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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CV AMALGAMATED LLC dba CALIGROWN, a California limited liability company,

Plaintiff,

v.

CITY OF CHULA VISTA, a California public entity; MARY V. KACHADOORIAN; and HINDERLITER, DE LLAMAS & ASSOCIATES, a California corporation; and DOES 1 through 100,

Defendants.

Case No. 24cv1348 RSH DDL

DEFENDANTS CITY OF CHULA VISTA'S AND CITY MANAGER, MARIA V. KACHADOORIAN'S (ERRONEOUSLY SUED AS MARY V. KACHADOORIAN) REPLY IN SUPPORT OF MOTION TO DISMISS THE SECOND AMENDED COMPLAINT PURSUANT TO RULE 12(B)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE

PER CHAMBERS RULES, NO ORAL ARGUMENT UNLESS SEPARATELY ORDERED BY THE COURT

Date: May 21, 2025
Judge: Hon. Robert S. Huie
Crtrm.: 3B

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I. INTRODUCTION

CV AMALGAMATED LLC dba CALIGROWN's ("CVA") Opposition fails to sufficiently address and overcome the deficiencies in its Second Amended Complaint ("SAC"). In particular, CVA fails to establish:

1. That the SAC states a Federal Civil Rights Act (42 U.S.C. § 1983) claim against the City or City Manager;

2. That CVA has actionable equal protection or due process claims;

3. That there is any statutory basis for imposing Negligence liability against the City or City Manager;

4. That a claim for "Failure to Follow the Law" exists; and

5. That the current City Manager, Maria V. Kachadoorian, is not immune from suit.

At no point has the City or City Manager claimed they are "empowered to ignore the law and those harmed have no recourse" as CVA asserts. Instead, CVA failed to preserve its rights during its Writ Action and on appeal. It did not obtain an injunction to halt license processing or an order to invalidate other licenses and did not challenge the trial court's denial of such relief on appeal. *CV Amalgamated LLC v. City of Chula Vista*, 82 Cal. App. 5th 265, 289 (Cal. Ct. App. 2022). To distract from its own "disastrous tactical choice" of failing to pursue a preliminary injunction in the Writ Action, CVA maligns the City for complying with its duty to process third-party licenses during the course of that litigation. *Bakersfield Citizens for Loc. Control v. City of Bakersfield*, 124 Cal. App. 4th 1184, 1195 n.2 (Cal. Ct. App. 2004)

The SAC should be dismissed without leave to amend. CVA cannot cure its failure to state a cause of action against the City or the City Manager despite

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multiple attempts to amend. Nor should this Court allow its powers to be misused to aid in the violation of federal laws[1].

II. DESPITE CVA'S MULTIPLE ATTEMPTS TO AMEND, THE SAC STILL FAILS TO STATE A VIABLE § 1983 CLAIM.

To plead a viable § 1983 Claim, CVA must satisfy *Monell* and plead sufficient facts to establish a constitutional violation. CVA has done neither. Accordingly, this Motion should be granted.

A. CVA Failed To File Suit Within Two Years of The City's Rejection of Its Applications Based on the Alleged 400-Point Policy.

CVA alleges that the City denied its applications in 2020 because (1) in 2019/2020 the City allegedly had a policy of rejecting all applications that scored fewer than 400 points in Phase One of the competition; and (2) the City Manager ratified HDL's erroneous rescore of CVA's applications in 2020. Dkt. 15 at ¶¶ 24–27. The City's Motion argued that CVA's § 1983 claim cannot be based on the alleged 400-point policy or the alleged 2020 ratification because CVA failed to sue within 2 years of those decisions. *Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004) (2-year statute on § 1983 Claims).

CVA counters that its § 1983 Claim can rely on the City's and former City Manager's alleged misconduct in 2020 because "Defendants reaffirmed all of their

[1] The City joins in the unclean hands and illegality defenses asserted by HDL in its Motion to Dismiss, Dkt. No. 28-1, p. 10–12, on the basis that the primary right underlying CVA's claims against all defendants— the right to obtain a business license to sell cannabis—is illegal under federal law and awarding the damages CVA seeks are contrary to the laws controlling this Court's actions. *Ctrl Alt Destroy v. Elliott*, No. 24-CV-753 TWR (AHG), 2025 WL 790963, at *13, 15 (S.D. Cal. Mar. 12, 2025); *Johnson v. Yellow Cab Transit Co.*, 321 U.S. 383, 387 (1944) ("a federal court should not lend its judicial power to a plaintiff who seeks to invoke that power for the purpose of consummating a transaction in clear violation of the law.")

past tortious and unconstitutional policies" by rejecting CVA's application a second time in September 2023. Dkt. 30 at 11. But CVA's § 1983 Claim accrued when it knew or had reason to know of the injury that is the basis of this action. *Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 926 (9th Cir. 2004) (claim accrues when "Plaintiff knows or has reason to know of the injury which is the basis of the action); *Aryeh v. Canon Bus. Sols., Inc.*, 55 Cal.4th 1185, 1191 (Cal. 2013) (same). Having filed the Writ Action in October 2020, CVA cannot credibly argue that it did not know it was injured in 2020.

CVA failed to file the § 1983 Claim within two years of the date it was allegedly injured by the City's allegedly unconstitutional conduct. Accordingly, CVA's § 1983 Claim cannot be based on (1) the City's alleged policy – in 2020 – of rejecting applications that scored less than 400 points in Phase One[2]; and/or (2) the City Manager's alleged "ratification" of HDL's scoring in 2020.

B. CVA Failed To Adequately Allege Ratification.

Municipal ratification may be the basis of municipal liability under § 1983 if "an official with final policy-making authority ratified a subordinate's unconstitutional decision or action and the basis for it." *Gillette v. Delmore*, 979 F.2d 1342, 1346–47 (9th Cir. 1992). However, the policymaker must have made "a deliberate choice to follow a course of action . . . from among various alternatives . . . with respect to the subject matter in question." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480–81 (1986); *Gillette*, 979 F.2d at 1348. "Simply going along with discretionary decisions made by one's subordinates is not a delegation to them of the authority to make policy." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 130 (1988).

/ / /

[2] Notably, CVA does not allege that the City had or applied any kind of 400-point policy when the City re-scored CVA's applications in 2023.

The City's Motion argued that CVA's § 1983 Claim fails as a matter of law because CVA failed to allege that an official with final policy-making authority ratified the Finance Director's and/or HDL's allegedly unconstitutional decisions.[3] Dkt. No. 26-1 at 20–21. CVA's Opposition makes two counterarguments. First, CVA argues that the former City Manager ratified the Finance Director's, HDL's, and perhaps the Assistant City Manager's allegedly unconstitutional acts in 2019/2020 because he had contemporaneous "knowledge" of their decisions but did not overrule them. Dkt. 30 at 12–14. The Ninth Circuit rejected this argument in *Gillette*. There, the Court observed that holding "cities liable under section 1983 whenever policymakers fail to overrule the unconstitutional discretionary acts of subordinates would simply smuggle *respondeat superior* liability into section 1983 law . . . ." *Gillette*, 979 F.2d at 1348. To plead ratification, CVA must allege that "a policymaker approve[d] a subordinate's decision and the basis for it." *Id.*; *Christie v. Iopa*, 176 F.3d 1231, 1239 (9th Cir. 1999) ("A policymaker's knowledge of an unconstitutional act does not, by itself, constitute ratification. Instead, a plaintiff must prove that the policymaker approved of the subordinate's act.") CVA does not allege the City Manager reviewed and approved either HDL's re-score, the Finance Director's decision in 2020, or the Finance Director's decision in 2023. Thus, CVA failed to allege ratification. *Praprotnik*, 485 U.S. at 127; *Arrieta v. Cnty. of Kern*, No. 1:14-CV-00400-LJO, 2014 WL 2801048, at *7 (E.D. Cal. June 19, 2014).

Second, CVA argues it has adequately alleged that HDL and/or the Finance Director made a series of decisions that "manifested a 'custom or usage'" of which the City Manager must have been aware. Dkt. 30 at 13. But this theory requires CVA to specifically allege "repeated constitutional violations for which the errant municipal officials were not discharged or reprimanded." *Gillette*, 979 F.2d at 1348-40. The SAC contains no such allegations. Rather, the SAC alleges that (1) HDL

[3] The City does not concede the City Manager has final policy-making authority.

erroneously scored CVA's applications; (2) the City Manager granted CVA's administrative appeal and ordered HDL to rescore CVA's applications; (3) HDL re-scored CVA's applications; (4) the Finance Director denied CVA's applications; and (5) after remand from the Court of Appeal in the Writ Action, the Finance Director denied CVA's applications because no permits remained. Dkt. 15 at ¶13–19. None of these alleged actions (or inactions) constitute repeated constitutional violations. See *Grizzle v. Cnty. of San Diego*, No. 17-CV-813-JLS (PCL), 2018 WL 3689153, at *6 (S.D. Cal. Aug. 3, 2018) (sustaining motion to dismiss); *Arrieta*, 2014 WL 2801048, at *7 (same).

C. CVA Failed to Adequately Plead a Constitutional Violation.

Even if CVA's § 1983 claim satisfies *Monell*, CVA must still plead specific facts establishing that the City violated its constitutional rights. *Van Ort v. Est. of Stanewich*, 92 F.3d 831, 835 (9th Cir. 1996). CVA failed to carry this burden.

1. CVA's Equal Protection Claim Fails as a Matter of Law.

The City's Motion argued that CVA's equal protection claim fails as a matter of law because CVA had failed to allege that it was similarly situated with other applicants "in all material respects," the differential treatment was intentional, and there was no rational basis for the differential treatment. *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564–65 (2000); *SmileDirectClub, LLC v. Tippins*, 31 F.4th 1110, 1122–23 (9th Cir. 2022); *Delux Public Charter, LLC v. Cnty. of Orange*, 2022 WL3574442 (C.D. Cal. July 29, 2022). CVA counters that certain paragraphs of the SAC contain the requisite allegations. Dkt. 30 at 14, citing Dkt. 15 at ¶¶ 15–19, 32. Not so.

The SAC alleges HDL erroneously scored CVA's applications in 2020. Dkt. 15 at ¶¶ 13–17, 26–27. But it did not allege that HDL scored CVA's applications differently than it scored other applications in 2020, that the City interviewed other applicants that received fewer than 400 points on Phase One, or that the City awarded permits to other applicants that received similar score in 2020. Dkt. 15 at ¶

17. Undeterred, CVA argues it alleged an equal protection claim because the City issued TD Chula Vista 1, Inc. ("TD1") a license in District 1 even though TD1 did not apply for a license in that district. Dkt. 30 at 14, citing Dkt. 15 at ¶ 19. But CVA did not allege facts establishing it was similarly situated with TD1 "in all material respects." *SmileDirectClub, LLC*, 31 F.4th at 1122–23. Indeed, CVA conspicuously failed to allege it received the same scores as TD1 in the 2020 application process. Dkt. 15 at ¶ 19. And CVA's scores in 2023—a year after the City issued TD1 a District 1 license—do not establish that the two were similarly situated because by then, TD1 had already obtained a cannabis license and entered a Cannabis Licensee Operating Agreement with the City. Dkt. 15 at ¶ 19.

2. CVA's Procedural Due Process Claim Likewise Fails.

The City's Motion argued that CVA's procedural due process claim fails as a matter of law because CVA had no constitutionally protected property interest in cannabis licenses. Dkt. 26-1 at 25–28. The City cited extensive case law holding that applicants for government-issued licenses have no property interest in such licenses unless they have a "legitimate claim of entitlement" to the license based on state law that "imposes significant limitations" on the decisionmakers' discretion. Dkt. 26-1 at 25–26.

Although the question whether applicants have protected property interests in government-issued licenses has been addressed extensively by state and federal courts, including in the cannabis context, CVA argues that "[t]his is a case of first impression." Dkt. 30 at 15. Seeking to distinguish the many cases cited in the City's Motion, CVA argues that it had a constitutionally protected property interest not in cannabis permits, but in its own applications. Dkt. 30 at 16. CVA's attempt to locate the property interest in its applications, instead of the licenses (i.e., the government benefit) makes no sense. The Constitution guarantees due process so that people are not deprived of protected property interests without notice and the opportunity to be heard. E.g. *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 n.7 (1972).

"The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Id.* at 570. CVA cited no case holding that a person has a property interest in their own *application* for a discretionary permit.[4] See *ARMLA One, Inc. v. City of Los Angeles*, No. 2:20-CV-07965-SB-RAO, 2020 WL 8372965, at *7 (C.D. Cal. Dec. 9, 2020).

3. CVA's Substantive Due Process Claim Fails.

Finally, the City argued that CVA's substantive due process claim fails as a matter of law because CVA did not allege facts supporting a conclusion that the City's rejection of CVA's applications "shock[s] the conscience."[5] Dkt. 26-1 at 28–29. CVA counters that its allegations regarding the City's alleged failure to "score CVA's applications multiple times" and issuance of licenses to other applicants while CVA's writ litigation was pending satisfies the "shocks the conscience" standard. Dkt. 30 at 11-12.

"Substantive due process protects individuals from arbitrary deprivation of their liberty by government." *Sylvia Landfield Tr. v. City of Los Angeles*, 729 F.3d 1189, 1195 (9th Cir. 2013). A public entity's refusal to issue a discretionary permit

[4] CVA's reliance on *Wedges/Ledges of California, Inc. v. City of Phoenix, Ariz.*, 24 F.3d 56 (9th Cir. 1994) and *N. Pacifica, LLC. v. City of Pacifica*, 234 F. Supp. 2d 1053, 1057 (N.D. Cal. 2002) is misplaced. In *Wedges*, the Ninth Circuit held the plaintiff had a property right in obtaining new licenses for its game machines because the municipal code contained an "articulable standard" that so constrained the city's discretion over licenses that the applicant had a property interest. *Wedges*, 24 F.3d at 64-65. Similarly, in *N. Pacifica, LLC*, the Court held state law so constrained the city's discretion to reject a housing project that the plaintiff had a legitimate claim of entitlement in a development permit. But here, in contrast, the City expressly "reserve[d] the right to reject or approve any and all applications . . . based on the standards set forth in this chapter, or otherwise in its sole discretion . . . ." CVMC § 5.19.050(D)(4).

[5] The City also argued that CVA's substantive due process claim fails as a matter of law because CVA had no property interest. Dkt. 26-1 at 26-28.

does not ordinarily implicate substantive due process. E.g., *Tyson v. City of Sunnyvale*, 920 F. Supp. 1054, 1063 (N.D. Cal. 1996), citing *Stubblefield Const. Co. v. City of San Bernardino*, 32 Cal.App.4th 687 (Cal. Ct. App. 1995). The SAC alleges that the City made errors when scoring CVA's applications, and that it issued permits to other applicants while the Writ Action was pending. But "these allegations do not amount to an adequately-pled claim for violation of [CVA's] substantive due process rights." *Sylvia Landfield Trust*, 729 F.3d at 1196.

D. The City Manager Has Qualified Immunity from the § 1983 Claim.

To determine whether the City Manager is entitled to qualified immunity, this Court will inquire (1) whether CVA has "made out a violation of a constitutional right"; and (2) "whether the right at issue was 'clearly established' at the time of defendant's misconduct." *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). The City's Motion argued that CVA's § 1983 Claim against the City Manager fails as a matter of law because CVA had not sufficiently alleged that the City Manager violated CVA's constitutional rights or that the City Manager's conduct violated "clearly established constitutional rights of which a reasonable person would have known." Dkt. 26-1 at 40, quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

CVA counters that the City Manager is not entitled to qualified immunity because CVA's claims are based on "mandatory and ministerial non-actions," and qualified immunity only applies to discretionary acts. Dkt. 30 at 27. CVA is mistaken. "A law that fails to specify a precise action that the official must take in each instance creates only discretionary authority; and that authority remains discretionary however egregiously abused." *F.E. Trotter, Inc. v. Watkins*, 869 F.2d 1312, 1315 (9th Cir. 1989), quoting *Davis v. Scherer*, 468 U.S. 183, 196 n.14 (1984). The CVMC and Regulations, to which CVA refers as the "CO&R," do not specify the action the City Manager must take. Dkt. 7-2 at 62 [CVMC § 5.19.050(6)], 105-08 [§0501(O)(2), (O)(4); *CV Amalgamated LLC*, 82 Cal. App. 5th at 271–272.

Moreover, CVA has not alleged that City Manager Mary Kachadoorian took any action with respect to its applications in 2020 (before she was employed by the City). Dkt. 15 at ¶¶ 22–27, 29. And judicially noticeable facts establish that the Finance Director, not Ms. Kachadoorian, denied CVA's applications in 2023. Compare Dkt. 15 at ¶ 28 with Dkt. No. 26-1 at 22, citing Dkt. 26-3 at 11–12. Accordingly, CVA failed to plead facts establishing that that Ms. Kachadoorian violated CVA's constitutional rights or that her conduct violated "clearly established statutory or constitutional rights of which a reasonable person would have known." Dkt. 15 at ¶¶ 22–29; *Pearso*n, 555 U.S. at 231 (qualified immunity applies regardless of whether official's error is a mistake of law, mistake of fact, or mistake based on mixed questions of law and fact.); *Grossman v. City of Portland*, 33 F.3d 1200, 1209 (9th Cir. 1994) (existence of statute authorizing conduct militates in favor of conclusion that reasonable official would find conduct constitutional). Ms. Kachadoorian is immune from CVA's § 1983 claim. E.g., *Bravo ex rel. Ramirez v. Hsu*, 404 F. Supp. 2d 1195 (C.D. Cal. 2005); *Scocca v. Smith*, 912 F. Supp.2d 875, 887–88 (N.D. Cal. 2012) (sheriff entitled to qualified immunity on claim that denial of concealed carry license was violation of equal protection).

III. CVA CANNOT STATE A CAUSE OF ACTION FOR NEGLIGENCE

A. CVA Can Identify No Statute that Imposes Negligence Liability.

As the City's Motion explained, the Government Claims Act ("GCA") abolished all common law or judicially declared forms of liability for public entities. The City can only be held liable for injury arising out of an alleged act or omission of the entity to the extent provided by statute. *Zelig v. Cnty. of Los Angeles*, 27 Cal. 4th 1112, 1127 (Cal. 2002). And no statute makes the City liable for negligently processing CVA's applications.

1. CVA Cannot Rely on Civil Code § 1714.

California's general negligence statute, Civil Code § 1714, is not a basis for imposing negligence liability against public entities. *Eastburn v. Reg'l Fire Prot.*

Auth., 31 Cal. 4th 1175, 1183 (Cal. 2003). CVA's attempt to distinguish *Eastburn* on its facts is not persuasive. The California Supreme Court observed that if plaintiffs could rely on Civil Code § 1714, "the general rule of immunity for public entities would be largely eroded by the routine application of general tort principles." *Id.*; see also *de Villers v. Cnty. of San Diego*, 156 Cal. App. 4th 238, 251 (Cal. Ct. App. 2007); *Martin v. Cnty. of San Diego*, No. 03-CV-1788-IEG (WMC), 2004 WL 7334370, at *5–6 (S.D. Cal. May 12, 2004) ("a public entity may not be held directly or vicariously liable for negligent hiring, training, supervision or discipline under § 1714.").

2. CVA Cannot Rely on Gov't Code §§ 815.2 or 815.4.

CVA cannot rely on Gov't Code §§ 815.2 or 815.4 either. Those sections state a public entity is liable for the acts or omissions of its employees or independent contractors **if** they are liable. But "the immunity provisions of the [GCA] . . . prevail over any liabilities established by statute." *Cochran v. Herzog Engraving Co.*, 155 Cal. App. 3d 405, 409 (Cal. Ct. App. 1984).

Gov't Code §§ 818.4 and 821.2 immunize the City and its employees, including the City Manager, from liability for injury caused by the issuance, revocation, suspension, or denial of a permit. *Chaplis v. Cnty. of Monterey*, 97 Cal. App. 3d 249, 256 (Cal. Ct. App. 1979). This immunity attaches to "integral parts of the process leading to the grant or denial of a permit," *Engel v. McCloskey*, 92 Cal. App. 3d 870, 881 (Cal. Ct. App. 1979), and immunizes the City from liability even when "negligence is involved in issuing or failing to issue the . . . permit." *Burchett v. City of Newport Beach*, 33 Cal. App. 4th 1472, 1480 (Cal. Ct. App. 1995). CVA argues the City had a "mandatory and ministerial duty to score, rank, and process Plaintiff's applications . . . in accordance with the CO&R." Dkt. 15 at 17 (¶ 41). But "[e]ven if mandatory language appears in the statute creating a duty, the duty is discretionary if the [public entity] must exercise significant discretion to perform the

duty." *Sonoma Ag Art v. Dept. of Food & Agriculture*, 125 Cal. App. 4th 122, 128 (Cal. Ct. App. 2004).

CVA argues this immunity only applies "where there is discretion authorized by the enactment" and not "where the allegations relate to mandatory and ministerial acts." Dkt. 30 at 22. Not so. Gov't Code § 821.2 immunizes public entities from tort claims **whenever** they have discretion to issue or deny a permit. *Rosenthal v. Vogt*, 229 Cal. App. 3d 69, 75 (Cal. Ct. App. 1991); *see State of Cal. v. Superior Ct.*, 12 Cal. 3d 237, 244–245 (Cal. 1974) (sustaining demurrer under Gov't Code § 821.2 where plaintiff alleged damages arising from a permit application); *see also Engel*, 92 Cal. App. 3d 870. The City has broad discretion over whether to issue licenses. *CV Amalgamated LLC*, 82 Cal. App. 5th at 271–272. Because the City and City Manager are immune from liability for injuries arising from the denial of CVA's applications, CVA's Negligence claim cannot rely on Gov't Code §§ 815.2 or 815.4. E.g., *Sonoma Ag Art*, 125 Cal. App. 4th at 129; *Engel*, 92 Cal. App. 3d at 883.

3. CVA's Cannot Rely On Gov't Code § 815.6.

CVA's reliance on Gov't Code § 815.6 is also misplaced. "A plaintiff seeking to hold a public entity liable under Government Code section 815.6 must specifically identify the statute or regulation alleged to create a mandatory duty." *In re Groundwater Cases*, 154 Cal. App. 4th 659, 689 (Cal. Ct. App. 2007). "Once identified, determining whether the particular enactment at issue creates a mandatory duty is a question of law." *Id.* CVA cannot "specifically identify [a] statute" or regulation (i.e., CO&R provision) that created a mandatory duty. *Id.*; see *Haggis v. City of Los Angeles*, 22 Cal. 4th 490, 498 (Cal. 2000); Dkt. 7-2 at 67 (§ 5.19.050(D)(5)). Accordingly, Gov't Code § 815.6 provides no basis for negligence liability against the City or City Manager.

B. CVA's Government Claim Was Untimely.

CVA's Negligence claim is based on the City incorrectly scoring its storefront cannabis permit applications. Dkt. 15 at ¶¶ 41–44. CVA alleged the City scored,

ranked, and processed its applications three times—in 2019, 2020, and 2023. Dkt. 15 at ¶¶ 1, 24, 26–27, 28–29. But CVA only alleged the City **negligently** scored its applications in 2019 and 2020. CVA's Negligence claim accrued in 2020, when CVA knew or had reason to know that the City had mis-scored its applications. *Harlow v. Cnty. of Riverside*, 295 F. App'x 252, 254 (9th Cir. 2008). CVA did ***not*** file a Government Claim within six months thereof. Dkt. 15 at ¶ 20. CVA's Negligence claim is thus barred. *City of Stockton v. Superior Ct.*, 42 Cal. 4th 730, 738 (Cal. 2007).

C. CVA Failed to Exhaust Administrative Remedies.

The City's Motion argued that CVA's Negligence claim fails as a matter of law because CVA did not appeal the Finance Director's 2023 decision to deny CVA's applications. The Finance Director's September 23, 2023 letter conveying this decision to CVA stated that the decision was appealable to the City Manager under CVMC § 5.19.050(A)(6). Dkt. 26-3 at 12. Citing City Cannabis Reg. 0501(P)(4)(a), CVA counters that the City's "final decision in 2023 was not appealable to the City Manager." Dkt. 30 at 24. CVA is mistaken.

The City's interpretation of its own municipal code is entitled to considerable deference. Y*amaha Corp. of Am. v. State Bd. of Equal*, 19 Cal. 4th 1, 12 (Cal. 1998); *Friends of Davis v. City of Davis*, 83 Cal. App. 4th 1004, 1015 (Cal. Ct. App. 2000). In 2023, the City scored CVA's written applications in compliance with the Writ. The City also interviewed CVA—for the first time—so the City could assign an interview score. Dkt. 15 at ¶ 18. That process resulted in CVA's applications receiving a composite score of 875. *Id.* But no cannabis permits were available in September 2023, so the Finance Director rejected CVA's applications. Dkt. 18 at ¶ 19.

However, the City also determined that CVA had the right, under the CO&R, to appeal the Finance Director's September 23, 2023 decision to the City Manager pursuant to CVMC § 5.19.050(A)(6). The Finance Director's September 23, 2023

letter informed CVA of this determination. Dkt. 26-3 at 11–12. Because CVA failed to exhaust administrative remedies, its Negligence claim is barred. E.g., *Tahoe Vista Concerned Citizens v. Cnty. of Placer*, 81 Cal. App. 4th 577, 585, 592 & 594 (Cal. Ct. App. 2000).

IV. THERE IS NO CLAIM FOR "FAILURE FOLLOW THE LAW"

CVA cites no real authority for its third cause of action for "Failure to Follow the Law." It justifies the claim as pleading in the alternative, under Fed. R. Civ. P. 8 (d)(2), entitled "Alternative Statements of a Claim or Defense." CVA is entitled to plead alternative theories of relief. See, e.g., *Diamond Center, Inc. v. Leslie's Jewelry Mfg. Corp.*, 562 F. Supp. 2d 1009, 1017-18 (W.D. Wis. 2008) (allowing alternative pleading of unjust enrichment and promissory estoppel). However, CVA cannot force the City and City Manager to defend against invented legal theories. CVA's "failure to follow the law" claim cites no statute and identifies no cognizable theory of relief. *Phillips v. County of Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008), quoting *Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 1964–65. As far as the City can tell, it is a combination of an untimely petition for writ of mandate challenging the 2023 denial and a duplicative negligence cause of action as to **both** the City and the City Manager, and should be dismissed with prejudice.

V. CONCLUSION

On the basis set forth herein, and in their moving papers, the City and City Manager respectfully ask this Court to dismiss CVA's SAC, and each cause of action alleged therein, without leave to amend and with prejudice.

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Dated: May 14, 2025

BURKE, WILLIAMS & SORENSEN, LLP

By: */s/ Alena Shamos*
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CITY OF CHULA VISTA and CITY MANAGER, MARIA V. KACHADOORIAN, (erroneously sued as MARY V. KACHADOORIAN, an individual)

PROOF OF SERVICE

CV Amalmagated LLC dba CALIGROWN v. City of Chula Vista, et al.
Case No. 3:24-cv-01348-RSH-DDL

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Riverside, State of California. My business address is 1770 Iowa Avenue, Suite 240, Riverside, CA 92507-2479.

On May 14, 2025, I served true copies of the following document(s) described as **DEFENDANTS CITY OF CHULA VISTA'S AND CITY MANAGER, MARIA V. KACHADOORIAN'S (ERRONEOUSLY SUED AS MARY V. KACHADOORIAN) REPLY IN SUPPORT OF MOTION TO DISMISS THE SECOND AMENDED COMPLAINT PURSUANT TO RULE 12(B)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE** on the interested parties in this action as follows:

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BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on May 14, 2025, at Riverside, California.

/s/ Sandra D. McLeod
Sandra D. McLeod