



Superior Court of California County of San Benito

Tentative Decisions for March 3, 2025

Courtroom #1: Judge J. Omar Rodriguez

CU-19-00059 Deluna, Raul, et al vs. Aramark Uniform & Career Apparel, LLC

Based on the Joint Case Management Conference Statement, the Case Management Conference is continued to May 12, 2025 at 10:30a.m.

CU-23-00086 Silva vs. Rite Aid Corporation

Based on Plaintiff's Case Management Conference Statement, the matter is continued to June 9, 2025 at 10:30 a.m.

CU-23-00165 Biakanja vs. State of Cal. Dept. of Transp., a public entity

The Motion to Consolidate and Transfer is GRANTED in part. Pursuant to California Government Code section 955.2, *Estate of Lisa Biakanja v. The State of California Department of Transportation* (CU-23-00165) and *Aracelli Murillo Zarate v. Estate of Lisa Biakanja*, (CU-23-00170) consolidated under case CU-23-00165 are transferred to the Superior Court of California, County of Los Angeles for coordination. The action, while not technically complex, is a complicated case of claims, cross-claims, and indemnity actions with intertwined insurance coverage issues. None of the parties are resident in San Benito County, there is a pending matter in Los Angeles County involving a common set of facts and issues involving insurance coverage, it would be an efficient utilization of judicial facilities and would reduce the likelihood of duplicative and/or inconsistent rulings, orders or judgments.

This court will defer to the Superior Court of California, County of Los Angeles to determine if consolidation is appropriate.

CU-23-00183 Natmar,L.P., et al. vs. City of Hollister, et al.

Defendants Demurrer is OVERRULED as to the First Cause of Action and SUSTAINED without leave to amend as to the Second and Third Causes of Action.

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.) A party may demur when any ground for objection to a complaint appears on the face of it, or from a matter from which the court is required or may take judicial notice. (Cal. Code of Civ. Proc. §430.30(a); *Levy v. Neilson* (2000) 83 Cal.App.4th 1061, 1063.) Demurrer lies where it appears on the face of the complaint that the plaintiff has not alleged facts sufficient to state a cause of action. (Cal. Code of Civ. Proc. §430.10(e); *James v. Sup. Ct.* (1968) 261 Cal.App.2nd 415.) 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.) 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. (Cal. Code of Civ. Proc. §430.30(a); *Levy 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.)

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*

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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.)

As to the First Cause of Action, Ordinary Mandamus pursuant to Code of Civil Procedure section 1085, the Demurrer is OVERRULED.

“A traditional writ of mandate will issue to ‘compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station’ (Code Civ. Proc., § 1085), ‘where there is not a plain, speedy, and adequate remedy, in the ordinary course of law’ (id., § 1086). (*CV Amalgamated LLC v. City of Chula Vista* (2022) 82 Cal.App.5th 265, 278.) Traditional mandamus under CCP §1085 can be used to compel the performance of a duty which is purely ministerial in character, it cannot be applied to control discretion to a matter lawfully entrusted to a commission. (*State v. Sup. Ct.* (1974) 12 Cal. 3rd 237, 247.) The appropriate method for challenging a ministerial decision, even one involving vested rights, is traditional mandamus under CCP §1085. (*Di Genova v State Bd. of Educ.* (1955) 45 Cal.2d 255; *Poschman v Dumke* (1973) 31 Cal.App.3d 932, disapproved on other grounds in *Armistead v State Personnel Bd.* (1978) 22 Cal.3d 198, 204 n3.) A statute or an ordinance that clearly defines the course of action that a governmental body or official must take in specified circumstances and eliminates any element of discretion imposes a ministerial duty. (*Monterey Coastkeeper v Central Coast Reg’l Water Quality Control Bd., Central Coast Region* (2022) 76 Cal.App.5th 1, 18; *Ellena v Department of Ins.* (2014) 230 Cal.App.4th 198, 205. See, e.g., *Kreutzer v County of San Diego* (1984) 153 Cal.App.3d 62 (if there is

mandatory duty to suspend or revoke license on conviction of specified crime, ministerial duty is involved and no hearing is necessary).)

Ministerial acts involve no judgment or discretion by the public official as to the wisdom or manner of carrying out the activity. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. (*Protecting Our Water & Env't'l Resources v County of Stanislaus* (2020) 10 Cal.5th 479, 489.) A ministerial decision involves only the use of fixed standards or objective measures, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. (*Mountain Lion Found. v Fish & Game Comm'n* (1997) 16 Cal.4th 105, 117.) In Beck Development, the Department of Substances Control argued that it could take any of the five actions set forth in the statute at issue, Health and Safety Code section 25221.1, or it may do nothing at all and, since it may do nothing at all, mandate cannot be issued to compel the department to take any of the actions set forth in the statute. Health and Safety Code section 25221.1 read in relevant part that “Upon evaluating all pertinent available information, the department may do any one or more of the following...” The Court stated, “(i)t would seem anomalous to argue that the Legislature intended that the Department could totally ignore the applications it thus receives. (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1192.)

Here, the TAC alleges that the City failed to allow Plaintiffs to file either of the VTMs under California Government Code section 66454, which states that “(a)ny subdivider may file with a city the tentative map of a proposed subdivision of unincorporated territory adjacent to such city.” The TAC alleges that Plaintiff complied with this statute and that the City arbitrarily refused such a filing, thereby prohibiting Plaintiffs from exercising its right as referenced in Section 66454 to file with a city the tentative map. Once the tentative map is filed with the city, the city has the discretion to act in such a manner as stated in Section 66454. Government Code section 66454 does not authorize the City to not allow the filing of the tentative map regardless of the reason even if the City were to ultimately disapprove the tentative map, which the City is authorized to do pursuant to Government Code section 66452.1.

The Demurrer as to the Second and Third Causes of Action are SUSTAINED without leave to amend. Plaintiffs have failed to plead sufficient facts to establish municipal liability under section 1983 pursuant to *Monell*. Plaintiffs assert their Second and Third Causes of Action under 42 U.S.C. section 1983. However, as set forth in the United States Supreme Court's decision, *Monell v. Dep 't of Social Services* (1978) 436 U.S. 658, municipal liability under section 1983 is limited to instances where the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by that body's officers." (*Id.* at 690.) Thus, "a local government may not be sued under section 1983 for an injury inflicted solely by its employees or agents...(but rather only) when execution of a government's policy or custom...inflicts the injury..." (*Id.* at 694.)

To satisfy *Monell*'s policy requirement, and therefore attach liability to a municipal Entity, a plaintiff must prove one of the following: 1) the government acted pursuant to an expressly adopted official policy; 2) the government acted in accordance with a longstanding practice or custom; or 3) the individual who committed the constitutional tort was an official with final policy making authority or such official ratified a subordinate's unconstitutional decision or action and the basis for it. (See *Gordon v. County of Orange* (9th Cir. 2021) 6 F.4th 961, 973-974.) Liability based on the first two types of government action involving policy, practice, of custom cannot be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy." (*Trevino v. Gates* (9th Cir. 1996) 99 F.3d 911, 918.)

Here, Plaintiffs have failed to state facts sufficient for *Monell* liability against the City and City Council. According to the TAC, the City is alleged to have acted "through its [legal] counsel" and/or "staff." (TAC ¶¶27, 65, and 71.) The TAC, therefore, seeks to impose something more akin respondeat superior liability against the City, which under *Monell*, simply does not exist. (*Monell*, supra, 436 U.S. at 691 ["a municipality cannot be held liable under section 1983 on a respondeat superior theory."]; see also *Bell v. Williams* (9th Cir. 2024) 108 F.4th 809, 824.)

Moreover, as to the Third Cause of Cause of Action alleging that Plaintiffs were intentionally treated differently for Equal Protection purposes, a plaintiff must demonstrate that he/she is "similarly situated to the proposed comparator in all material respects." (*SmileDirectClub, LLC. v. Tippins* (9th Cir. 2022) 31 F.4th 1110, 1123.) Plaintiffs fail to allege facts to support this claim. For instance, the comparator project closest in time to Plaintiffs project was in 2017, which is six years prior to when the City allegedly denied the filing of the VTMs. (TAC ¶52.)

CU-23-00262 Martinez, et al vs. Target Corporation, et al.

Defendant's Motion to Reclassify Plaintiffs to Limited Jurisdiction is DENIED.

A matter may be reclassified as a limited civil action "when (i) the absence of jurisdiction is apparent before trial from the complaint, petition, or related documents, or (ii) during the course of pretrial litigation, it becomes clear that the matter will "necessarily" result in a verdict below the superior court jurisdictional amount..." (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 262.) "This standard requires a high level of certainty that a damage award will not exceed \$ 25,000 and is not satisfied by a finding that such an award is merely 'unlikely' or 'not reasonably probable.'" (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 269.)

Here, Plaintiffs have asserted damages for medical expenses of \$3,592.13 as well as lost wages, future medical expenses yet to be determine, and non-economic damages including general damages and pain and suffering. Since the only evidence submitted in support of the motion pertains to medical expenses, there is no evidence to suggest that a damage award will not reach the jurisdictional threshold through the recovery of other types of damages.

CU-24-00267 Petition of Kristian Berger

The Petition is DENIED without prejudice. Petitioner did not file a proof of publication.

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CU-24-00268 Petition of Richard Perez

The Petition is APPROVED.

CU-24-00271 Petition of Ricardo Miguel Sisneros

The Petition is APPROVED.

PR-19-00064 In Re Matter: Nellie R Hart Revocable Trust dated 10-23-92

The Motion to be Relieved as Counsel is GRANTED.

PR-23-00051 Estate of Floyd L. Jordan, Jr.

The Petition is APPROVED as requested.

END OF TENTATIVE DECISIONS