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Municipal Torts and Civil Rights Litigation Update

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Sacramento Television Stations, Inc. v. Superior Court of Placer County

111 Cal.App. 5th 984

Court of Appeal, Third District, California

Filed June 6, 2025

This is a CPRA writ of mandate case stemming from a request to the Roseville Police Department for police body camera footage of an officer involved shooting. The crux of the case is two-fold. First, whether the active investigation exemption applies; and second, how much footage are agencies required to produce to comply with Section 7923.625 of the CPRA as revised by AB 748.

As background, Roseville PD responded to a call of shots fired in a City park. When they arrived, they learned that CHP had attempted to serve a search warrant on a suspect and one of their officer had been shot by the suspect who was holding two civilians as hostage. Multiple Roseville officers fired shots, wounding the suspect, and the hostages, one of them, fatally. When asked for body camera and dashboard footage of the incident the Agency took a very narrow stance on what it was required to produce and provided only snippets of video showing the officers' discharging their firearms. Moreover, the agency argued that releasing additional footage would substantially interfere with an active criminal investigation and criminal court proceeding, namely, the suspect's criminal trial. The City proffered a declaration from the involved prosecutor stating concerns that release of the footage would create trauma for the victims and impinge upon the defendant's right to a fair trial.

Sac TV argued it was entitled to all recordings from the moment Roseville PD arrived on scene until the time that the suspect was apprehended and the scene was secured.

The superior court denied Sac TV's mandate petition finding the City had shown evidence that further disclosure would substantially interfere with the active investigation in the suspect's criminal case. While the Court acknowledged that AB 748's amendments to the CPRA required the disclosure of more footage than merely the seconds before and after the shooting, it did not rule on how broadly that disclosure would be because of the application of the active investigation exception. Sac TV appealed.

As an initial matter on appeal, the court determined that the mere showing of a pending criminal prosecution is insufficient for application of the active investigation exemption, and the prosecutor's declaration regarding concerns of victim trauma and a fair trial, without more were also insufficient. Because the court found that the active investigation exception did not apply, the court remanded the case to the trial court to review the footage in camera and determine how much additional footage needed to be released. The court provided guidance to the lower court which, essentially is dicta, but said that both Sac TV and the City were wrong in their interpretations because Sac TV's argument was for too much disclosure while the City's position would disclose too little. The Court said that the correct amount was whatever made the viewer able to fully, completely, and accurately comprehend the events captured. "Sufficient context preceding a peace officer's discharge of a firearm at a person is essential to understanding what occurred, just as sufficient context following the final shot is."

Significance: The amount of footage that agencies must disclose of critical incidents under AB 748 is the amount needed to provide sufficient context before and after the officer involved shooting to make it make sense.

RND Contractor's Inc. v. Superior Court of San Bernardino County

112 Cal.App.5th 697

Court of Appeal, Fourth District, California

Filed June 30, 2025

Issue presented is when a defendant moves for summary judgment, but the plaintiff does not oppose the motion, may another party oppose the motion?

Plaintiffs are the families of two men who were injured on a job site. They filed suit against various defendants including WRSE, and Balfour. Balfour filed a cross claim against RND. WRSE moved for summary judgment and plaintiffs filed a non-opposition, but RND and Balfour opposed arguing that WRSE was at least partially responsible and should not be out of the case. The trial court refused to consider RND and Balfour's oppositions finding they lacked standing because RND and Balfour had not filed cross-

claims against WRSE. The trial court granted WRSE's unopposed motion. RND filed a writ petition asking the court to vacate its order granting WRSE's motion and revisit the motion after considering RND's and Balfour's oppositions.

Federal district courts are divided on whether a defendant may oppose a codefendant's motion for summary judgment when the plaintiff does not oppose it and there is no cross-claim between defendants. Here, the court determined that the Supreme Court decision in *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826 was instructive. Aguilar, clarified California law regarding burden shifting on motions for summary judgment. In dicta, the Aguilar court broadly interpreted 437c(b)(2) to provide that any party may oppose a motion for summary judgment so long as that party is adverse to the moving party. While there is no definition of "adverse party" in the context of a summary judgment motion, there does exist a common thread in other contexts that parties are deemed adverse where their competing interests in the outcome of the litigation are at odds.

Here, defendants are all adverse to each other because they are all trying to escape liability by blaming someone else for Plaintiff's damages. Given the finger-pointing the defendants are all adverse to each other regardless of the presence or absence of cross-claims, and therefore, the oppositions should have been considered.

Significance: Adverse parties may oppose dispositive motions regardless of the existence or non-existence of cross-complaints.

Dessins LLC v. City of Sacramento

112 Cal.App.5th 996

Court of Appeal, Third District, California

Filed July 9, 2025

Issue presented is whether under Prop 218 a city may vote on a storm drainage fee it proposed on behalf of properties that it owns.

In 2022, the City of Sacramento proposed a new storm drainage fee to fund maintenance and improvements to its storm drainage system. The City's Department of Utilities conducted an election on the proposed fee and mailed ballots to each property owner who received storm drainage services and would be subject to the fee. The City owned 1% of the involved properties and authorized a vote in favor of the fee for its 2,007 properties. Ultimately, 22,178 votes were cast in favor of the fee and 20,229 were cast against the fee. Based on the results of the vote, the City adopted the fee and authorized

the creation of a new accounting fund. It is undisputed that had the City not voted, and it's 2,007 votes were taken out of the ballot count, the fee would not have passed.

Dessins, a property owner who voted against the fee, filed a petition for writ of mandate and complaint against the City seeking to invalidate the fee. Dessins argued that the City's votes should not be counted. The trial court determined that the City was entitled to vote and denied the petition. Dessins then appealed.

Challenges to the adoption of property-related fee increases subject to Prop 218 are properly brought through a writ of mandate with two key differences from a traditional writ of mandate. First, the agency has the burden of proving compliance and second, the trial court employs its independent judgment.

Before proposing or increasing any fees set forth in Prop 218 the agency is generally required to identify of the parcels upon which a fee or charge is imposed and provide notice to each record owner of each identified parcel. The voting provisions require a majority vote of the property owners of the property subject to the fee, or at the option of the agency, by two-thirds vote of the electorate residing in the affected area.

Dessins argues the City was not authorized to vote because doing so subverted the purpose of Prop 218. Court of Appeal determined that because the City is a property owner subject to the fee it was authorized to vote on the fee.

Significance: Public entities can vote on Prop 218 fee increases where it owns property that is subject to the fee.

Tindall v. County of Nevada

112 Cal.App.5th 78

Court of Appeal, Third District, California

Filed May 30, 2025

Appeal from summary judgment dealing with the weather immunity articulated in Government Code Section 831.

Appellant, Rhonna Tindall slipped on a layer of ice as she walked to her car in the parking lot of the County jail where she worked. The parking lot is owned and maintained by the County of Nevada. On the date of the incident Tindall arrived at work in the morning and there was fresh snow on the ground and in the parking lot. She went for a walk at lunch and noticed that the snow was starting to melt. Around 6 p.m., when Tindall left work, the sun had set and it was very cold. She ultimately slipped and fell on an ice patch injuring her knee which required surgery. Tindall sued the County alleging the icy parking lot was a

dangerous condition of public property. The County filed a motion for summary judgment on several grounds including that it was immune under Government Code section 831 – weather immunity. The trial court granted the County’s motion and Tindall appealed.

Section 831 provides immunity to public entities and its employees for an injury caused by the effect on the use of streets and highways of weather conditions as such. This includes the effect on the use of streets and highways of fog, wind, ice or snow, but not physical damage to or deterioration of the streets and highways resulting from such conditions. The section also does not include liability for injuries proximately caused by such effect if it would not be reasonably apparent or anticipated by a person exercising due care. Appellant argued that section 831 does not apply to parking lots per se and does not apply where a combination of weather and other factors causes injury.

The appellate court agreed with the trial court that the parking lot where Tindall fell is a “street” for purposes of section 831 because Vehicle Code section 590 defines the word “street” as “a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel.” Moreover, at oral argument, Tindall did not dispute that the ice she slipped on was an effect of weather conditions. Therefore, the appellate court affirmed summary judgment.

Significance: Don’t forget about the weather immunity! It applies to parking lots.

Maksimow v. City of South Lake Tahoe

106 Cal.App.5th 514

Court of Appeal, Third District, California

Filed November 4, 2024

This case involves the same set of facts as in Tindall but has a different analysis largely because the parties did not raise the weather immunity. Here, Plaintiff slipped and fell on a patch of ice in a public parking lot in the City of South Lake Tahoe. She sued alleging that the ice patch was a dangerous condition of public property. The City moved for summary judgment on the basis of lack of actual and constructive notice. The trial court granted the City’s motion and the Plaintiff appealed, arguing that the motion should have been denied because there was a factual question for the jury as to actual and constructive notice.

As to actual notice, the court was not persuaded with appellant’s argument that because the City knew that it was snowing, and that given the appropriate conditions snow can turn to ice, which may be hazardous to pedestrians, it had actual notice of the dangerous condition. Relying on the buried coals at the beach case, *State of California v.*

Superior Court (Rodenhuis) (1968) 263 Cal.App.2d 396, the court held that actual notice requires knowledge of the particular danger in question rather than mere general knowledge of a condition that has a potential for harm. In the same way that it was insufficient to show actual knowledge by showing that the state employees knew that beachgoers sometimes buried coal in the sand, so too is it insufficient to show that the South Lake Tahoe City employees knew it was snowing and that snow can turn to ice.

As to constructive notice, appellant argued that there was a triable issue of fact as to whether the ice patch existed for a sufficient length of time to permit the City to discover and remedy it. On appeal, the court considered that for constructive notice to be imputed the condition must have existed for a sufficient length of time in an obvious nature. The requirement of obviousness, coupled with the requirement of the particularization means that the particular condition needs to have existed in an obvious nature for the requisite period of time. With that framework, and the observation that ice patches are transitory in nature, the court looked to other cases with transitory conditions. In *Kotronakis v. City and County of San Francisco* (1961) 192 Cal.App.2d 624, plaintiff slipped and fell in a puddle of vomit on the sidewalk in an area known as “skid road.” The evidence showed that vomit was a frequent occurrence on the sidewalks in the area but there was a total lack of evidence that the vomit that plaintiff slipped in had existed for any length of time longer than overnight. The *Kotronakis* court refused to impute constructive notice on the City explaining that “it would carry the doctrine of constructive notice too far.” With respect to the ice patch, the court stated, “we are concerned with transitory conditions of public property” and like hot coals, and vomit, “the ice patch could have been present in the parking lot for 11 days or 11 hours.” Inviting a jury to simply guess as to how long the patch of ice existed is insufficient to establish a triable issue of fact.

Significance: The notice element in Gov. Code section 835 requires notice of the particularized condition. Constructive notice requires that the particularized condition was obvious for a sufficient length of time.

Estate of Hernandez, et al. v. City of Los Angeles

139 F.4th 790

U.S. Court of Appeals, Ninth Circuit

Filed June 2, 2025

Officers McBride and Fuchigami responded to the scene of a motor vehicle collision when the officers were advised by dispatch that a male suspect in one of the vehicles was armed with a knife. As the officers approached the collision, several bystanders informed the officer that the armed suspect was still located inside a vehicle and was threatening to

kill himself. The officers responded by directing the bystanders to move back and McBride drew her firearm. McBride kept the weapon trained on the ground, and the officers called for additional units to respond. As the officers removed other victims of the collision from the scene, Officer McBride spotted the suspect rummaging in the middle console of his vehicle. McBride then requested that Fuchigami procure less lethal weapons, some of which were located within their patrol vehicle. As Fuchigami and McBride separated, McBride observed the suspect, later identified as Daniel Hernandez, exit the far side of his vehicle. McBride called out to Fuchigami, and subsequently, instructed Hernandez to show his hands.

Hernandez then rounded the corner of the vehicle and began approaching McBride, holding an unspecified object in his right hand. At the time of his approach, he was approximately 43 feet away from the officer, and as he continued his approach, McBride stepped back roughly 10 feet. McBride continued to instruct Hernandez to stop and disarm. Hernandez continued his approach regardless of the officer's warnings, and as he did, he raised his right hand making a box cutter visible to the officer. McBride continued to instruct Hernandez to disarm, but he did not relent. McBride then fired two rounds which took Hernandez to the ground. Hernandez then rolled to his side and began to push himself to his feet without yet advancing toward the officer, and McBride again fired a subsequent two rounds. Hernandez then fell into a supine position and subsequently rolled away from the officer onto his side when the officer fired a final volley of two rounds. Hernandez then ceased all movement and died shortly thereafter.

Following the incident, Hernandez's family brought suit against the City of Los Angeles, its police department, and Officer McBride on the grounds that Officer McBride's actions constituted a violation of Hernandez's constitutional and state law rights. Defendants moved for summary judgment which was granted by the District Court. In so doing, the District Court reasoned that McBride had not violated Hernandez's Fourth Amendment rights because her uses of force were reasonable under the circumstances. The district Court also opined that McBride was entitled to qualified immunity, and as no constitutional claims remained, dismissed Plaintiffs' claims under Monell as well. Plaintiff's appealed the decision, and the matter was heard in the Ninth Circuit by a three-judge panel. The Ninth Circuit reversed and remanded, in part, as to the reasonable nature of the third volley of rounds and their bearing on Plaintiffs' state law claims. However, following that decision, the Ninth Circuit elected to hear the matter en banc.

On rehearing, the Ninth Circuit examined whether Officer McBride's conduct was objectively reasonable. To assess the reasonableness of a particular use of force, the court balances the nature and quality of the intrusion on the individual's Fourth Amendment

interests' against the countervailing government interests at stake. Use of deadly force is the ultimate intrusion, and the court thus would examine whether the state interest was sufficient to justify the use of force.

The Supreme Court has provided three factors for determining the strength of the government's interest: "[1] the severity of the crime at issue, [2] whether the suspect poses an immediate threat to the safety of the officers or others, and [3] whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham v. Conner*, 490 U.S. at 386, 396 (1989). The "most important" of these factors is "whether the suspect posed an immediate threat to the safety of the officers or others." *Lal v. California*, 746 F.3d 1112, 1117 (9th Cir. 2014).

Here, the Court analyzed the reasonableness of each volley of lethal rounds and found that at the time McBride fired the first two volleys, Hernandez could have reasonably constituted an immediate threat. As for the initial volley of force, Hernandez continued to approach McBride while armed despite her commands to "drop the knife." While the Court indicated that McBride could have indeed continued to back away from Hernandez, it also highlighted that an officer is not required to avail themselves of the least intrusive means of responding to an exigent situation." *Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994). Similarly, the Court also dismissed Plaintiff's argument that McBride should have waited for less lethal devices as an officer is not required to " 'endanger their own lives by allowing [a suspect] to continue in his dangerous course of conduct' merely because he 'was intent on suicide by cop.' " *Lal*, 746 F.3d at 1117 (internal citations omitted).

As to the second volley, the Court found that a reasonable officer could have determined that Hernandez continued to pose a threat. In so holding, the court recognized that an officer is not required to cease fire against "a severe threat to public safety" until the threat has ended. *Plumhoff v. Rickard*, 572 U.S. 765, 777 (2014). Yet, an officer may not continue the use of lethal force where the initial round has clearly incapacitated the suspect. *Id.* Thus, where a suspect is on the ground, and appears wounded, a reasonable officer should reassess the situation prior to continuing to shoot. *Zion v. County of Orange*, 874 F.3d 1072, 1076 (9th Cir. 2017). As Hernandez continued to reorient himself in McBride's direction, attempted to get back to his feet, and remained armed despite McBride's commands, he was not yet incapacitated and continued to present an immediate threat. *Blanford v. Sacramento County*, 406 F.3d 1110, 1118 (9th Cir. 2005).

However, as to the third volley fired by McBride, the Court found that her actions could be unreasonable as he no longer posed an immediate threat. The Court highlighted the fact that at the time of the third volley, Hernandez had fallen to the ground remaining on his back and in the fetal position, only momentarily rolling to his side and away from

McBride. Accordingly, as Hernandez was armed solely with a “melee weapon” and it remained unclear whether he “would or even could get up from the ground to continue advancing,” McBride was obligated to reassess the situation and abstain from further uses of force unless Hernandez continued to pose an immediate threat. The Ninth Circuit further highlighted that McBride should not be entitled to qualified immunity for her actions as it was clearly established that the continued use of force against an incapacitated suspect violated the Fourth Amendment. As the District Court’s denial of Plaintiff’s state law claims was based on their denial of the Fourth Amendment claims, the Ninth Circuit reversed that ruling as well.

In sum, the Ninth Circuit clarified and reaffirmed prior precedent holding that a use of lethal force against a fallen suspect, armed only with a bladed weapon, was de facto unreasonable absent some indication that the suspect continued to present an immediate threat.

Significance: Where an officer encounters an armed but injured suspect, particularly one armed only with a bladed weapon, continued use of lethal force cannot be predicated on the suspect’s mere movement while on the ground. Instead, an officer must continually reassess the situation to determine if the suspect’s movements are either non-threatening, or if the suspect’s movements indicate an attempt to rise to their feet or otherwise continue their advance or flight.

Alves v. County of Riverside

135 F.4th 1161

U.S. Court of Appeals, Ninth Circuit

Filed April 29, 2025

Riverside County Deputies Keeney and Gomez responded to a call regarding an injured and unarmed man who appeared to be in the midst of a psychotic break and was causing self-injury. When the deputies encountered the suspect, later identified as Kevin Niedzialek, he was bleeding from a head wound and speaking incoherently. As they approached Niedzialek, he abruptly stood up and approached Deputy Keeney. At that time, Deputy Gomez deployed one cycle of her taser, taking Niedzialek down to the ground where Deputy Keeney attempted to restrain him. However, as Deputy Keeney re-approached, Niedzialek began to sit up. Deputy Keeney stepped back, and Deputy Gomez again deployed a taser cycle which took Niedzialek to the ground again. Once on the ground, the deputies struggled to restrain Niedzialek who was bucking, kicking, and flailing his legs. Deputies ultimately placed a knee on Niedzialek’s back and Deputy Gomez applied handcuffs.

Niedzialek continued to struggle against the handcuffs, and he informed the deputies that he “need[ed] help” and to “get [him] up;” however, the deputies continued to keep Niedzialek in a prone position, handcuffed with Deputy Keeney’s knee against his back. Momentarily, Niedzialek was able to roll to his left side, but he was ultimately re-positioned by the officers in the prone position, and Deputy Keeney again place a knee onto Niedzialek’s back with Deputy Gomez placing a hand against his center back to prevent Niedzialek from further movement. As the officers waited for the arrival of paramedics, Niedzialek ceased movement and began to make grunting and moaning sounds. Niedzialek was unresponsive when asked his name, and remained unresponsive for approximately four minutes before Deputy Gomez checked for a pulse. Niedzialek was then rolled to his back and a weak pulse was located, but CPR was not given until paramedics arrived on-scene approximately two minutes later. Although CPR was then administered, Niedzialek died the following day.

Niedzialek’s successor then brought suit against Riverside County, the Sheriff, Coroner, and Deputies Keeney and Gomez under both federal and state law. At trial, Plaintiff’s claims for excessive force under federal law, and battery and negligence under state law, were tried before a jury. The jury ultimately concluded that the deputies had not used excessive force against Niedzialek under either federal or state law, but that the deputies did breach a duty owed to Niedzialek by failing to monitor and/or reposition Niedzialek once restrained. Defendants then sought judgment as a matter of law on the grounds that the mixed verdict was inconsistent and argued that reasonableness was assessed under an identical standard as it pertains to both excessive force and negligence. The District Court denied Defendants motion and Defendants subsequently appealed.

Relying on California Supreme Court precedent *Hayes v. County of San Diego*, the Ninth Circuit affirmed that, under California law, the “reasonable standard or care” is separate, distinct, and broader than the “reasonableness” standard pertaining to excessive force under the Fourth Amendment. *Hayes v. County of San Diego*, 57 Cal.4th 622, 639 (2013). Accordingly, the Ninth Circuit reiterated that it had repeatedly acknowledged that California negligence law was far broader than Fourth Amendment jurisprudence. *C.V. ex rel. Villegas v. City of Anaheim*, 823 F.3d 1252, 1257 n.6 (9th Cir. 2016); accord *Vos v. City of Newport Beach*, 892 F.3d 1024, 1037–38 (9th Cir. 2018); see also *Tabares v. City of Huntington Beach*, 988 F.3d 1119, 1126–1128 (9th Cir. 2021). The Ninth Circuit also rejected Defendants argument that *Hayes* and its progeny should be narrowly read to apply solely to pre-shooting tactics and decisions. In support of their rejection of the argument, the Court stated that *Hayes* itself clarified the distinction between California law’s broad consideration of the totality of the circumstances surrounding the incident as a whole, and

Fourth Amendment law which focuses more narrowly on the moments where force was used. *Hayes*, 57 Cal. 4th at 639.

While acknowledging that both bodies of law take into consideration a totality of the circumstances, the Court noted that, under California negligence law, a jury might consider whether officers acted in a manner consistent with their duty of due care during a use of force incident rather than focusing on the manner and context in which force or restraint was applied in that moment. *Grudt v. City of Los Angeles*, 2 Cal.3d 575, 585–88 (1970); *see also Tabares*, 988 F.3d at 1122. Accordingly, the Ninth Circuit found that the mixed jury verdict adequately reflected the nuances between California negligence law and Fourth Amendment jurisprudence, and was therefore reconcilable. In support of their contention, the Court noted that the jury had concluded that the uses of force were objectively reasonable under a Graham analysis regarding the totality of the circumstances officers faced at the moment force was applied.

Conversely, the jury had been able to conclude that the deputies' actions constituted negligence as they were instructed to contextualize the reasonableness of the officers restraint and force used in light of all facts known to the deputies leading up to the use of force or restraint and following its application once Niedzialek had ceased movement and respiration. As the evidence presented at trial by Plaintiffs could have caused a reasonable inference that the deputies had breached their duty of care to Niedzialek by not placing him in a recovery position, failing to check whether he was breathing and had a pulse, or applying pressure on his back when it was no longer necessary, the jury's verdict in favor of Plaintiff's negligence claim was reconcilable. The Ninth Circuit accordingly affirmed the District Court's denial of Defendants post-trial motion.

Significance: Although the standards under both the Fourth Amendment and California's negligence law call for an analysis of reasonableness in the context of the totality of the circumstances, the standards are separate and distinct from one another. California's negligence standard assesses the issue of police conduct far more broadly, analyzing not only the application of force and those moments just prior, but also the incident as a whole, even extending beyond the application of force itself.

Murphy v. City of Petaluma

106 Cal.App.5th 1263

Court of Appeal, First District, California

Filed November 25, 2024

Marites Murphy was a victim of a head-on vehicle collision to which Paramedics Jude Prokop and Shay Burke responded. At the time the paramedics arrived on-scene, both Murphy and the other motorist were out of their cars and ambulatory. Prokop approached Murphy and inquired as to her physical state, to which Murphy replied that she had been involved in the incident but was not hurt. Murphy further stated that she did not want medical treatment or assistance. Following Prokop's conversation with Murphy, Burke then approached her asking numerous questions about the incident, how it had occurred, and whether or not she required any medical assistance. Murphy informed Burke that she was not injured and reiterated that she did not want medical assistance. Burke then urged Murphy to continue speaking with him, asking her several additional questions about potential unseen injuries. Murphy stated in response that she had not suffered any impact to her head, did not lose consciousness, and was fine. Murphy had also not shown any signs or symptoms of any unseen injury at that time, neither did she show any signs of cognitive impairment. Per the Glasgow Coma Scale, Murphy was fully responsive and alert.

Despite Murphy's continued insistence that she did not require attention, Burke explained that Murphy may have injuries for which symptoms had not yet manifested; he also indicated that such injuries could prove life-threatening if left untreated. Burke then recommended medical transport and examination as a precautionary measure. Murphy stated she understood the risks, but declined. Burke then gave her signs and symptoms to keep watch for which could indicate such an injury was present. Following a completion of other duties at the scene, Prokop asked Burke to confirm that medical transport would not be completed for Murphy. Burke again approached Murphy and inquired if she had developed any additional symptoms or medical concerns. Murphy again indicated that she did not want medical assistance. Just before leaving the scene, Prokop requested final confirmation from Murphy that she did not want or need medical assistance, Murphy declined, and the paramedics left the scene.

Murphy subsequently suffered a stroke several hours following the incident, and she filed a claim alleging that the paramedics were negligent in their medical examination, evaluation, and treatment. Murphy further alleged that their failure to examine and record various biomarkers or transport her for evaluation were supportive of her claims. Defendants then moved for summary judgment which was granted on the grounds that neither Prokop nor Burke took any action which created a duty to perform a full assessment of Plaintiff's medical condition. Murphy appealed.

In analyzing the lower court's ruling, the appellate court noted that "It is well established there is no general duty to protect others from the conduct of third parties." (*Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 214.) The Court also noted that the "no-

duty-to-aid rule applies equally to emergency rescue personnel, including paramedics.” (*Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1185.) However, where a defendant’s takes affirmative steps to render aid and thereby increases the risk of harm, a duty can arise giving way to negligence liability. (See *Golick v. State of California* (2022) 82 Cal.App.5th 1127, 1143–1146.) Similarly, once undertaken, liability can flow where harm is suffered in reliance upon the affirmative assistance given. (*Greyhound Lines, Inc. v. Department of California Highway Patrol* (2013) 213 Cal.App.4th 1129, 1136.) Yet, the scope of these duties necessarily depends on the nature of the undertaking. (*Golick, supra*, 82 Cal.App.5 at 1146.) The harm which arises from any undertaking must be of the type that would not have otherwise arisen but for the defendant’s conduct. (*Id.* at 1147.)

The appellate court went on to affirm the lower court’s ruling on the grounds that neither Prokop nor Burke had done any more than offer assistance to Murphy – that is neither paramedic took affirmative steps on which Murphy could have relied, nor did their offers of medical treatment increase any harm to her. Instead, the stroke suffered by Murphy was just the type of harm which was likely to arise from the third-party vehicle collision, a fact of which she was informed multiple times by the paramedics on-scene. The Court rejected Murphy’s argument that the paramedics interacting with her in any capacity, even without providing medical care at all, gave rise to a duty. (*Cf Wright v. City of Los Angeles* (1990) 219 Cal.App.3d 318; *Zepeda v. City of Los Angeles* (1990) 223 Cal.App.3d 232; *Camp v. State of California* (2010) 184 Cal.App.4th 967.) As neither paramedic was permitted by Murphy to even begin to conduct a medical evaluation or examination, the Court held that Murphy’s claims and the facts of the case were inconsistent with the parameters of the negligent undertaking doctrine. Accordingly, the appellate court determined that, based on the undisputed facts of the case, the lower court had correctly ruled in favor of Defendants.

Significance: Where an individual does not appear injured, refuses medical treatment, and appears to have the capacity for such a refusal, a theory of negligent undertaking against emergency responders is only viable if some medical examination of the individual, however minor, is conducted.

Hubbard v. City of San Diego

139 F.4th 843

U.S. Court of Appeals, Ninth Circuit

Filed June 4, 2025

The City of San Diego enacted an ordinance which prohibited yoga instruction at shoreline parks and beaches where the instruction was given to four or more persons. Two

yoga instructors, Steven Hubbard and Amy Baack, challenged the City's ordinance on the grounds that it was a violation of the free speech provisions of the First Amendment both on its face, and as applied. The City's ordinance was enacted on the grounds that it attempted to limit commercial activity in the absence of City approval, or unless the activity was defined as "expressive" under the municipal code. Within the municipal code, teaching yoga was defined as a "non-expressive" activity. Both Hubbard and Baack were affected by the ordinance, with Hubbard receiving two citations for teaching and Baack being turned away from a park and informed that the City would not issue permits for yoga instruction.

The two teachers subsequently challenged the ordinance and sought a preliminary injunction which the District Court denied. In denying the injunction, the court reasoned that the teachers had failed to establish that teaching yoga was protected speech and thus had not demonstrated a likelihood of success on the merits. The District Court further determined that the ordinance was therefore content neutral, and did not specifically attempt to exclude yoga instruction, but was rather a valid time, place, and manner restriction. As the ordinance was not an outright ban on yoga instruction, but rather a restriction, the District Court deemed the ordinance constitutional. The teachers subsequently appealed to the Ninth Circuit which reversed the District Court's ruling.

In analyzing the relevant factors which pertained to the preliminary injunction, the Ninth Circuit focused heavily on the teachers' likelihood of success on the merits. *Meinecke v. City of Seattle*, 99 F.4th 514, 521 (9th Cir. 2024). The Court determined that, as a first step, teaching yoga was unequivocally protected speech under the First Amendment as it communicates a philosophy and information through expressive movements. *Bikram's Yoga Coll. of India, L.P. v. Evolution Yoga, LLC*, 803 F.3d 1032, 1034 (9th Cir. 2015). Liking yoga to vocational training, the Court quickly established that yoga instruction was protected under the First Amendment. *Pac. Coast Horseshoeing Sch., Inc. v. Kirchmeyer*, 961 F.3d 1062, 1069 (9th Cir. 2020). Similarly, the Court had no issue determining that the parks and spaces affected by the ordinance were traditionally places of public speech and assembly. *ACLU of Nev. v. City of Las Vegas*, 333 F.3d 1092, 1099 (9th Cir. 2003). The Court then turned to the communicative content that the ordinance sought to restrict, finding it content-based, and thus presumptively unconstitutional. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

Finding the ordinance presumptively unconstitutional, the Court then focused its analysis on whether the ordinance "further[ed] a compelling interest and [was] narrowly tailored to achieve that interest." *Id.* at 171. In determining that the ordinance failed strict scrutiny, the Court highlighted the City's lack of explanation as to how the ordinance

protected public safety or to the contrary how yoga instruction could pose a public harm or what consequences might result. Thus, even in the face of a compelling interest such as public safety, the City had failed to show that the ordinance was narrowly tailored to meet those interests. Further, the Court noted that the ordinance was “hopelessly underinclusive” in that it targeted yoga instruction for exclusion, but permitted similar activities such as Tai Chi or other types of physical instruction. *Id.* Finally, as the City failed to show how the ordinance and its prohibition on yoga instruction was the least restrictive means, the Court established that the ordinance failed under strict scrutiny, and that the teachers had made a showing of success on the merits of their as-applied challenge.

Having established a colorable claim under the First Amendment, the Court determined that Hubbard and Baack would suffer irreparable harm absent the preliminary injunction. The Court reasoned that “[i]t is axiomatic that ‘[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.’” *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 694 (9th Cir. 2023). Thus, finding that the balance of hardships tipped strongly in favor of Hubbard and Baack’s claim, the Ninth Circuit reversed the District Court’s denial of the preliminary injunction, ordering it issued on remand. *Am. Beverage Ass’n v. City & County of San Francisco*, 916 F.3d 749, 758 (9th Cir. 2019).

Significance: City ordinances which attempt to restrict or single out particular activities, even those which are not traditionally thought of as forms of speech, may be subject to heightened levels of scrutiny and constitutional review. Accordingly, interpreting “expressive activity” broadly and avoiding activity-specific prohibitions may be advisable when contemplating new ordinances to avoid First Amendment challenges.