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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

BENJAMIN DEVITT et al., Plaintiffs and Appellants, v. LOS ANGELES COUNTY DEPARTMENT OF ANIMAL CARE AND CONTROL, et al., Defendants and Respondents.	B270577 (Los Angeles County Super. Ct. No. BC568584)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mel Red Recana, Judge. Affirmed in part, reversed in part with instructions.

Davies Wegner Law Corp., William E. Wegner; The Levine Firm, Olesia Levine and Eric Levine; The Ehrlich Law Firm and Jeffrey I. Ehrlich for Plaintiffs and Appellants.

Mary C. Wickham, County Counsel, Jennifer A.D. Lehman, Assistant County and Diane C. Reagan, Deputy County Counsel; Carpenter, Rothans & Dumont, Justin Reade Sarno, Jill Williams for Defendants and Respondents.

INTRODUCTION

Pamela Devitt was fatally attacked by pit bull dogs in the Littlerock area of Los Angeles County in May 2013. The dogs' owner, Alex Jackson, was convicted of second-degree murder as a result of the attack. (See *People v. Jackson* (Apr. 18, 2016, B259906) [nonpub. opn.].) Pamela Devitt's family—husband Benjamin Devitt, son Tad Devitt, and daughter April Devitt[1] sued the Los Angeles County Department of Animal Care and Control (the Department), the County of Los Angeles, and Marcia Mayeda, director of the Department. Plaintiffs allege that although defendants knew about multiple attacks by the dogs, and knew the dogs were either unlicensed or strays, defendants failed to comply with the Los Angeles County Code (LACC) requiring unlicensed and stray dogs to be captured.

Defendants claim that as governmental entities, they cannot be held liable for failing to control the dogs. They point to Government Code section 815: "Except as otherwise provided by statute: [¶] [a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (Gov.Code § 815, subd.

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[1] Because the decedent and plaintiffs share a last name, we refer to them individually by their first names for clarity. No disrespect is intended.

(a).[2]) However, section 815.6 provides a statutory exception to the general rule of public entity immunity: "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." (§ 815.6.) The trial court held that defendants were immune from liability, and sustained defendants' demurrer. We affirm in part and reverse in part.

Plaintiffs assert that under the facts alleged in the operative complaint LACC section 10.12.090, stating that the director of the Department "shall capture and take into custody" all unlicensed dogs, stray dogs, or dogs "running at large," imposed a mandatory duty on defendants to capture the dogs that killed Pamela. We agree, and therefore reverse the court's judgment following demurrer as to plaintiffs' negligence, public nuisance, and wrongful death causes of action. We further hold that plaintiffs have alleged facts to support delayed discovery of their causes of action, but they failed to allege that Tad and April have complied with the Government Claims Act (§ 900, et seq.). We remand to allow plaintiffs to allege compliance with that statute.

FACTUAL AND PROCEDURAL BACKGROUND

A. First amended complaint

Benjamin filed the original complaint on January 5, 2015. All three plaintiffs filed a first amended complaint on July 21, 2015. The following facts are alleged in the first amended

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[2] All further statutory references are to the Government Code unless otherwise indicated.

complaint.[3] Because this case comes to us following a demurrer, we assume the facts alleged are true. (*Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 998.)

Pamela was mauled by a pack of dogs in Littlerock on May 9, 2013; she had up to 200 puncture wounds and died of blood loss on the way to the hospital. Before Pamela's death, defendants received several complaints about attacks by a pack of dogs in the area where Pamela was attacked. In June 2005 and January 2006, the Department received complaints that a pack of pit bulls had escaped from the property of Alex Jackson, were running at large, and were attacking people, pets, and livestock. The Department did not impound the dogs, as required by LACC. The Department observed that Jackson had more than three dogs, which according to LACC required a kennel license, and the Department did not impound the dogs or enforce the licensing provisions.

In January 2013, the Department and Los Angeles Sheriff deputies responded to a complaint that at least eight dogs from Jackson's property attacked people and horses. Department reports from the call note that three large pit bulls were on the property; their confinement was deemed adequate. The Department failed to enforce licensing laws or impound the dogs.

In April 2013, the Department received another report that six to eight dogs from the Jackson property were running at large and attacked a horse and rider. Although the Department observed the horse's and rider's injuries, the Department did not enforce relevant laws or impound the dogs. Department reports

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[3] Because the first amended complaint is the operative complaint, we focus on the facts alleged in that version, not the original complaint.

state that a citation for unlicensed dogs was issued, but "Alex Jackson called in response to a posted notice and stated that he does not own any animals. Dogs seen on the property are local strays." The Department did not impound the dogs.

The Department also received complaints about the dogs to which they never responded. "Concerned employees" from the Department shelter in Lancaster complained in writing and in person to Department management, Mayeda, and the Board of Supervisors regarding the Department's failures to "enforce proper processes and procedures that would have resulted in the dogs being impounded, and to properly respond to complaints from the public over several months seeking protection from dogs running at large from the Jackson property and attacking people and livestock in the Little Rock [*sic*] area." The Department still did not impound the dogs.

At Jackson's trial, evidence was presented that seven other altercations involving the dogs were reported to defendants in the 18 months preceding Pamela's death. Defendants knew the dogs were unlicensed or strays, and did not impound them. Jackson was convicted of the second-degree murder of Pamela.

The complaint alleges that under LACC section 10.12.090, defendants had a mandatory duty to impound the dogs. LACC section 10.12.090, as written at the time of Pamela's death, stated that the director of the Department "shall capture and take into custody" "[a]ll unlicensed dogs," "[d]ogs and other animals running at large," "[s]ick, injured, stray, unwanted or abandoned animals," and "[d]ogs which are unvaccinated." Plaintiffs allege that despite this mandatory duty, and even though defendants knew the dogs were dangerous, defendants failed to impound the dogs.

Plaintiffs also allege delayed discovery of defendants' wrongdoing. At a Board of Supervisors public meeting in May 2013, Mayeda stated that no dogs were seen on the Jackson property when the Department responded to prior complaints. Plaintiffs allege that in May 2014, a whistleblower employee informed plaintiffs that defendants had prior knowledge about the dogs on the Jackson property, despite defendants' contentions that there was nothing they could have done to prevent Pamela's death. Plaintiffs also learned that defendants knew of the risk the dogs posed to the public, and despite being informed by Jackson that the dogs were unlicensed strays, did not impound the dogs. Also in May 2014, plaintiffs "learned that Defendants knew that certain Lancaster [Department] employees were often under the influence of alcohol and ingesting illegal substances while on the job and driving County vehicles under the influence."

The complaint alleges that Benjamin, Pamela's husband, filed a claim for damages on June 19, 2014, which was denied. Benjamin filed a complaint in Los Angeles Superior Court on January 5, 2015. The first amended complaint includes Pamela's children, Tad and April, as plaintiffs. It alleges that the complaint was timely, and that if it could be considered untimely, any late filing was a result of defendants' deception about their role in events leading to Pamela's death and plaintiffs' delayed discovery of the truth. The first amended complaint also notes that Tad had been serving in the United States Army until April 2015, and therefore the statute of limitations was stayed as to him pursuant to 50 U.S.C. § 3936.

In their first cause of action for negligence, plaintiffs allege that under section 10.12.090 defendants had a mandatory duty to

impound all stray dogs, unlicensed dogs, and dogs running at large. Defendants knew the dogs from the Jackson property were stray, unlicensed, and/or running at large, but they did not impound the dogs.

In the second cause of action for fraudulent deceit, plaintiffs allege that defendants made affirmative misrepresentations about the dogs. Although defendants received numerous complaints about the dogs, and Jackson himself told defendants that the dogs were strays, defendants misrepresented their knowledge following Pamela's death. Some of the alleged deceptive practices include defendants entering updates in their complaint records after Pamela's death "to make it appear that Defendants followed up on complaints about the unlicensed pit bulls running at large." Mayeda punished employees who spoke out about problems at the Department by write-ups, suspensions, termination, harassment, or reassigning employees to "freeway therapy"—locations remote from the employee's home. Mayeda told the Board of Supervisors that there had been two complaints about the dogs from Jackson's property before Pamela's death, when in fact there had been at least seven complaints, not including "no timed" calls—calls that were closed out without investigation. The County failed to adequately supervise the Department or Mayeda. Mayeda misrepresented to the Board of Supervisors that the law as written at the time of Pamela's death did not allow the Department to impound the dogs. Plaintiffs relied on defendants' statements as true and did not file a claim, and only learned of the cover-ups relating to the dogs in May 2014.

Plaintiffs' third cause of action for negligent misrepresentation alleges that defendants concealed facts about

Jackson's dogs and defendants' knowledge from plaintiffs. Plaintiffs allege they relied on the representations and delayed filing a claim as a result.

In their fourth cause of action for public nuisance, plaintiffs allege that despite multiple complaints, defendants failed to protect the public from the unlicensed Jackson property dogs that were running at large. Defendants also failed to cite Jackson for keeping eight dogs, which was in excess of the three-dog limit, and for finding the enclosure "adequate" despite multiple reports that the dogs were escaping, running at large, and attacking people and livestock. Department Officer DiBene, who was charged with investigating Jackson, was a long-time friend of Jackson. Department employees entered false information into the Department system, and were drinking and ingesting drugs on the job. Mayeda misrepresented the law and the Department's knowledge to the Board of Supervisors. As a result "of Defendants' conduct constituting public nuisance, Plaintiffs and the community of Littlerock . . . suffered severe and serious damages" and were deprived of the quiet enjoyment of their property.

In their fifth cause of action for wrongful death, plaintiffs allege defendants were liable for Pamela's death. Defendants had a mandatory duty to impound stray and unlicensed dogs, or dogs running at large, including the Jackson property dogs.

B. Demurrer

Defendants demurred to plaintiffs' first amended complaint. Defendants argued that they were immune from liability under section 815. They also argued that the exception in section 815.6 did not apply because LACC section 10.12.090 did not impose a mandatory duty. Defendants contended they

were immune from liability under sections 818.2 and 821 (immunity for failing to enforce laws), and sections 818.8 and 822.2 (immunity from fraud and misrepresentation). Defendants also argued that they could not be held liable for failing to inspect the Jackson property (§§ 818.6, 821.4), or for any discretionary actions they took or failed to take. (§ 820.2.) Defendants further asserted that they could not be held liable for negligent misrepresentation or public nuisance.

Defendants also asserted that the court lacked jurisdiction because plaintiffs failed to comply with the Government Claims Act and the statute of limitations. They argued that plaintiffs' causes of action accrued on the date of Pamela's death, May 9, 2013, and plaintiffs were required to file a claim for damages within six months. Defendants argued that the delayed discovery doctrine should not be applied because plaintiffs failed to allege that they had been reasonably diligent in pursuing their claims. April and Tad's claims were also barred because they did not join the lawsuit as plaintiffs until the first amended complaint was filed on July 21, 2015.

Plaintiffs opposed the demurrer, asserting that their allegations focused on a mandatory duty, not a discretionary act. Jackson told the Department the dogs were strays 27 days before they killed Pamela. Because defendants had a mandatory, ministerial duty to capture stray dogs and take them into custody, there was nothing discretionary about defendants' failure to do so. Plaintiffs pointed out that they did *not* allege that defendants should have made a discretionary determination that the dogs were "dangerous" under the provisions of the LACC. They argued that the various governmental immunity statutes defendants asserted did not apply. Plaintiffs also

asserted that they had complied with the Government Claims Act, and that defendants were estopped from asserting timeliness arguments and the statute of limitations because defendants' acts prevented or deterred plaintiffs from filing their claims.

Plaintiffs also filed a request for judicial notice. They asked the court to take notice of a 2006 Los Angeles County Board of Supervisors meeting transcript, in which Mayeda advocated for a change to a different LACC ordinance by stating that unaltered stray dogs roaming the streets "are public safety hazards" that pose problems "such as dog bites and attacks." Plaintiffs also asked the court to judicially notice that shortly after Pamela's death in 2013, LACC section 10.12.090 was amended. The revision removed the phrase, "The director *shall* capture and take into custody," and replaced it with, "The director *is authorized to* capture and take into custody."[4]

C. Trial court's ruling

The trial court issued a tentative ruling that it later adopted as the final ruling. In it, the court discussed plaintiffs' and defendants' positions regarding the timeliness of plaintiffs' claims, and concluded, "As to April, the two-year statute of limitations expired. Thus, she is barred from pursuing any claims under the FAC." There is no ruling regarding the timeliness of Benjamin's or Tad's claims.

The court also found that governmental immunity barred liability for each of plaintiffs' causes of action. The court stated that LACC section "10.12.090 does not impose a mandatory duty

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[4] The parties agree that the statute in effect at the time of Pamela's death is relevant to the analysis on appeal. We therefore focus on that version, not the version as amended in 2013.

on defendant. As defendants argue, this section does not command any such specific acts or particularize any steps that need to be taken." The court also held that defendants were immune from any claims that they failed to enforce existing laws. The court held that defendants were also immune from liability for the causes of action alleging misrepresentation, deceit and public nuisance. The court therefore sustained the demurrer without leave to amend. The record does not include a ruling on plaintiffs' request for judicial notice.

The trial court entered a judgment of dismissal and plaintiffs timely appealed.

STANDARD OF REVIEW

"On review from an order sustaining a demurrer, 'we examine the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory, such facts being assumed true for this purpose. [Citations.]'" (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42.)

At oral argument on appeal, plaintiffs' counsel stated that plaintiffs are not challenging the court's ruling as to the causes of action for fraudulent deceit or negligent misrepresentation. We therefore consider the parties' arguments as they relate to plaintiffs' causes of action for negligence, public nuisance, and wrongful death.

DISCUSSION

A. Immunity under Government Code section 815.6

As noted above, a public entity is generally immune from liability under section 815. However, "[w]here a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury,

the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." (§ 815.6)

"Government Code section 815.6 has three elements that must be satisfied to impose public entity liability: (1) a mandatory duty was imposed on the public entity by an enactment; (2) the enactment was designed to protect against the particular kind of injury allegedly suffered; and (3) the breach of the mandatory statutory duty proximately caused the injury. . . . The first question always is whether there is liability for breach of a mandatory duty. [Citation.] If there is no liability, the issue of immunity never arises." (*B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 179 (*B.H.*); see also *State Dept. of State Hospitals v. Superior Court* (2015) 61 Cal.4th 339, 348 ["Thus, the government may be liable when (1) a mandatory duty is imposed by enactment, (2) the duty was designed to protect against the kind of injury allegedly suffered, and (3) breach of the duty proximately caused injury."].)

We examine each of these prongs below.

1. Mandatory duty

We initially consider whether defendants had a mandatory statutory duty to capture the dogs. "First and foremost, application of section 815.6 requires that the enactment at issue be *obligatory*, rather than merely discretionary or permissive, in its directions to the public entity; it must *require*, rather than merely authorize or permit, that a particular action be taken or not taken. [Citations.] It is not enough, moreover, that the public entity or officer have been under an obligation to perform a function if the function itself involves the exercise of discretion."

(*Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 498 (*Haggis*).)

At the time of Pamela's death, LACC section 10.12.090 stated,

"10.12.090 Capture and custody of animals required when.

"The director shall capture and take into custody:

"A. All unlicensed dogs;

* * *

"D. Dogs and other animals running at large contrary to the provisions of the Food and Agriculture Code or any other state statute or of this Division 1;

"E. Sick, injured, stray, unwanted, or abandoned animals;

"F. Dogs which are unvaccinated in violation of this Division 1. . . ."

"Whether a particular statute is intended to impose a mandatory duty, rather than a mere obligation to perform a discretionary function, is a question of statutory interpretation for the courts." (*Creason v. Department of Health Services* (1998) 18 Cal.4th 623, 631.) "As with all questions of statutory interpretation, our foremost task is to give effect to the Legislature's purpose. [Citation.] In doing so, we analyze the statute's text in its relevant context, as text so read tends to be the clearest, most cogent indicator of a specific provision's purpose in the larger statutory scheme. We interpret relevant terms in light of their ordinary meaning, while also taking account of any related provisions and the overall structure of the statutory scheme to determine what interpretation best advances the Legislature's underlying purpose." (*Los Angeles County Board of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 293.)

The County made clear that the word "shall" in the statute indicated a mandatory requirement. LACC section 10.08.220, also part of the Animal Control Ordinance, states, "'Shall' is mandatory and 'may' is permissive." This comports with "the usual rule that 'shall' expresses a mandatory requirement, while the use of 'may' would confer discretion or choice." (*Standard Pacific Corp. v. Superior Court* (2009) 176 Cal.App.4th 828, 833.; see also *Woodbury v. Brown-Dempsey* (2003) 108 Cal.App.4th 421, 433 ["Ordinarily, the word 'may' connotes a discretionary or permissive act; the word 'shall' connotes a mandatory or directory duty."]; *Ovadia v. Abdullah* (1994) 24 Cal.App.4th 1100, 1109 ["The word 'shall' expresses a mandatory intent unless the legislative history of the statute where it occurs shows otherwise."].)

The plain language of LACC section 10.12.090 therefore indicates that the Department had a mandatory duty to "capture and take into custody" "[a]ll unlicensed dogs," "[d]ogs . . . running at large," and "stray . . . animals." (LACC § 10.12.090, subds. (A), (D), (E).)

Defendants disagree. They assert that "[e]ven if mandatory language appears in the statute creating a duty, the duty is discretionary if the State must exercise significant discretion to perform the duty." (*Sonoma AG Art, LLC v. Department of Food and Agriculture* (2004) 125 Cal.App.4th 122, 127.) They argue that our colleagues' decision in *County of Los Angeles v. Superior Court (Faten)* (2012) 209 Cal.App.4th 543 (*Faten*) is fatal to plaintiffs' argument, because in that case, "Division 8 of the Second Appellate District held that LACC section 10.12.090 does not impose a mandatory duty on the County of Los Angeles." This argument misrepresents the holding of *Faten*.

In *Faten*, three brothers were walking home from school when two pit bulls jumped over a fence and attacked one of them, Kameron, causing serious injuries. (*Faten, supra*, 209 Cal.App.4th at p. 547.) The brothers sued the County of Los Angeles for negligence, alleging that the County had received numerous complaints about the dogs, but "failed to capture and take the pit bulls into custody pursuant to [LACC], § 10.12.090, knowing that they posed an immediate threat to public safety." (*Ibid.*) The County moved for summary judgment, the trial court denied the motion, and the County filed a writ petition challenging the ruling.

On appeal, Division Eight of this court focused on two different LACC sections read in conjunction: 10.12.090C and 10.40.010W. (*Faten, supra*, 209 Cal.App.4th at p. 550.) LACC section 10.12.090C, a different subdivision of the statute at issue in this case, stated that the director shall capture and take into custody "[a]ny animal being kept or maintained contrary to the provisions of this Division 1, the Animal Control Ordinance, or any other ordinance or other state statute." (*Id.* at p. 547.) LACC section 10.40.010W stated, "No animal shall be allowed to constitute or cause a hazard, or be a menace to the health, peace or safety of the community." (*Ibid.*) The court said, "In this case, LACC sections 10.12.090C and 10.40.010W may be read together as requiring the County to capture any animal that 'constitute[s] or cause[s] a *hazard*, or [is] a *menace to the health, peace or safety of the community*.' (Italics added.) However, what constitutes a 'hazard' or a 'menace to the health, peace or safety of the community' is an inherently subjective question which requires the exercise of considerable discretion based on consideration of a host of competing factors. [Citations.] It involves 'debatable

issues over whether the steps taken by the entity adequately fulfilled its obligation.' [Citation.] The LACC sections therefore did not impose a mandatory duty on the County to capture the pit bulls in question before they attacked Kameron." (*Id*. at p. 550.)

Faten, therefore, did not consider whether LACC section 10.12.090, subdivisions A, D, or E imposed a mandatory duty relating to capturing unlicensed dogs, stray dogs, or dogs running at large, as plaintiffs allege here. Instead, *Faten* considered if a determination about whether a dog constituted a hazard or a menace was inherently subjective. Defendants argue that as in *Faten*, "determinations regarding the status of the dog required considerable discretion." Whether a dog is "sick" or "unwanted," defendants argue, is not an objective determination, and because it requires discretion LACC section 10.12.090 cannot impose a mandatory duty.

Plaintiffs counter that there was no discretionary determination to be made in this case. The Department received reports that the dogs were running at large, it cited Jackson for having unlicensed dogs, and Jackson responded that the dogs were strays. The dogs therefore fell within at least one of several categories of dogs that "shall" be impounded, and there was no discretionary action necessary.

Plaintiffs' position is supported by *Haggis, supra*, 22 Cal.4th 490. In that case, the City of Los Angeles found that a landslide destabilized a property on a coastal bluff in November 1966. (*Id*. at p. 496.) Pursuant to its municipal code, the City issued a notice to the owner of the property, directing the owner to vacate the property and perform stabilization work. (*Ibid*.) Although the municipal code also mandated that the City record a certificate of substandard condition with the county recorder,

the City failed to do so. (*Ibid.*) A similar series of events occurred in March 1970, but again the City failed to record a certificate of substandard condition. (*Ibid.*) In the following decade, the owner received multiple permits to build new structures and additions on the property. (*Id.* at pp. 496-497.) The plaintiff alleged that he purchased the property in 1991, and "[b]ecause the City had never recorded a certificate of substandard condition or required the previous owners to record affidavits of awareness of slide conditions before issuing building permits in 1970, 1971, 1973, or 1977, plaintiff and his agents did not know the property was in an active landslide area or that the instability caused by landslides had never been corrected." (*Id.* at p. 497.) The 1994 Northridge earthquake, "acting on the unstabilized condition of the property, caused massive landslides, severely damaging plaintiff's house and destroying the property's value." (*Ibid.*)

The City demurred, arguing in part that the municipal code did not create a mandatory duty that could serve as the basis for liability under section 815.6. (*Haggis, supra*, 22 Cal.4th at p. 497.) The trial court sustained the demurrer and the Court of Appeal affirmed. (*Ibid.*) The Supreme Court considered whether the City's duty to file a certificate of substandard condition was a mandatory duty required by the code, or whether it was discretionary. The Court held, "[T]he determinations whether a property is unstable, and what conditions make it so and thus must be remedied, rest, under the ordinance, with the judgment and discretion of the superintendent of building or his or her staff. But once these determinations have been made—as they allegedly were in this case in 1966 and 1970—the ordinance does not contemplate any further discretionary decision as to whether

to record the certificate of substandard condition; rather, the ordinance commands that such a certificate be recorded when the owner is given notice of the substandard condition. In this respect . . . Municipal Code section 91.0308(d) creates a mandatory duty." (*Id*. at p. 502.)

The same analysis is applicable here. Even if there is some discretion inherent in determining whether a dog is in violation of the licensing laws, "running at large," or "stray," once that determination has been made there is no discretion as to what the Department must do under the section as written—it is required to capture the dog and take it into custody. Plaintiffs allege that defendants knew the dogs were stray, unlicensed, and running at large before Pamela was killed, and Department records reflected that the dogs were stray. Under the circumstances alleged, determining whether the dogs fell "into a defined category does not require the consideration of a host of potentially competing factors that is the hallmark of discretion." (*B.H., supra,* 62 Cal.4th at p. 181.) Therefore, under the circumstances alleged in the first amended complaint, and pursuant to the statute as it was written at the time of Pamela's death, the duty to take the dogs into custody was mandatory.

2. Designed to protect against the injury alleged

The second prong of the section 815.6 test is whether the enactment was "designed to protect against the risk of a particular kind of injury." (§ 815.6.) To meet this prong, "[t]he plaintiff must show the injury is '"one of the consequences which the [enacting body] sought to prevent through imposing the alleged mandatory duty."' [Citation.] Our inquiry in this regard goes to the legislative *purpose* of imposing the duty. That the enactment 'confers some benefit' on the class to which plaintiff

belongs is not enough; if the benefit is 'incidental' to the enactment's protective purpose, the enactment cannot serve as a predicate for liability under section 815.6." (*Haggis, supra*, 22 Cal.4th at p. 499.) "The question of whether an enactment is intended to impose a mandatory duty on a public entity to protect against a particular kind of injury is a question of law." (*Clausing v. San Francisco Unified School Dist.* (1990) 221 Cal.App.3d 1224, 1239.)

Defendants argue that LACC section 10.12.090 is "not designed to protect against the risk of mauling death." Instead, they claim this was simply a licensure statue, demonstrated by the "*de minimis* monetary penalty for maintaining unlicensed dogs and [because it] does not otherwise evidence an intent to prevent the public from physical harm." Any effect of the licensing statute on potential dog-bite victims is incidental.

Plaintiffs, on the other hand, argue that "[t]here can be no serious dispute that the enactment at issue in this case was intended to protect the public from being attacked by dogs." They point to testimony by Mayeda before the Board of Supervisors in 2006, when she was advocating for an ordinance requiring dogs to be spayed or neutered. She said, in part, "[W]e want to protect public safety by reducing the numbers of stray dogs on the streets." She also said that when unaltered dogs roam the streets, there "are public safety hazards that come along with this, such as dog bites and attacks."[5]

[5] In the trial court, plaintiffs sought judicial notice of the transcript of this meeting. There is no ruling on that request in the record. Plaintiffs have not sought judicial notice of the transcript on appeal. As Mayeda's comments relate to a statute not at issue in this case, they are not necessary, helpful, or

LACC section 10.12.090 does not include an explicitly stated purpose. When the plain meaning of the statutory text is insufficient to resolve the question of its interpretation, we may turn to rules of construction and other extrinsic aids, including the apparent object to be achieved, the legislative history, public policy, contemporaneous administrative construction, the evils to be remedied, and the statutory scheme of which the statute is a part. (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1008; *All Angels Preschool/Daycare v. County of Merced* (2011) 197 Cal.App.4th 394, 402-403.)

The apparent object to be achieved by LACC section 10.12.090 is to ensure the capture of dogs that do not meet certain criteria, and have those dogs sequestered. The requirement that stray dogs, unlicensed dogs, and dogs running at large be captured and taken into custody suggests that the purpose of the ordinance was to capture dogs that lacked responsible ownership, and contain them in a space away from the public. The removal of certain dogs from public areas was not an "incidental benefit resulting from a procedural licensure provision," as defendants argue. If that were the case, licensed dogs running at large, licensed sick dogs, or licensed injured dogs—all of which are subject to capture under LACC section 10.12.090—would not be included in the statute. Rather, the main thrust of LACC section 10.12.090 makes clear that dogs not meeting certain criteria are to be separated from the public and contained within a shelter. (See LACC § 10.12.100 ["The director shall place animals taken into custody in the county animal shelters or appropriate facilities."].)

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relevant to our analysis. (See *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748.)

The ordinance's history and statutory scheme suggest that the control of animals, not simply licensing, was a primary focus of the code section. An earlier version of LACC section 10.12.090 was enacted in 1946 as part of as "The Pound Ordinance," which "provid[ed] for the County Pound Department, County Poundmaster, for the licensing of dogs and for the regulation and impounding of dogs and other animals." (Former LACC Ordinance No. 4729.) Section 208 of the ordinance stated that "'Shall' is mandatory and 'may' is permissive." Section 302 of the ordinance stated that the "County Poundmaster shall capture and take into custody all" "[u]nlicensed dogs," "[d]ogs . . . running at large," and "[s]ick, injured, stray, unwanted, or abandoned animals." Animals taken into custody were to be placed "in the County Pound or in such shelters or pounds as shall be designated by the Board of Supervisors." (L.A. County Ord. No. 4729, § 304 (1946).)

The Pound Ordinance was amended in 1967 as "An ordinance providing for the Department of Animal Control, and for the licensing, impounding, and regulating the keeping, sale, and exhibition of animals." (Former LACC Ordinance No. 9454.) Section 101 of that ordinance stated, "This ordinance shall be known as, and may be cited and referred to as, 'The Animal Control Ordinance.'" Section 207 of that ordinance again stated that " 'Shall' is mandatory and 'may' is permissive." Section 302 of the ordinance is the predecessor to LACC section 10.12.090, and includes the language in effect at the time of Pamela's death.

The language of these enactments indicates that a primary purpose of the sections was to control animals within the County, by capturing and containing animals not in compliance—not simply to license dogs. The section does not explicitly state that

it is intended to protect the public from dog bites, but the longstanding mandatory requirement that dogs not in compliance with this section be taken into custody and maintained in animal shelters supports the conclusion that dogs without responsible ownership were to be separated from the public.

California public policy ascribes strict liability to owners of dogs that bite people: "The owner of any dog is liable for the damages suffered by any person who is bitten by the dog while in a public place or lawfully in a private place, including the property of the owner of the dog, regardless of the former viciousness of the dog or the owner's knowledge of such viciousness." (Civ. Code, § 3342, subd. (a).) This statute "is designed 'to prevent dogs from becoming a hazard to the community' [citation] by holding dog owners to such a standard of care, and assigning strict liability for its breach." (*Priebe v. Nelson* (2006) 39 Cal.4th 1112, 1120 (*Priebe*).) It can be inferred that dogs without owners—i.e. stray dogs—may also be a hazard to the community.

An exception to strict liability, the "veterinarian's rule," holds that veterinarians and those who work closely with dogs accept the risk that dogs may bite. It is an extension of the primary assumption of risk doctrine. (*Priebe, supra,* 39 Cal.4th at p. 1122.) "[O]ne public policy supportive of the veterinarian's rule is the common sense recognition that veterinarians, their trained assistants, and those in similarly situated professions (e.g., dog groomers, kennel technicians) are in the best position, *and usually the only position*, to take the necessary safety precautions and protective measures to avoid being bitten or otherwise injured by a dog left in their care and control." (*Id.* at p. 1130.) In extending the veterinarian's rule to kennel workers,

the Supreme Court pointed out that encouraging owners to kennel their dogs without risk of liability served the important purpose of protecting the public: "Encouraging the use of secure kennel boarding facilities in turn serves the salut[a]ry purpose behind the dog bite statute—that of protecting members of the public from harm or injury by dogs not properly under their owners' control and which they (the members of the public) themselves are in no position to control." (*Id.* at p. 1131.) Dogs running at large and stray dogs also present a risk of harm or injury because they are not under anyone's control.

Thus, there are strong public policy purposes inherent in the control of stray dogs or dogs running at large, and part of that policy is to protect the public from dogs that are insufficiently controlled by an owner. We therefore find that LACC section 10.12.090, as written at the time of Pamela's death, was designed to protect against the particular kind of injury Pamela suffered.

3. Proximate cause

The third prong of the section 815.6 test is whether the breach of the mandatory statutory duty proximately caused the injury. The parties do not dispute that plaintiffs adequately alleged facts supporting causation.

We therefore find that LACC section 10.12.090 created a mandatory duty and was designed to protect against the injury alleged. The demurrer should have been overruled.

B. Defendants' additional claims of immunity

Defendants argue that they are immune from liability under a variety of other statutes. While many of these statutes may provide affirmative defenses to particular allegations, none of them supports sustaining the demurrer.

Defendants assert that under sections 818.2 and 821,[6] they are immune from any liability for failing to enforce any laws such as dog licensing laws or the requirement that owners such as Jackson, who owned more than three dogs, must have a kennel license. However, "[t]he immunity afforded by Government Code sections 818.2 and 821 attaches only to discretionary functions." (*Nunn v. State of California* (1984) 35 Cal.3d 616, 622.) We have held that the duty to impound the dogs, under the circumstances alleged, was not discretionary. Immunity under these statutes therefore does not apply to defendants' failure to impound the dogs.

Defendants also assert that they are immune from any allegations that they failed to adequately inspect Jackson's premises under sections 818.6 and 821.4.[7] These sections address liability for failing to adequately inspect property for

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[6] Section 818.2 states, "A public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law." Section 821 states, "A public employee is not liable for an injury caused by his adoption of or failure to adopt an enactment or by his failure to enforce an enactment."

[7] Section 818.6 states, "A public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property . . . for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety." Section 821.4 states, "A public employee is not liable for injury caused by his failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property . . . for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety."

hazards. Defendants do not point to any cause of action that imposes liability solely on failure to inspect the Jackson property. "[A] demurrer cannot rightfully be sustained to part of a cause of action." (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1047.) Any immunity relating to allegations for failing to inspect Jackson's property therefore is not a valid basis for a demurrer.

Defendants also contend that Mayeda is immune from liability under section 820.2. That statute, titled "Discretionary acts," states, "Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." Because we have found that under the circumstances alleged the duty to capture the dogs was not discretionary, and the breach of that mandatory duty serves as the basis of plaintiffs' complaint, the immunity outlined in section 820.2 is not applicable.

Defendants also allege that they cannot be liable for failing to institute a proceeding under section 821.6 ("A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause.). As with the allegations of failure to inspect, defendants do not point to any cause of action based on "instituting or prosecuting any judicial or administrative proceeding." This asserted immunity therefore cannot serve as the basis for a demurrer.

C. Government Claims Act compliance

Defendants argue that all three plaintiffs failed to file timely claims under the Government Claims Act, and therefore their causes of action are barred. "Before suing a public entity, the plaintiff must present a timely written claim for damages to the entity. (Gov.Code, § 911.2; [citations].)" (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 208.) "Timely claim presentation is not merely a procedural requirement, but is . . . ""a condition precedent to plaintiff's maintaining an action against defendant"" [citations] and thus an element of the plaintiff's cause of action. [Citation.] Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action. [Citation.]" (*Id.* at p. 209.)

A claim for wrongful death must be submitted "not later than six months after the accrual of the cause of action." (§ 911.2.) The date of accrual under the Government Claims Act is the date on which the cause of action would accrue for purposes of the statute of limitations in an action against a private party. (§ 901.) A cause of action generally accrues at "the time when the cause of action is complete with all of its elements." (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397 (*Norgart*).) "The statute of limitations on a wrongful death action begins to run at the time of death." (*Kincaid v. Kincaid* (2011) 197 Cal.App.4th 75, 80.)

However, the delayed discovery doctrine "postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807.) "In order to rely on the discovery

rule for delayed accrual of a cause of action, '[a] plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence.' [Citation.]" (*Id*. at p. 808.)

Pamela died in May 2013. The first amended complaint alleges Benjamin filed a claim on June 19, 2014. Plaintiffs argue that their causes of action did not accrue until May 2014, when they discovered defendants' wrongdoing due to a whistleblower informing them that defendants had knowledge that the dogs were problematic before Pamela's death. In the first amended complaint, plaintiffs alleged that defendants covered up their wrongdoing with respect to the dogs, and plaintiffs had no way of knowing the truth. Plaintiffs also allege they did not know about the alleged mishandling of complaints about the dogs until a whistleblower informed them in May 2014, and they learned additional facts in June 2014 about the Department's handling of complaints about the dogs. Prior to May 2014, defendants misrepresented that there was nothing they could have done to prevent Pamela's death.

These allegations are sufficient to postpone accrual of plaintiffs' causes of action under the delayed discovery doctrine. "[T]he statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing, that someone has done something wrong to her." (*Jolly v. Eli Lilly & Co*. (1988) 44 Cal.3d 1103, 1110.) Here, plaintiffs have alleged that they did not suspect wrongdoing until May 2014, so their causes of action accrued then. Because plaintiffs allege that Benjamin filed his claim for damages on

June 19, 2014, the facts alleged in the complaint do not indicate that Benjamin's claim was untimely. A demurrer on this basis was not warranted.

The first amended complaint includes no allegations that Tad or April complied or attempted to comply with the Government Claims Act. In their opposition to defendants' demurrer, plaintiffs state that April filed a claim on July 22, 2015—the day after the first amended complaint was filed. Defendants' reply in support of their demurrer states that Tad filed a claim on the same day the first amended complaint was filed, July 21, 2015. These facts are not alleged in the complaint. "If a complaint does not allege facts showing that a claim was timely made, or that compliance with the claims statutes is excused, it is subject to demurrer." (*J.M. v. Huntington Beach Union High School District* (2017) 2 Cal.5th 648, 652.)

Plaintiffs argue in their reply brief that because Benjamin filed a timely claim asserting wrongful death, thereby putting defendants on notice, April and Tad were in substantial compliance with the Government Claims Act's requirements. "Where a claimant has attempted to comply with the claim requirements but the claim is deficient in some way, the doctrine of substantial compliance may validate the claim 'if it substantially complies with all of the statutory requirements . . . even though it is technically deficient in one or more particulars.'" (*Connelly v. County of Fresno* (2006) 146 Cal.App.4th 29, 38.) "The purpose of the claim requirements is to provide a public entity with sufficient information to enable it to investigate and evaluate the merits of claims, assess liability, and, where appropriate, to settle claims without the expense of litigation." (*Nguyen v. Los Angeles County Harbor/UCLA*

Medical Center (1992) 8 Cal.App.4th 729, 732.) "The test for substantial compliance is whether the face of the filed claim discloses sufficient information to enable the public entity to make an adequate investigation of the claim's merits and settle it without the expense of litigation." (*Connelly, supra,* 146 Cal.App.4th at p. 38.)

In general, however, "each claimant must file his or her own tort claim. . . . One claimant cannot rely on a claim presented by another." (*Castaneda v. Department of Corrections and Rehabilitation* (2013) 212 Cal.App.4th 1051, 1062.) A claim for wrongful death filed by the spouse of a decedent does not excuse the decedent's children from filing their own claims for wrongful death. (*Petersen v. City of Vallejo* (1968) 259 Cal.App.2d 757, 768; see also *Lewis v. City and County of San Francisco* (1971) 21 Cal.App.3d 339, 341 ["The filing of a wrongful death claim by one heir for herself alone, even though it similarly gives the public body full opportunity to investigate, does not excuse absence of a claim by another heir"].) Tad and April cannot be deemed to have substantially complied with the Government Claims Act requirements because Benjamin filed a claim.

Plaintiffs also argue that defendants are estopped from asserting the timeliness of plaintiffs' claims as a defense, because plaintiffs assert that their failure to file claims within six months of Pamela's death resulted from defendants' concealment of their wrongdoing. "Estoppel as a bar to a public entity's assertion of the defense of [Government Claims Act] noncompliance arises when the plaintiff establishes by a preponderance of the evidence: (1) the public entity was apprised of the facts, (2) it intended its conduct to be acted upon, (3) plaintiff was ignorant of the true state of facts, and (4) relied upon the conduct to his detriment."

(*Christopher P. v. Mojave Unified School Dist.* (1993) 19 Cal.App.4th 165, 170; see also *J.M. v. Huntington Beach Union High School District*, *supra*, 2 Cal.5th at p. 656.) In addition, "[a] defendant may be equitably estopped from asserting a statutory or contractual limitations period as a defense if the defendant's act or omission caused the plaintiff to refrain from filing a timely suit and the plaintiff's reliance on the defendant's conduct was reasonable." (*Superior Dispatch, Inc. v. Insurance Corp. of New York* (2010) 181 Cal.App.4th 175, 186.) Because plaintiffs have not alleged any facts as to whether Tad and April timely complied with the Government Claims Act or whether their lack of compliance should be excused, plaintiffs have not sufficiently alleged facts to support estoppel as to Tad and April.

Plaintiffs also argue that defendants' limitations defense is barred for Tad, because Tad was on active duty in the United States Army until April 2015. According to 50 U.S.C. § 3936(a),[8] "The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) . . . ." This statute tolls the claim requirements of section 911.2. (*Syzemore v. County of Sacramento* (1976) 55 Cal.App.3d 517, 524.) However, 50 U.S.C. § 3936(a) tolls accrual for a servicemember—it does not abrogate the requirements of the Government Claims Act altogether. Without allegations that Tad filed a claim within the time limits required in section 911.2 as tolled by 50 U.S.C. § 3936(a), the first amended complaint fails to

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[8] Plaintiffs cite 50 U.S.C. § 526, which has been transferred to 50 U.S.C. § 3936.

allege facts to demonstrate that Tad has complied with the Government Claims Act.

Because the first amended complaint does not allege that Tad and April ever filed claims pursuant to the Government Claims Act, the demurrer as to Tad and April was properly sustained. However, the facts alleged and the parties' arguments suggest that Tad and April may be able allege facts to show that their claims were either timely or that timely filing should have been excused. Plaintiffs have asked that they be allowed to amend their claims to allege compliance with the Government Claims Act. We therefore remand with directions to allow plaintiffs to file an amended complaint that includes facts demonstrating that Tad and April have complied with the Government Claims Act or that such compliance should be excused.

D. Statute of limitations

Defendants argue that Tad and April failed to join this lawsuit until after the two-year statute of limitations had expired, and their claims are barred on that basis. Pamela died in May 2013, and Benjamin's original complaint was filed on January 5, 2015. The first amended complaint, adding Tad and April as plaintiffs, was filed July 21, 2015. The statute of limitations for wrongful death is two years. (Code Civ. Proc., § 335.1.)

Plaintiffs argue that they have sufficiently alleged the delayed discovery of their causes of action. As discussed in the previous section, plaintiffs have alleged sufficient facts to apply the delayed discovery doctrine. Because plaintiffs did not suspect wrongdoing until a whistleblower provided them with

information in May 2014, their allegations support a finding that their claims accrued in May 2014.

Plaintiffs also assert that any statute of limitations on Tad's claims was tolled due to his active duty in the Army under 50 U.S.C. § 3936. As noted above, the facts alleged demonstrate that Tad's causes of action did not accrue until his active duty ended in April 2015.

The facts alleged in the first amended complaint are therefore sufficient to overcome a demurrer asserting the statute of limitations. (See *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1232 [a demurrer based on a statute of limitations is appropriate only where the defect clearly and affirmatively appears on the face of the complaint].)

DISPOSITION

The judgment is reversed. On remand, the trial court is directed to vacate its order sustaining the demurrer without leave to amend, and enter a new order (1) sustaining the demurrer to plaintiffs' fraudulent deceit and negligent misrepresentation causes of action, (2) overruling the demurrer to Benjamin Devitt's causes of action for negligence, public nuisance, and wrongful death, (3) sustaining the demurrer to Tad Devitt's and April Devitt's causes of action for negligence, public nuisance, and wrongful death, and (4) granting Tad Devitt and April Devitt leave to amend the complaint to allege facts showing that they timely complied with the Government Claims Act or

that such compliance was excused. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.