Superior Court of California
County of San Benito

Tentative Decisions for July 31, 2024

Courtroom #1: Judge Thomas Breen

CU-17-00067 Gabriel Escobedo v. County of San Benito, et al.

7-31-24

On calendar for: Defendant's 7-5-24 motion for prior separate trial on liability issues before damages

Plaintiff: Michael E. Adams

Defendant: Jon A. Heaberlin (County of San Benito)

Defendant: *Jeffrey F. Oneal* (Joe Garcia (Doe 11).)

The motion is unopposed by Plaintiff.

The case arises from Plaintiff's slip and fall accident allegedly occurring 3-30-16 inside Plaintiff's cell during incarceration at the San Benito County Jail. Plaintiff avers he was using a walker to move from the bunk to the toilet when he slipped and fell on water leaking from the toilet/sink, causing him to fall to the floor. He claims to have suffered injuries as a result. This suit follows. Procedurally, two days before the County's motion for summary judgment, Plaintiff filed an amendment to the complaint naming two deputies for Does 1 & 2. (R. Aviles, A. Arrendondo) who then filed a motion challenging the amendment on the basis that the unreasonable delay in filing the amendment prejudiced them, and they sought to be dismissed. The Plaintiff appealed, but failed to file his reply brief. The Sixth Appellate District dismissed the appeal, but later allowed rehearing and ultimately granted Plaintiff's appeal. The case was remanded and trial set 3-25-24. 1-30-24 Plaintiff amended his complaint and named Joe Garcia as Doe 11. Garcia is a county maintenance worker. The amendment alleges Garcia negligently failed to fully and properly repair, if at all, or otherwise resolve the alleged dangerous condition,

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to wit, the alleged water leak. The trial has been continued to 9-9-24. The other named defendants have been dismissed.

Defendant argues that pursuant to CCP§1048(b) it is within the court's sound discretion to bifurcate issues for separate trials to avoid the waste of time and money. It also prevents the jury from overlooking, as in this case, the issue of liability in favor of damages for a sympathetic defendant. (Edmon & Karnow (The Rutter Group, 2023) California Practice Guide: Civil Procedure Before Trial, "Case Management &Trial Setting" §12:414.) In this instance the ends of justice would be served by granting the bifurcation as proposed to hear the issues of liability prior to the issue of damages, and will avoid the waste of time and judicial resources if, as Defendant believes, Plaintiff will be unable to provide evidence to support his claim.

Legal Authority: As stated CCP§1048(b) " [t]he court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action…or of any separate issue or of any number of causes of action or issues…."

Analysis: The Defendant presents solid argument in favor of this court's exercise of discretion to bifurcate the issues of liability from damages in the case at bar. Here, if, as the Defendant avers, the Plaintiff is unable to prove his claims regarding liability, then the issue of damages will not be reached. The court further notes that the Plaintiff is not opposing the motion.

Ruling: The Defendant's motion is Granted as prayed

CU-23-00241 Estate of Jason Charles Manning, by and through his Successor in Interest

5-8-24

On for Defendant Department of Transportation Demurrer

Plaintiff: Laura F. Sedrish (Estate of Jason Charles Manning; Mary Ann Manning, individually as wrongful death beneficiary)

Defendant: David A. Austin (State of California Dept. of Transportation ("CalTrans"))

Defendant: Willam A. Bogdan (Granit Rock Co.)

Defendant: Mark Emmett Berry (Count of San Benito)

Defendant: *County of Monterey (dismissed*)

Defendant: Charles Edwin Manning

FAC filed 7-15-24: On 12-11-22 at approximately 3:26 a.m. Decedent was driving southbound on I-101, south of Cannon Rd in San Benito County when one or more eucalyptus trees fell or had fallen on the roadway. The Decedent's vehicle collided with the fallen tree(s) on the roadway, and as a result of the incident, the Decedent sustained injuries resulting in his death.

This action follows. Plaintiff (Decedent's successor in interest) alleges 1) Breach of Mandatory Duty (CalTrans, County of San Benito, Does 50-100); 2) Dangerous Condition of Public Property (CalTrans, County of San Benito, Does 50-100); 3) Premises Liability (Granite Rock Co, Does 1-49); 4) Wrongful Death (All Defendants, Does 1-100); 5) Survival Action (All Defendants, Does 1-100).

12-20-23 San Benito County filed Answer; and their Cross Complaint (1) against CalTrans, Granite Rock Co, nominal Defendant Charles Edwin Manning, and Does 100-150 for 1) Equitable Indemnity, and 2) Declaratory Relief.

Granite Rock filed answer to the initiating Complaint 11-13-23, their answer to Cross Complaint (a) on 1-23-24; and 1-23-24: Granite Rock files Cross Complaint (2) against CalTrans, County of San Benito , Moes 1-100 for 1) Declaratory Relief; 2) Equitable Indemnity; 3) Implied Contractual Indemnity; 4) Contribution; 5) Apportionment. 2-23-24 San Benito County filed their answer to Cross Complaint (2); 3-22-24 CalTrans filed their answer to Cross Complaint (2).

CalTrans files their Demurrer to the First and Fifth Causes of Action of the FAC on the basis that the pleading fails to state a cause of action. CalTrans argues that the first cause of action for breach of mandatory duty fails to allege facts upon which relief may be granted, stating that this cause of action must specifically allege the particular enactment creating the mandatory duty. (*Cerna v. City of Oakland* (2008) 161 Cal. App. 4th 1340, 1349.) No such enactments have been stated creating a mandatory as to CalTrans, and thus fail to state facts sufficient for this cause of action. They note the Plaintiff's theory seems to be that unspecified statute(s) create a mandatory duty to perform maintenance regarding the trees in CalTrans' right of way. The theory espoused by Plaintiff at belies the discretionary nature of CalTrans maintenance duties under statute in the Streets and Highways Code. Because the Fifth cause of action is predicated on the claim that the First Cause of action imposes a mandatory duty on the Defendants, it falls with the First Cause of Action. They further ask that the demurrer be sustained without leave to amend.

Plaintiff's opposition does not argue against the logic of the Defendant's demurrer, and they agree that they will amend the complaint to withdraw the first cause of action. They request leave to amend the Fifth Cause of action to reframe it to remove the breach of mandatory as the predicate to the claim.

No Reply has been filed.

Legal Standards: Demurrer serves to test the legal sufficiency of the pleadings and is limited to challenging defects appearing on the face of the complaint. Under Code of Civil Procedure section 430.10 a demurrer is appropriate where the pleading fails to "state facts sufficient to constitute a cause of action," or where the pleading is "uncertain." (CCP§430.10 sub (e), (f).) For this purpose, a demurrer admits the truth of all properly pled material facts. In other words, the ultimate facts alleged but not contentions, deductions, or legal/factual conclusions. (*Aubry*

v. Tri City Hosp. Dist. (1992) 2 Cal. 4th 962, 966-967.) The court ordinarily liberally exercises its discretion to permit amendment to pleadings. (*Nestle v. Santa Monica* (1972) 6 Cal. 3rd 920, 939.) The policy is sufficiently strong that it is considered to be an abuse of discretion to deny leave to amend unless the complaint shows on its face that no amount of amendment will cure the defect. (CCP§576; *Tarrar Enterprises, Inc. v. Associated Indemnity Corp.*(2022) 83 Cal. App. 5th 685, 689.)

Analysis: Based on the Plaintiff's opposition, the court notes that the underlying complaint is likely to be cured by proper amendment. The Plaintiff's proposal to amend the fifth cause of action to remove reliance on the Breach of Mandatory Duty claim, and to withdraw the First Cause of Action would appear to be proper.

Ruling:

The Court therefore sustains the demurrer to the First and Fifth causes of action, however, the court will grant the Plaintiff leave to amend their Fifth Cause of Action. Noting the Plaintiff has averred they will withdraw their First Cause of Action, and can assert a claim for Survivorship without reliance upon a claim of Breach of Mandatory Duty.

The Case Management Conference is continued to September 11, 2024 at 10:30 a.m.

CU-23-00049 DeCarlo v. EnviroServices, et al.

7-31-24

Matter is on for: 12) Defendant Agromin's Demurrer to SAC

Plaintiffs: John Crowley

Defendants: Adron Beene (EnviroServices, LLC, Kelli Crestani, Jim Friebel, Jim Friebel Trucking)

Defendant: Frank Perretta (Agromin Corp.)

Defendant: Keith Merrell, in pro per.

5-11-23 First amended Cross Complaint (Crestani, EnviroServices, LLC v. DeCarlo, et al.): 1) Penal Code §496; 2) Conspiracy to Confer and Embezzle; 3) Breach of Fiduciary Duty and Duty of Loyalty; 4) Fraud; 5) Slander Per Se (Civ. Code §46); 6) Interference with Prospective Economic Advantage; 7) Promissory Note; 8) Implied Contract.

5-29-24 Plaintiff's SAC: 1) Fraud; 2)Conversion; 3) Unjust Enrichment;4)Accounting; 5)Breach of Fiduciary Duties; 6) Involuntary Dissolution of LLC; 7) Appointment of Receiver; 8) Rescission of Operating Agreement; 9) Extortion; 10) Negligent Misrepresentation; 11) Negligence;12) Nuisance; 13) Negligence (Friebel); 14) Defamation; 15) Wrongful Termination (DeCarlo); 16)Retaliation (DeCarlo); 17) Failure to Reimburse Business Expenses (DeCarlo);

18) Wrongful Termination (Brum); 19) Retaliation (Brum); 20) Intentional Interference with Prospective Economic Advantage (Agromin).

This case arises from Plaintiff's claim that the Defendants improperly ousted them from the operation and control of their business: an agricultural and construction waste recycling business.

5-9-23: The court denied the ex parte application for a temporary restraining order pending hearing. The court ordered Defendant's reply briefing by May 17, 2023; and the Plaintiff's Reply briefing by 5-23-23. 5-31-23 The court denied Plaintiff's application for temporary injunction. 7-12-23 Defendant's motion for Right to Attach and Issuance of Writ of Attachment vs. Cross Defendants (Plaintiff Tim DeCarlo) is granted. 9-13-23 The court continued the Defendant's 7-623 Motion for Summary Judgment or, alternatively, Summary Adjudication, and Plaintiff's 7-28-23 Motion for leave to File First Amended Complaint are continued to 10-4-23, the court also continues the CMC to 10-4-23.

Argument:

Demurrer to the FAC (Agromin) Defendant demurs to Plaintiff's 12th and 20th Causes of action as directed to Agromin pursuant to CCP §430.10(e) for failure to state facts sufficient to constitute a cause of action. Plaintiff avers that their pleadings are sufficient. The court notes that in the text of their opposition the Plaintiff appears to have recycled much of their prior pleadings from their opposition to the Defendant's demurrer to their First Amended Complaint.

Legal Authority:

Demurrer: A demurrer generally serves to test the legal sufficiency of the complaint's factual allegations. (*Genis v. Schainbaum* (2021) 66 Cal. App. 5th 1007, 1014.) It does not test the factual accuracy or truth of the facts alleged. The court must assume the truth of all properly pled allegations. The process of a demurrer does not serve to test the merits of the Plaintiff's case. (*Tenet Health System Desert Inc. v. Blue Cross of CA. (2016*) 245 Cal App 4th 821, 834.) Because a demurrer only challenges the defects on the face of the complaint, it can only refer to matters outside the pleadings which are subject to judicial notice. (*Tenet, supra,* at 831.)" When any ground for objection to a complaint…appears on the face thereof, or from any matter of which the court is required to or may take judicial notice, the objection on that ground may be taken by a demurrer to the pleading." (CCP§430.30 sub (a); *Levya v. Nielson* (2000) 83 Cal. App. 4th 1061, 1063.) For the purpose of demurrer, a judge must treat the demurrer as an admission of all material facts properly pled in the challenged pleading or that reasonably rise by implication, however improbable they are. (*Collins v. Thurmond* (2019) 41 Cal. App 5th 879, 894.) For the purpose of testing the sufficiency of a cause of action, contentions, deductions, or conclusions of law are not admitted as true, and must be ignored. (*Aubry v. Tri-City Hosp Dist.* (1992) 2 Cal. 4th 962, 966-67.) Additionally, a party may not allege facts inconsistent with the exhibits to the complaint. (*Moran v. Prime Healthcare Management, Inc. (2016)* 3 Cal. App. 5th 1131, 1145-6.)

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The other proper use of demurrer is to challenge standing. Standing is the threshold element required to state a cause of action, and thus lack of standing is grounds for demurrer. (Martin *v. Bridgeport Community Assn., Inc.* (2009) 173 Cal. App. 4th 1024, 1031.)

Before a demurrer is filed, the demurring party must meet and confer with the other party in person or by telephone to determine if agreement can be reached to resolve the objections raised in the demurrer. (*CCP §430.41 (a).*) The meet and confer must occur at least five days before the responsive is due and a declaration stating the means of the meet and confer is required. (*CCP§43.41 (a) (3).*)

Argument and Analysis:

1) Defendant Agromin's Demurrer to SAC
2) The 12th Cause of Action for Nuisance, based on Civil Code §3480 and related statutes, requires that this cause of action be pled with particularity. (Lopez v. Southern Cal. Rapid Transit Dist. (1985) 40 Cal. 3rd 780, 795.) They also note per Civ. Code §3493 that a private party may maintain an action for public nuisance if it specially injures him but may not do so otherwise. This element is not pled, nor are all the necessary elements pled. Plaintiff argues that their claim for nuisance is adequately pled regarding the elements of private nuisance. However, Plaintiff has not pled as required that they have suffered harm that is different from that suffered by the public generally, as is needed to put forward a prima facie case. (*Cal. Dept. of Fish and Game v. Sup. Ct.* (2011) 197 Cal. App. 4th 1323, 1352, citing to CACI 2021.) The demurrer therefore must be sustained without leave to amend.
3) Cause of Action 20. fails. In the SAC at paragraph 11, the Plaintiffs allege that Agromin is an employee/agent/ or representative of EnviroServices. The language is identical to that presented in Plaintiff's FAC. Because the tort for interference with contract cannot lie with a party to the contract, the claim must fail. (*Applied Equip. Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal. 4th 503, 514.) By alleging Agromin is an employee/agent/representative of EnviroServices, and because the claim is that there was interference with other employees of EnviroServices, the cause of action will not lie. Further, the allegation is interference with an at-will employment relationship, therefore plaintiff must plead that Defendant engaged in an independently wrongful act that induced interference with the relationship. (*Reeves v. Hanlon* (2004) 33 Cal. 4th 1150, 1152-3.) The allegation is not that there was any independently wrongful act by Agromin which was the mechanism by which Plaintiffs' termination was affected, and thus it too fails. Defendants argue that each of these causes of action are frivolous as directed to Agromin, and that no amendment will cure the defects noted herein and leave to amend should be denied.
    a. Elements of interference with prospective business advantage are 1) an economic relationship between Plaintiff and some third party with the probability of a future economic benefit to the plaintiff; 2) defendant's knowledge of that relationship; 3) intentional acts by the defendant designed to

disrupt that relationship; 4) the actual disruption of the relationship; and 5) economic harm to the plaintiff proximately caused by the defendant's action. (*Youst v. Longo* (1987) 43 Cal. 34d 64, 71, note 6.) The plaintiff must show not only that defendant interfered with the plaintiff's expectancy but engage in conduct that was wrongful by some legal measure other than the fact of the interference itself. (*Della Penna v. Toyota Motor Sales, USA* (1995) 11 Cal. 4th 376, 393) The crux of the Plaintiff's claim for Intentional Interference with Prospective Economic Advantage is grounded in the alleged wrongful termination of the Plaintiffs' employment by Defendant, allegedly that Defendant Agromin sought that the other Defendants terminate their employment. They allege this was retaliatory for their refusal to falsify certain records. However, this is not the nature of the claim regarding prospective or ongoing contractual or business relationships. The key element of the cause of action is "…proving that the defendant not only knowingly interfered with the plaintiff's expectancy (of a profitable business relationship), but also that defendant engaged in conduct that was wrongful by some legal measure other than the mere fact of the interference itself." (*Delta Penna v. Toyota Motor Sales, Inc.* (1995) 11 Cal. App. 4th 376.) Continuing and ongoing employment is not the type of business advantage envisioned in the cause of action which relates to the expectancy of developing or continuing a (potentially) profitable business relationship as opposed to the relationship between an at will employee and their employer.

Rulings.

1) Demurrer
    a. Agromin: The court sustains the demurrer to the Twelfth and Twentieth causes of action without leave to amend.

CU-23-00282 Sywak (NATMAR L.P., et al.) v. City of Hollister

4-10-24

See related CU-23-00183 (*Natmar L. P. v. City of Hollister, et al.)*

Plaintiff: Christine Breen

Defendant: James N. McCann

1) Plaintiff's Petition for Writ of Administrative Mandamus
2) Defendant's Demurrer to 2nd and 3rd Causes of Action for failure to state a claim. (Defendant City of Hollister)

Note 3-29-24 Defendant requests that the Demurrer continue to allow opportunity to meet and confer as is statutorily required. The parties have been unable to meet and confer and have not previously sought extension of time. Defendant and moving party is thus entitled to an automatic 30 day extension of time in which to file further pleadings. Based on other pending litigation and associated deadlines including a separate but similar matter between the parties in CU-23-00183, Defendant was unable to initiate meet and confer efforts until 3-22-24. The parties are in ongoing discussion with regard to possible dismissal of the First and Third Causes of action as to specific named defendants, and in light of ongoing efforts in this regard a continuance is necessary.

Subsequently the individual defendants withdrew their Demurrer and Special Motion to Strike (Anti-SLAPP motion) The City Council of Hollister's motion remains on calendar on calendar.

Petitioner seeks 1) Writ of Administrative Mandate (CP§1094.5); 2) Declaratory Relief; 3) Complaint for Regulatory Taking/ Inverse Condemnation. Petitioner asserts that the Writ should issue to conditionally approve the Petitioner's subdivision project. The Sywaks are the general Partners of Natmar, which owns a 2.17 acre property located on the west side of the intersection of Cienega Road and Promise Way, asserting the denial of the Petitioner's appeal was based on findings that were unsupported by law or other codes, thus they are entitled to a writ as no other adequate legal remedy exists.

2-8-24: City Council and Hollister City Council demur to the Petition's 2nd and 3rd Causes of action. Petitioners have failed to state a claim for Declaratory relief, or for a Regulatory Taking/Inverse Condemnation. Plaintiff's application for the Project with the City was followed by several rounds of review an resubmission of revised applications by Petitioners, where it was ultimately denied based on alleged non compliance with the City's Fire Code and concerns about the City's solid waste hauler's ability to collect at the proposed project (Complaint ¶¶14 , 33, Breen Dec Ex. U, V.) The denial was appealed to the City Council, and the appeal was denied for the same reasons, noting waste services did not comply with the City's general Plan, the Municipal Code, and further specific adverse impacts on public health and safety (Complaint, ¶¶ 36,37, Breen Dec. Ex A.) Petitioner's seek determination of their rights and duties and a declaration that they have the right to develop the property, that the development is consistent with the city's General Plan and zoning' and that the 11-30-23 decision of the City Council is void as a matter of law lacking evidentiary or reasonable basis. This does not comport with declaratory relief which is unavailable to review an administrative decision. Petitioner's opposition to the City's demurrer is filed on 4-5-24 arguing that the parties have suffered a real compensable loss or taking because of the magnitude of the administrative decision has wholly disrupted their property interests, which are distinct and investment backed. The action taken included failing to schedule their appeal, by which the city council violated their own procedural requirements, and they failed to consider actions available in mitigation. Declaratory relief is also available under Code of Civil Procedure section 1060; because the demurrer admits the truth of all material facts, the facts here reveal a legal controversy sufficient for declaratory relief. The reply declaration filed highlights that the controlling applicable law is clear that

while declaratory relief is proper to challenge a statute, regulation or ordinance as facially unconstitutional, the only remedy to challenge an agency's application of statute, regulation, or ordinance is Mandamus relief. (*Sheetz v. County of El Dorado* (2022) 84 Cal. App. 5th 394, 414.) Moreover, the Petitioners have failed to demonstrate the ripeness of a regulatory taking or inverse condemnation claim, with the Petitioner's interpretation of the relevant case law ignoring significant sections of the quoted cases to prop up the position that the developer need only try once to obtain approval before ripeness is established, rather than the need to have an application fully rejected which requires more than one bite at the apple.

Legal Authority Demurrer,

A demurrer generally serves to test the legal sufficiency of the complaint's factual allegations. (*Genis v. Schainbaum* (2021) 66 Cal. App. 5th 1007, 1014.) It does not test the factual accuracy or truth of the facts alleged. The court must assume the truth of all properly pled allegations. The process of a demurrer does not serve to test the merits of the Plaintiff's case. (*Tenet Health System Desert Inc. v. Blue Cross of CA. (2016*) 245 Cal App 4th 821, 834.) Because a demurrer only challenges the defects on the face of the complaint, it can only refer to matters outside the pleadings which are subject to judicial notice. (*Tenet, supra,* at 831.) For demurrer, a judge must treat the demurrer as an admission of all material facts properly pled in the challenged pleading or that reasonably rise by implication, however improbable they are. (*Collins v. Thurmond* (2019) 41 Cal. App 5th 879, 894.) Before a demurrer is filed, the demurring party must meet and confer with the other party in person or by telephone to determine if agreement can be reached to resolve the objections raised in the demurrer. (*CCP §430.41 (a).*) The meet and confer must occur at least five days before the responsive pleading is due and a declaration stating the means of the meet and confer is required. (*CCP§43.41 (a) (3).*)

Pursuant to statute, the failure to state facts sufficient to constitute a cause of action are proper to sustain a demurrer. (CCP §¶430.10 (e); see also *Esparza v. County of Los Angeles* (2014) 224 Cal. App. 4th 452,459.) To prevail against the challenge, the complaint must sufficiently allege 1) every element of that cause of action and 2) the Plaintiff's standing to sue. (*Shaeffer v. Califa Farms, LLC* (2020) 44 Cal. App. 5th 1125, 1134.) The facts that must be included in the complaint to properly allege a cause of action are the essential elements of that cause of action, as determined by the substantive law defining that cause of action. (*Foster v. Sexton* (2021) 61 Cal. App. 5th 998, 1018.) A plaintiff need only plead ultimate facts rather than evidentiary facts. (CW Johnson and Sons v. Carpenter (2020) 53 Cal. App. 5th 165,169.) A plaintiff however must allege the essential facts with "clearness and precision so that nothing is left to surmise," and those allegations of material fact that are left to surmise are subject to demurrer. (CCP§430.10 sub. (f); *Bernstein v. Pillar* (1950) 98 Cal. App. 2nd 441,443.) The court may sustain demurrer without leave to amend, unless there is a reasonable probability that the Plaintiff will be able to cure by amendment. (*Goodman v. Kennedy* (1976) 18 Cal. 3rd 335,349.)

Analysis:

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Declaratory relief is not appropriate for review of an administrative decision. (State of California v. Sup. Ct. *(1974) 12 Cal. 3rd 237, 249.*) Declaratory relief is inappropriate where it challenges an administrative agency's application of legal principles to a party. (*Public Employee's Retirement System v. Santa Clara County Valley Transportation Authority* (2018) 23 Cal. Ap. 5th 1040, 1045) Essentially, having a difference of opinion as to the interpretation of a statute between a citizen and a governmental agency does not create a justiciable controversy and does not provide the court a compelling reason to direct the manner in which the agency administers the law. (*Zetterberg v. State Dept. of Public Health* (1974) 43 Cal. App. 3rd 657, 663-664.) Therefore, when the challenge, as it is here, is to a regulation's application to the complaining party's lands, the proper and only remedy is administrative mandamus. (*Tejon Real Estate, LLC. v. City of Los Angeles* (2014) 3223 Cal. App. 4th 149, 155.) Declaratory relief in such an instance is appropriate only to obtain declaration that a statute or a regulation is unconstitutional on its face. (*Tejon, supra, at 155.*) Here, the Plaintiffs are not challenging the constitutionality of the general plan or zoning designations of the city, but the application of those regulations to them and the administrative ruling by the Respondent. While Petitioner argues generally, that declaratory relief lies when the parties have a fundamental disagreement over the construction of particular legislation or dispute whether a public entity has engaged in conduct or established policies in violation of applicable law (cites omitted) the real issue is whether the actions taken by an administrative body were appropriate not whether the they properly construed the fire code, or engaged in conduct or established a policy in violation of the law, they applied the law, the question is whether they applied it in a manner which is consistent and not arbitrary, and whether they followed the procedures as laid out in the code for a full and fair hearing on the issue. Therefore, the only relief appropriate is by administrative mandamus, presuming they can meet that burden of proof.

The cause of action for regulatory taking/inverse condemnation is unripe, as the Petitioners have yet to reach a final decision with regard to the disapproval. The Respondent notes, and the court concurs that the denial given at the city council meeting is not final- there is no evidence that the Petitioners sought variance after receiving the disapproval of the council, nor that they offered a modification of the development which satisfied the Respondent's stated objections. Here, there was a single effort to obtain approval yet failed to seek a variance or modified their proposal and resubmitted, as such the process is incomplete. Contrary to Petitioners' position that the issue is ripe, the requirement is that the developer have submitted "at least one meaningful application for a zoning variance or something similar which as been finally Denied. (*Long Beach Equities, Inc. County of Ventura* (1991) 231 Cal. App 3rd 1016, 1030.) Until there is a final definitive position on how the regulations are to be applied to the property, the court cannot say a compensable taking has occurred. Here, the Petitioners have not applied for any such variance, there is only their initial series of applications, which they put before the board. While the fire marshal's email indicates they do not approve the standard as presently put forth, there is a clear and unequivocal denial of the meaningful request for a variance . There is a lack of finality in the efforts as framed by the Petitioners. The process engaged in by the

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Petitioner are not, as they suppose two separate processes, rather a single continuous application for the project .

The court therefore sustains the Respondent City of Hollister and Hollister City Council's demurrer on the 2nd and 3rd grounds without leave to amend as no amount of pleading can cure the defects as noted herein.

Petition for Writ of Mandamus: Parties need to brief further, set for further hearing.

Matter is continued for further hearing on September 18, 2024 at 10:30 a.m.

The Case Management Conference is continued to September 18, 2024 at 10:30 a.m.

END OF TENTATIVE RULINGS

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