language" in an effort to effectuate the intent of the Legislature. *Ibid.* (citations omitted). Second, "the courts may turn to rules or maxims of construction 'which serve as aids in the sense that they express familiar insights about conventional language usage," and consider "extrinsic aids, including the statute's legislative history." *Ibid.* (citations omitted). Finally, the court may apply "reason, practicality, and common sense to the language at hand" and "consider not only the words used, but also other matters, 'such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same.'" *Id.* at 1084. (citation omitted).

[3] Health and Safety Code section 13009.1 provides, in pertinent part: "Any person . . . who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him or her to escape onto any public or private property . . . is liable for both of the following: (1) The cost of investigating and making any reports with respect to the fire. (2) The costs relating to accounting for that fire and the collection of any funds pursuant to Section 13009, including, but not limited to, the administrative costs of operating a fire suppression cost recovery program . . . . The liability constitutes a debt of that person and is collectible . . . in the same manner as in the case of an obligation under a contract, expressed or implied."

1. The Plain Language of the Statutes

The plain language of sections 13009 and 13009.1 imposes liability only on those who *set* a fire, *allow* a fire to be set, or *allow* a fire he/she/it *kindled* or *attended* to escape. Nothing in the statutory language suggests that liability can be extended to those persons who are not specifically identified, whether through tort doctrines or otherwise. Also supporting this conclusion, section 13009 twice utilizes the words "that person" when delineating who suppression costs may be "charged against," thereby indicating that the only person who can be held liable under the statute is the one who actually *sets* a fire, *allows* a fire to be set, or *allows* a fire he/she/it kindles to escape. Additionally, sections 13009 and 13009.1 give rise to contract or quasi-contract recovery, neither of which extend liability through tort and vicarious liability principles.[4]

2. The Statutory Scheme

The statutory scheme governing the recovery of fire damages also suggests that liability cannot be extended to Sierra Pacific, Beaty or Landowner Defendants. See generally *Graphic Arts Mut. Ins. Co. v. Time Travel Intern., Inc.* (2005) 126 Cal.App.4th 405, 415-416 (explaining that the words of a statute cannot be read "in isolation," but rather must be considered "in the light of the statutory scheme"). The fire liability laws, some of which apply to private property owners, and others which apply to public agencies, appear in Health and Safety Code sections 13000 through 13011. With only ***one*** exception, these statutes impose liability only on those who participate in the prohibited conduct. The ***single*** exception established by the California Legislature lies in section 13007, which applies only to landowners whose property is damaged by the fire, and provides the following:

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[4] Cal Fire suggest that *Globe Indem. Co. v. State of California* (1974) 43 Cal.App3d 745, 749, and *People v. Zegras* (1946) 29 Cal.2d 67, stand for the proposition that section 13009 does not sound in contract, but rather in tort. In *Zegras*, the court found that the amount recoverable under section 13009 is fixed regardless of whether one classifies the action as one sounding in contract or tort. 29 Cal.2d 68-69. Whether section 13009 sounded in contract or tort was immaterial to the issue presented in that case. *Ibid.* ("It is immaterial, therefore, whether the statutory obligation for the expense of extinguishing a fire is classified as one sounding in tort, or a quasi contract, or a liability in the nature of a penalty; the Legislature has fixed the amount that may be recovered under specified conditions and made applicable the procedure for suit upon a contract.") Here, the Court need not reach the issue if the statutes sound in contract or tort; the Court observes, however, that the use of quasi-contractual recovery suggests an intent by the Legislature not to extend liability to those who are not specifically identified in the statutes.

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

(emphasis added). Importantly, sections 13009 and 13009.1 are nearly identical to section 13007, except that they do not contain the "through another" language. Additionally, unlike section 13007, sections 13009 and 13009.1 include references to "that person" whom fire suppression costs can be "charged against." These important differences reveal that only within section 13007 did the Legislature extend liability to those who did not engage in the prohibited conduct, but who can be found legally liable for the conduct of another. It is hornbook law that where the Legislature has carefully employed a term in one place and excluded it in another, it should not be implied where excluded. See *Wells Fargo Bank v. Superior Court* (1991) 53 Cal.3d 1082, 1096-97 (citing *Russello v. United States* (1983) 464 U.S. 16, 23).

3. Legislative History

Both parties contend that the legislative history supports their respective readings of the statutes. Cal Fire argues that the legislative history of sections 13007 and 13009 suggests that these statutes should be read broadly so as to expand liability to Sierra Pacific, Beaty and Landowner Defendants. Specifically, Cal Fire references an amendment to section 13009 that expanded the circumstances under which the State could recover its fire suppression costs. Prior to this amendment, the State could not recover its costs if the fire remained contained on private property, and after the amendment, it could. Nothing about this amendment suggests that the Legislature intended to also expand liability to other parties.

Defendants contend the legislative history supports a narrow reading of the statutes with respect to those who can be held responsible for fire suppression costs. Defendants observe that, at one time, Health and Safety Code section 13009 included language that allowed the State to recover its fire suppression costs for those fires encompassed within the predecessor statute to Health and Safety Code section 13007. At that time, just as today, the predecessor statute to section 13007 included the "through another" language. Consequently, those who personally or through another set a fire, allowed a fire to be set, or allowed a fire he kindled or attended to escape could be held liable for fires suppression expenses.

The Legislature subsequently amended these statutes. Post-amendment, the Legislature kept the "through another" language in section 13007, but removed the language from section 13009 that allowed the State to recover fire suppression costs for fires encompassed within section 13007. Instead, the Legislature took care to explain that liability for fire suppression costs under section 13009 would instead be borne by "[a]ny person (1) who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him or her to escape onto any public or private property . . . ." Missing, of course, is the "through another" language still remaining in section 13007. The post-amendment 13009 language reveals that the Legislature *narrowed* the types of persons who can be held responsible for fire suppression costs, not broadened it as Cal Fire claims.

4. Public Policy and Reasonableness of Defendants' Interpretation

While section 13007 of the Health and Safety Code provides private landowners with a mechanism to recover damages from a person who "personally or through another" sets or allows a fire, the Code does not provide the same broad scope of recovery to state agencies seeking to recover their fire suppression costs. The distinction drawn by the Legislature between private parties with property damages, and public agencies with fire suppression costs, makes sense in light of the public policies underlying sections 13009 and 13009.1.

"Where emergency services are provided by the government and the costs are spread by taxes, the tortfeasor does not anticipate a demand for reimbursement." *Abalone Alliance*, *supra*, 178 Cal.App.3d at 859 (citation omitted). As one court explained: "where a generally fair system for spreading the costs of accidents is already in effect—as it is here through assessing taxpayers the expense of emergency services—we do not find the argument for judicial adjustment of liabilities to be compelling . . . . especially . . . where a governmental entity is the injured party." *Ibid.* "It is critically important to recognize that the government's decision to provide tax-supported services is a legislative policy determination. It is not the place of the courts to modify such decisions. Furthermore, it is within the power of the government to protect itself from extraordinary emergency expenses by passing statutes or regulations that permit recovery from negligent parties." *Ibid.* "Accordingly, 'in the absence of a statute expressly authorizing recovery of public expenditures (i.e., police, fire and other emergency services), 'the cost of public services for protection from fire or safety hazards is to be borne by the public as a whole, not assessed against the tortfeasor whose negligence creates the need for the service.'" *Shpegel-Dimsey, supra,* 198 Cal.App.3d at 1018 (citing *Abalone Alliance, supra,* 178 Cal.App.3d at 859). For this reason, the State "can ***never sue in tort*** in its political or governmental capacity" to collect fire suppression costs. *Ibid.* (emphasis added).

Private litigants, however, can sue in tort. And importantly, unlike State agencies, private litigants do not receive taxpayer money to redress their property damages. For that reason, it makes sense that private property owners would have broader based recovery than State agencies. In other words, the statutory scheme is consistent with the notion that the State has already accepted firefighting as an emergency expense, which will generally be borne by the taxpayers, but that private parties do not have the same type of taxpayer funding to fall back on.

C. Defendants Did Not Negligently Set, Allow a Fire to Be Set, or Allow the Fire to Escape.

Because Health and Safety Code sections 13009 and 13009.1 do not extend liability, Cal Fire must allege – and ultimately prove – that each of the Defendants unlawfully or negligently engaged in one of the following acts delineated by the statutes: set a fire, allowed a fire to be set, or allowed a fire kindled or attended by him/her/it to escape onto public or private property. Cal Fire does not allege that Sierra Pacific, Beaty or the Landowner Defendants set the Moonlight Fire. Nor does Cal Fire contend that these Defendants kindled or attended the Moonlight Fire and subsequently allowed its escape.

Cal Fire suggests, however, that Sierra Pacific, Beaty and the Landowners can be held liable for a fire allegedly caused by Howell on the grounds that such Defendants "allowed the fire to be set." In support of this argument, Cal Fire cites *County of Ventura v. Southern California Edison Co.* (1948) 85 Cal.App.2d 529. In *Ventura*, the county sought to recover its fire suppression costs under the predecessor statute to section 13007, which contains the "through another" language that is absent from sections 13009 and 13009.1.[5] *Id.* at 531-32. The trial court found that the defendant utility company had negligently constructed and maintained telephone lines that caused the fire. *Id.* at 531. On appeal, the utility argued that its negligent construction and maintenance did not provide a basis for liability under former section 13007 because its negligence was "indirect" and not the consequence of an "affirmative act." *Id.* at 532. The court rejected this argument, finding that the utility company "allowed the fire to be set" because its "failure to construct and maintain its equipment was . . . the proximate cause of the [fire]." *Ibid.*

Ventura does not support the proposition suggested by Cal Fire. While *Ventura* supports the proposition that Howell could be held liable, even if Howell did not engage in the affirmative act of setting the fire and instead indirectly caused the fire to start by negligently maintaining its equipment, it does not support the proposition that liability can or should be extended to Sierra Pacific, Beaty, and/or the Landowners. Indeed, nothing in *Ventura* suggests that someone who had a contractual relationship with the utility company – like Sierra Pacific did with Howell – could be held liable for the affirmative or passive negligence of the utility company itself. And, in fact, had the *Ventura* court engaged in such an analysis, its holding would be inapplicable here because the statute at issue in *Ventura* imposed liability on those who act "through another." Because Heath and Safety Code sections 13009 and 13009.1 do not contain the "through another" language which modifies and informs the phrase "allows a fire to be set," Cal Fire's reliance on *Ventura* is unavailing with respect to Sierra Pacific, Beaty and the Landowner Defendants.

Cal Fire also cites *Travelers Indemnity Co. v. Titus* (1968) 265 Cal.App.2d 515, a negligence per se case, in which the court found that a landlord could be found contributory negligent for damages caused by a fire, even though he did not personally "strike the match," because he negligently installed and maintained the incinerator from which the fire originated. Like *Ventura, Travelers* merely indicates that Howell could be held liable if it negligently

[5] At the time *Ventura* was decided, the predecessor statute to section 13007 provided: "Any person who: (1) Personally or through another, and (2) Wilfully, negligently, or in violation of law, commits any of the following acts: (1) Sets fire to, (2) Allows fire to be set to, (3) Allows a fire kindled or attended by him to escape to the property, whether privately or publicly owned, of another, is liable to the owner of such property for the damages thereto caused by such fire." *Ventura, supra,* 85 Cal.App.2d at 531-32.

maintained its bulldozer and that such negligent maintenance caused the Moonlight Fire. *Travelers* does not, however, suggest that Sierra Pacific, Beaty, or Landowner Defendants, who did not own or maintain the bulldozer, can be held liable to the same extent as Howell. Moreover, had the *Travelers* court engaged in such an analysis, its holding would be inapplicable here because that case involved common law tort causes of action, to which theories of vicarious liability apply, not statutory claims under Health and Safety Code sections 13009 and 13009.1.

D. Cal Fire Cannot Graft Common Law Negligence Claims and Theories Into the Statutory Scheme.

Cal Fire contends that independent tort causes of action, such as negligent supervision and retention, as well as common law negligence doctrines such retained control and peculiar risk, can be grafted into its statutory cause of action under the Health and Safety Code. Such an approach, however, would circumvent the rule that Cal Fire cannot recover fire suppression costs through common law tort causes of action. See *Shpegel-Dimsey, supra,* 198 Cal.App.3d at 1018. Had the Legislature intended to allow Cal Fire to recoup fire suppression costs to the extent allowed by the common law, the Legislature could have easily done so. Instead, the Legislature delineated specific classes of persons who could be held liable for these tax-payer supported costs, none of which encompass Sierra Pacific, Beaty or the Landowner Defendants.

Moreover, allowing Cal Fire to graft common law tort claims such as negligent supervision, as well as vicarious tort liability theories, such as agency and peculiar risk, into Health and Safety Code sections 13009 and 13009.1 contradicts the plain language of the statutes, which only impose liability on the person who set the fire, allowed the fire to be set, or allowed a fire he/she/it kindled to escape. Also, such an approach would render the "through another" language in section 13007 meaningless. *See Committee for Responsible School Expansion v. Hermosa Beach City School Dist.* (2006) 142 Cal.App.4th 1178, 1189 ("Courts should interpret statutes . . . so as to give force and effect to every provision and not in a way which would render words or clauses nugatory, inoperative or meaningless."); *Graphic Arts Mut. Ins. Co. v. Time Travel Intern., Inc.* (2005) 126 Cal.App.4th 405, 415-416 ("An interpretation that renders related [statutory] provisions nugatory must be avoided"). Additionally, such a reading is at odds with controlling case law, which instructs that defendants cannot be held liable based on "some negligent conduct," but rather must somehow be responsible for setting or kindling the fire. See *Southern Pacific, supra,* 39 Cal.App.3d at 638 (holding that a jury instruction "was erroneous insofar as it may have suggested to the jury that it could find in favor of the State on the basis of 'some negligent conduct' on the part of defendant, without finding that defendants were responsible for setting or kindling the fire"). Cal Fire has not addressed this authority.

For these reasons, Cal Fire cannot graft common law tort claims and theories into a cause of action that is "creature of statute." *See Shpegel-Dimsey, supra,* 198 Cal.App.3d at 1018 ("It is well settled that "an action to recover fire suppression costs . . . is a creature of statute."). For that reason, its arguments that Sierra Pacific, Beaty and the Landowner Defendants are liable on various common law theories is without merit.[6]

E. <u>*Leslie Salt* Does Not Authorize Cal Fire to Recover Its Suppression Costs from Sierra Pacific, Beaty and Landowner Defendants.</u>

Finally, Cal Fire relies on *Leslie Salt Co. v. San Francisco Bay Conservation and Development Commission* (1984) 153 Cal.App.3d 605, where the court stretched for an admittedly broad interpretation of statutory language lest the entire purpose of the statutory scheme be frustrated. Although the statutory language at issue *Leslie Salt* had some similarities to the language at issue here, the context and relevant considerations that led to the court's are quite different.

As issue in *Leslie Salt* was a provision of the McAteer-Petris Act (Gov. Code section 66600 *et seq.*), which created the San Francisco Bay Conservation and Development Commission ("BCDC") and charged it with comprehensively regulating development of the San Francisco Bay and shoreline. *Id.* at 616-17. The provision at issue provides that "[a]ny person who places fill . . . within the area of the commission's jurisdiction without securing a permit from the commission as required by this title is guilty of a misdemeanor" and empowered the BCDC to

[6] For this reason, the cases Cal Fire cites regarding agency and other vicarious liability theories is inapposite.

issue cease and desist orders to such persons. *Id.* at 612-13.

The issue in the case was whether the BCDC could issue such an order to a landowner who had not itself placed fill on its land but who "passively countenance[d] the continued presence of such fill on his land." (*Id.* at 618.) The landowner argued that the plain meaning of "any person who . . . places fill" did not include itself, an entity that undisputedly did not place the fill, and thus that the BCDC had exceeded its authority. The court disagreed for two primary reasons. First, it noted that interpreting the regulation literally would "defeat the Legislature's central objective," by "materially impairing the BCDC's ability to prevent and remedy haphazard and detrimental filling of the Bay." *Id.* at 614, 617 ("In our view, BCDC's ability to effectively regulate filling of the Bay *requires* that its cease and desist power extend to landowners regardless whether they actually placed the fill or know its origin.") (emphasis added). In other words, toxic fill would remain in the Bay unless the BCDC could issue orders to innocent landowners. No such consideration exists here, where the only question is whether Cal Fire can recover fire-suppression costs from more than the party or parties that negligently start a fire or allow it to escape. Especially considering the background rule that fire suppression costs are not recoverable at all, there is no compelling need here such as the one that caused the *Leslie Salt* court to depart from the statute's literal meaning.

The *Leslie Salt* court's second reason to go beyond the literal meaning of the statute at issue was its recognition that background principles of nuisance law support imposing broad obligations on landowners to abate nuisances on their property, regardless of fault. *Id.* at 620. The background principle here, on the other hand, is that landowners generally are *not* liable for public agencies' fire-suppression costs (because fire-suppression is a public service financed through tax revenues). Indeed, as discussed elsewhere, the legislative history of sections 13009 and 13009.1 show that the Legislature intentionally narrowed the class of persons to which the quasi-contractual obligation to reimburse fire-fighting agencies might apply. The contrast between the wording of sections 13009 and 13009.1, on the one hand, and 13007, on the other, makes clear that this was very much the Legislature's intent – the Legislature well understood the difference between statutory liability imposed "through another" and the narrower potential liability under sections 13009 and 13009.1.

ORDER

The Court holds that Cal Fire cannot recover fire suppression and related costs pursuant to common law causes of action. The Court also holds that Cal Fire cannot recover its fire suppression and related costs against Defendants Sierra Pacific, Beaty and the Landowners under Health and Safety Code sections 13009 and 13009.1.

IT IS SO ORDERED

Dated: July 26, 2013

Leslie C Nichols

Honorable Leslie C. Nichols
Judge of the Superior Court