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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

PAUL ALLEN, RAJEEB ADHIKARY,
LINDSAY DOLEZAL, DEVIN COOK,
RHEA CULLISON, CHARLES
DUCKWORTH, GREG FARNHAM,
TARIEL A. GREEN, DAVID W. JACOBS,
RONALD G. JELLISON, SASHI LAL,
MADISON LANTZ, RILEY LANTZ, LISA
MACHADO, MARIO MACHADO, TIM
METIVIER, RHONDA METIVIER, CLAY
MOORE, ERIC OHLSON, KATHERINE
OHLSON, NATHAN OHLSON,
JULIETTE D. PORRO, CYNTHIA
PRIDMORE, FOREST W. VIEHMAN,
CAROL D. WILSON, ROBERT A.
WILSON, as individuals,

Plaintiffs,

vs.

CITY OF SACRAMENTO; and DOES 1 to
50, inclusive,

Defendants.

Case No.: 23WM000068

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
THE CITY OF SACRAMENTO'S
GENERAL DEMURRER OR, IN THE
ALTERNATIVE, SPECIAL
DEMURRER TO PETITIONERS'
COMPLAINT FOR WRIT OF
MANDATE AND DECLARATORY
RELIEF

Date: February 2, 2024
Time: 11:00 a.m.
Dept: 21
Location: 720 9th Street,
Sacramento, CA 95814

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I.

INTRODUCTION

3 The City of Sacramento generally demurrs to Petitioners' Complaint for Writ of
4 Mandate and Declaratory Relief (Writ) on the grounds that both causes of action contained
5 therein fail as a matter of law.¹ In January 2022, the City entered into a contract with Hope
6 Cooperative for the operation of its Outreach and Engagement Center located at 3615 Auburn
7 Boulevard, which is adjacent to Del Paso Regional Park. Petitioners are individuals living in
8 and around Del Paso Regional Park who are not pleased to have an outreach center serving
9 the unhoused in their neighborhood. They seek to terminate the City's contract with Hope
10 Cooperative by wrongly alleging the location of the Outreach and Engagement Center violates
11 provisions of the Sacramento City Code (SCC). As detailed herein, the City is not violating
12 the SCC by allowing operation of its Outreach and Engagement Center at 3615 Auburn
13 Boulevard. These are not pleading defects that can be cured via amendment. Therefore, the
14 City's general demurrer should be sustained, without leave to amend.

15 In the alternative, should the Court overrule the City's general demurrer, or elect to sustain
16 it with leave to amend, Petitioners' Writ is subject to special demurrer because Hope
17 Cooperative is an indispensable party and Petitioners failed to name it as a real party in
18 interest.

III.

FACTS

21 On August 17, 2023, Petitioners filed a Writ against the City. (Request for Judicial Notice
22 [RJN], Ex. 1.) Petitioners allege the City is violating the SCC by allowing a “homeless shelter”
23 operated by Hope Cooperative to operate at 3615 Auburn Boulevard. (RJN, Ex. 1, pg. 2:5.)
24 They seek a declaration that the City’s conduct violates several SCC sections and they “pray
25 for judgment...commanding the City terminate its ongoing contractual relationship with Hope

¹ The Complaint and Petition for Writ of Mandate and Declaratory relief erroneously identifies Petitioners as Plaintiffs. The City and Does 1-50 are also mistakenly identified as Defendants instead of Respondents.

1 Cooperative, or at a minimum not renew its contract with Hope Cooperative at the time of
2 their next renewal late this year 2023..." (RJN, Ex. 1, pg. 5:15-21.)

3 **A. CONTRACT BETWEEN THE CITY AND HOPE COOPERATIVE**

4 On or about January 1, 2022, the City and Hope Cooperative entered into a contract
5 whereby Hope Cooperative would operate the City's Outreach and Engagement Center,
6 located at 3615 Auburn Boulevard. (RJN, Ex. 1, pg. 3:22-5 and Exhibit A.) The contract is a
7 two-year contract, beginning on January 1, 2022, and ending on December 31, 2023. (RJN,
8 Ex. 1, at Exhibit A - January 4, 2022, City Council Report, page 40 of 60.)

9 **B. SACRAMENTO CITY CODE CHAPTER 12.100 - EMERGENCY SHELTER AND**
10 **ENFORCEMENT ACT OF 2022.**

11 Measure O was approved by the voters on November 8, 2022, and codified at SCC, Title
12 12, Chapter 12.100, the Emergency Shelter and Enforcement Act of 2022 ("ESEA"). (RJN,
13 Ex. 1, pg. 3:5-4; RJN, Ex. 2.) The ESEA "requires the City of Sacramento to identify and
14 authorize emergency shelter spaces to house currently homeless persons." (RJN, Ex. 1, pg.
15 3:4-6.) The ESEA operates prospectively and does not contain express language of
16 retroactivity. (RJN, Ex. 2.)

17 Sacramento City Code § 12.100.020(A) states:

18 Within *90 days of the effective date of this chapter*, the city manager
19 will identify and authorize at least the number of *new* emergency
20 shelter spaces that equals 20% of the minimum threshold. If in any
21 given month thereafter, the utilization rate is greater than 60%, the
22 city manager shall, within 30 days, identify and authorize an
additional number of emergency shelter spaces that equals 20% of
the minimum threshold. However, the city manager shall not be
required to identify and authorize emergency shelter spaces that
exceed the minimum threshold.

23 (Emphasis added.)

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1 Sacramento City Code § 12.100.020(C) states the city manager may include emergency
2 shelter spaces within the city that are:

3 1. On any *public property*, except for city streets, sidewalks, or
4 neighborhood parks; locations within 1,000 feet of a K-12 school,
public library, licensed daycare or preschool facility, or playground;
or locations within 500 feet of a stream or river.

5
6 (SCC § 12.100.020(C)(1).) (Emphasis added.)

7 **C. SACRAMENTO CITY CODE, TITLE 12, CHAPTER 12.72, ARTICLE III, §**
8 **12.72.060 – PARK USE REGULATIONS.**

9 Sacramento City Code, Title 12, Chapter 12.72, Article III, § 12.72.060 governs park use
10 regulations and states that, in relevant part, no person shall:

11 Enter the designated *natural habitat areas* within Del Paso Regional
12 Park, except for the following activities:

13 1. Horseback riding on the designated trails;
2. Walking or using a non-motorized bicycle on the designated
trails; and
14 3. Using the areas for scientific, environmental, educations, or
maintenance purposes, if granted permission to do so by the city
15 manager.

16 (SCC § 12.72.060(AA)(1-3); RJD, Ex. 3.) (Emphasis added.)

17 The City's Outreach and Engagement Center is adjacent to Del Paso Regional Park.
18 (RJD, Ex. 4.) It is not located within the park's boundaries or any of the natural habitat areas
19 contained therein. (*Id.*)

20 **III.**

21 **LAW AND ARGUMENT**

22 **A. THE FUNCTION OF A DEMURRER IS TO TEST THE SUFFICIENCY OF THE**
23 **COMPLAINT AS A MATTER OF LAW.**

24 Code of Civil Procedure section 430.10 states, in pertinent part:

25 The party against whom a complaint or cross-complaint has been filed
26 may object, by demurrer or answer as provided in section 430.30 to
the pleading on any one or more of the following grounds:

27 (d) There is a defect or misjoinder of parties.
28 (e) The pleading does not state facts sufficient to constitute a cause of action.

1 Code of Civil Procedure section 430.50 states, in pertinent part:

2 (a) A demurrer to a complaint or cross-complaint may be taken to
3 the whole complaint or cross-complaint or to any of the causes of
action stated therein.

4 The function of the demurrer is to test the sufficiency of the pleadings as a matter of law.

5 (5 Witkin, California Procedure (5th Ed. 2008), Pleading, § 946.) A demurrer challenges only
6 the legal sufficiency of the complaint (or petition) and not the truth or accuracy of its factual
7 allegations. (*Assurance Co. of America v. Haven* (1995) 32 Cal.App.4th 78, 82.) A general
8 demurrer admits the truth of all factual material allegations properly pled in the challenged
9 pleading, regardless of possible difficulties of proof. (*Blank v. Kirwan* (1985) 39 Cal.3d 311,
10 318; *Martinez v. Socoma Companies, Inc.* (1974) 11 Cal.3d 394.) A general demurrer does not
11 admit contentions, deductions, or conclusions of fact or law alleged in the complaint; facts
12 impossible in law; or allegations contrary to facts of which a court may take judicial notice.
13 (*Id.*) A special demurrer lies when it appears from the face of the complaint that a third person
14 or entity is a “necessary” or “indispensable” party and must be joined before the case can
15 proceed. (CCP § 430.10(d).)

16 Code of Civil Procedure § 430.30(a) specifically authorizes the court to consider, as
17 grounds for demurrer, any matter which the court *must* or *may* judicially notice under Evidence
18 Code §§ 451 or 452. The court is permitted to take judicial notice of the records in the pending
19 action. (Evid. Code § 452(d).) Judicial notice may be taken of “[r]egulations and legislative
20 enactments issued by or under the authority of the United States or *any public entity* in the
21 United States.” (Evid. Code § 452(b).) (Emphasis added.) Judicial notice may also be taken
22 of facts outside of the complaint if they are of such common knowledge that they are beyond
23 dispute, such as the existence of local landmarks, buildings, parks, etc. (Evid. Code § 452(g).)

24 Additionally, the court may take judicial notice of facts not reasonably subject to dispute
25 and “capable of immediate and accurate determination by resort to sources of reasonably
26 indisputable accuracy.” (Evid. Code § 452(h).) This includes “facts which are widely accepted
27 as established by experts and specialists in the natural, physical, and social sciences which can
28 be verified by reference to treatises, encyclopedias, almanacs and the like.” (*Gould v. Maryland*

1 *Sound Indus., Inc.* (1995) 31 CA4th 1137, 1145.) The court may take judicial notice of a fact or
2 proposition that cannot be reasonably controverted, even if it negates express allegations of the
3 pleading. (*Jenkins v. JP Morgan Chase Bank, N.A.* (2013) 216 CA4th 497, 536.) The court may
4 also take judicial notice of the ownership, easements, and control over certain public land.
5 (*Bethman v. City of Ukiah* (1989) 216 CA3d 1395, 1399.) Accordingly, the Court may take
6 judicial notices of the SCC sections and map of Del Paso Regional Park attached to the City's
7 RJD as Exhibits 2 – 4.

8 **B. THE CITY GENERALLY DEMURRERS TO PETITIONERS' WRIT AS BOTH**
9 **CAUSES OF ACTION CONTAINED THEREIN FAIL AS A MATTER OF LAW.**

10 Petitioners' Writ contains two causes of action against the City – Writ of Mandate and
11 Declaratory Relief. Both fail as a matter of law because the ESEA does not apply retroactively,
12 and the City's Outreach and Engagement Center is not located in Del Paso Regional Park.

13 **1. The City's Emergency Shelter and Enforcement Act of 2022 Does Not Apply**
14 **Retroactively.**

15 The ESEA, passed by the voters in November 2022 and codified at Sacramento City Code
16 Chapter 12.100, operates prospectively. The plain language of the ESEA clearly states that
17 "...within 90 days of the effective date of this chapter, the city manager *will* identify and
18 authorize at least the number of *new* emergency shelter spaces that equals 20% of the minimum
19 threshold..." (SCC § 12.100.020(A).) (Emphasis added.) The City's contract with Hope
20 Cooperative was effective beginning on January 1, 2022. Accordingly, it was established 10
21 months *prior* to the voters passing the ESEA in November 2022. It is not a "new" emergency
22 shelter space as defined in the ESEA.

23 Furthermore, the rules of statutory construction apply to the ESEA and in California, as
24 in most states, a statute, or ordinance, is presumed to operate prospectively in the absence of
25 a clear intention of a contrary legislative intent. (*Quarry v. Doe I* (2012) 53 Cal.4th 945, 955.)
26 In construing statutes, there is a presumption against retroactive application unless express
27 language of retroactivity is contained in the statute or there is legislative intent supporting
28 retroactivity. (*Id.*) Neither is contained in the ESEA. Therefore, none of the location

1 restrictions set forth in SCC § 12.100.020(C) apply to the City's Outreach and Engagement
2 Center.

3 **2. The Location of the City's Outreach and Engagement Center Does Not Violate**
4 **Sacramento City Code § 12.72.060AA.**

5 Petitioners incorrectly allege the location of the City's Outreach and Engagement Center
6 violates SCC § 12.72.060AA. The Outreach and Engagement Center is not located within the
7 boundaries of Del Paso Regional Park, as evidenced on the City's map of Del Paso Regional
8 Park. (RJN, Ex. 4.) Rather, the Outreach and Engagement Center is adjacent to Del Paso
9 Regional Park. Furthermore, the restrictions contained in SCC § 12.72.060AA only apply to
10 the "designated natural habitat areas within Del Paso Regional Park." The Outreach and
11 Engagement Center is not located in the boundaries of Del Paso Regional Park, let alone any
12 of the designated natural habitat area contained therein. (RJN, Ex. 4.) As such, all causes of
13 action contained in Petitioners' Writ fail as a matter of law because the location of the City's
14 Outreach and Engagement Center at 3615 Auburn Boulevard does not violate the SCC. These
15 are not defects that can be cured via amendment. Accordingly, leave to amend is not proper.

16 **C. IN THE ALTERNATIVE, THE CITY SPECIALLY DEMURRERS BECAUSE**
17 **HOPE COOPERATIVE IS AN INDISPENSABLE PARTY UNDER CCP § 389.**

18 In the alternative, should the Court overrule the City's general demurrer, or sustain it with
19 leave to amend, Hope Cooperative is an indispensable party and must join the action. As
20 such, Petitioners' Writ is subject to special demurrer. Petitioners seek to terminate the City's
21 contract with Hope Cooperative, yet Petitioners failed to name Hope Cooperative as a real
22 party in interest. As detailed below, Hope Cooperative is an indispensable party under CCP §
23 389(b).

24 Code of Civil Procedure § 389(b) sets forth a four-factor test for courts to determine
25 whether a nonjoined party is indispensable to the action, such that the court cannot move
26 forward "in equity and good conscious" due to the absence of the nonjoined party:

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- (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties;
- (2) the extend to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;
- (3) whether a judgment rendered in the person's absence will be adequate;
- (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder.

(CCP § 389(b).)

“California courts do not require that a party have a vested contractual or property right at stake in order to be found an indispensable party.” (*County of Imperial v. Superior Court* (2007) 152 Cal.App.4th 13, 36.) The controlling test is “[w]here the plaintiff seeks some type of affirmative relief which, if granted, would injure or affect the interest of a third person not joined, that third person is an indispensable party.” (*Id.*, citing *Sierra Club, Inc. v. California Coastal Com.* (1979) 95 Cal.App.3d 495, 501.) Here, Hope Cooperative has a vested contractual right at stake in the litigation. If Petitioners prevail on their Writ, Hope Cooperative would lose the benefits of its contract with the City.

1. Hope Cooperative's Interests Would Be Prejudiced

In evaluating indispensability under the equitable factors of CCP § 389(b), the “potential prejudice to [the] unjoined person is of critical importance.” (*Tracy Press, Inc. v. Superior Court* (2008) 164 Cal.App.4th 1290, 1298.) The City has contracted with Hope Cooperative for the operation of the Outreach and Engagement Center. Petitioners seek to either terminate the existing contract or prevent the City from renewing the contract with Hope Cooperative when the contract term ends on December 31, 2023. Clearly, termination of the contract, or an inability to renew it, would be prejudicial to Hope Cooperative’s interests. These facts prove Hope Cooperative has a significant and independent interest in the operation of the Outreach and Engagement Center which it cannot protect as it is not a party to the action.

2. There Are No Means to Lessen the Prejudice

There is no mechanism by which prejudice to Hope Cooperative could be “lessened or avoided” or an adequate judgment rendered in its absence from this action. (CCP § 389(b).) Any adverse ruling would terminate Hope Cooperative’s contract with the City or prevent the

1 renewal of the contract when term ends on December 31, 2023. As there is no viable
2 mechanism to lessen the prejudice against Hope Cooperative in this case, this factor provides
3 further support that Hope Cooperative is an indispensable party. (See *Save Our Bay, Inc. v. San*
4 *Diego Unified Port Dist.* (1996) 42 Cal.App.4th 686 [affirming dismissal with prejudice where no
5 viable evidence was presented to show how judgment could be shaped to lessen prejudice to
6 the unnamed real party.].)

7 **3. A Judgment Without Hope Cooperative Will Not Be Adequate**

8 When considering the adequacy of a judgment in the absence of unnamed parties, the
9 court may also consider “whether existing and absent parties’ interest are sufficiently aligned
10 that the absent party’s rights necessarily will not be affected or impaired by the judgment or
11 proceeding.” (*County of Imperial, supra*, 152 Cal.App.4th at 38.) Here, the City has
12 fundamentally distinct interests from Hope Cooperative. The City’s interest is one of public
13 service - to ensure the operation of its Outreach and Engagement Center to help serve people
14 experiencing homelessness. While Hope Cooperative also seeks to assist people experiencing
15 homelessness, under the contract, it is entitled to get paid by the City for its services. Should
16 Petitioners prevail, Hope Cooperative will lose the financial benefit of its contract with the
17 City.

18 **4. The Adequacy of Any Remedy to Petitioners’ is Not a Dispositive Factor**

19 Petitioners will not be deprived of an adequate remedy should the Court determine Hope
20 Cooperative is an indispensable party. If the Court sustains the City’s special demurrer,
21 Petitioners may file an amended writ petition naming Hope Cooperative as a real party in
22 interest. Therefore, should the Court overrule the City’s general demurrer, or sustain it with
23 leave to amend, the City’s special demurrer should be sustained because Hope Cooperative is
24 an indispensable party and must join the action.

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IV.

CONCLUSION

3 As the foregoing demonstrates, Petitioners have not, and cannot allege facts sufficient to
4 constitute a single cause of action against the City. All of Petitioners' causes of action fail as
5 a matter of law because the location of the City's Outreach and Engagement Center at 3615
6 Auburn Boulevard does not violate the SCC. These are not pleading defects that can be cured
7 by amendment. Therefore, the City's general demurrer should be sustained, without leave to
8 amend. In the alternative, should the Court overrule the City's general demurrer, or sustain it
9 with leave to amend, the City's special demurrer should be sustained because Hope
10 Cooperative is an indispensable party.

11 | DATED: September 25, 2023

**SUSANA ALCALA WOOD,
City Attorney**

By:

Katherine Underwood

KATHERINE UNDERWOOD
Senior Deputy City Attorney

**Attorneys for the
CITY OF SACRAMENTO**

PROOF OF SERVICE

CASE NAME: Allen, Paul, et al. v. City of Sacramento, et al.
COURT: Sacramento Superior Court
CASE NUMBER: 23WM000068

I declare that:

I am employed in the County of Sacramento, California. I am over the age of eighteen years and not a party to this action; my business address is 915 I Street, Room 4010, Sacramento, CA 95814-2604. On the date executed below, I served the following document(s):

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE CITY OF SACRAMENTO'S GENERAL DEMURRER OR, IN THE ALTERNATIVE, SPECIAL DEMURRER TO PETITIONERS' COMPLAINT FOR WRIT OF MANDATE AND DECLARATORY RELIEF

[X] **By United States Mail.** I enclosed the documents in a sealed envelope or a package addressed to the person(s) at the addresses listed below and:

(1) [] Deposited in a sealed envelope with the United States Postal Service, with the postage fully prepaid.

(2) [X] Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employee in the county where the mailing occurred. The envelope or package was placed in the mail at Sacramento, California.

By Electronic Service. Based on a court order or an agreement of the parties to accept electronic service. I caused the documents to be sent to the persons at the electronic service addresses listed below.

addressed as follows:

John R. Garner
Garner & Associates, LLP
520 Capitol Mall, Suite 280
Sacramento, CA 95814
John@garner-associates.com
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Monica@garner-associates.com

1 I declare under penalty of perjury that the foregoing is true and correct, and that the
2 declaration was executed on September 25, 2023, at Sacramento, California.
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ERICa D. DILLARD