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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, an individual; and HINDERLITER, DE LLAMAS & ASSOCIATES, a California corporation and DOES 1 through 100, Defendants.	CASE NO: 3:24-cv-01348-RSH-DDL CV AMALGAMATED LLC DBA CALIGROWN'S OPPOSITION TO HINDERLITER, DE LLAMAS & ASSOCIATES' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT (F.R.C.P. 12(b)(6)) [PER CHAMBERS RULES, NO ORAL ARGUMENT UNLESS SEPARATELY ORDERED BY THE COURT] Assigned to: Hon. Robert S. Huie, Courtroom 3B Hon. David D. Leshner, Courtroom 3A Date: June 6, 2025 Judge: Hon. Robert S. Huie Crtrm: 3B Complaint Filed: July 30, 2024 Trial Date: Not Set

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I

INTRODUCTION

Defendant Hinderliter, De Llamas & Associates' ("Defendant" or "HDL") motion to dismiss Plaintiff CV Amalgamated LLC dba Caligrown's ("CVA") second amended complaint ("SAC") should be denied. CVA's claims against HDL are timely, properly and sufficiently pleaded, and state claims under Section 1983 and California law. In the alternative, CVA should be granted leave to amend its SAC, as it can easily cure any pleading defects the Court might find to have merit.

II

STATEMENT OF FACTS

Chapter 5.19 ("Cannabis Ordinance") of the City of Chula ("City") Municipal Code ("CVMC") and the related controlling cannabis regulations ("Cannabis Regulations") (the Cannabis Ordinance and the Cannabis Regulations are sometimes referred to collectively as the "CO&R") require that all applications for storefront Cannabis permits be scored and ranked along with all other applications. SAC, ¶ 10. This has not happened as a result of the Defendant's unlawful and tortious conduct. SAC, ¶¶ 1, 24-29.

The City contracted with Defendant to conduct scoring and ranking of applications. SAC, ¶ 25. On January 31, 2020, the City and HDL failed to score CVA's applications for licenses in Districts 1, 3, and 4. SAC, ¶ 14. Following an appeal by CVA, the City was ordered to score and process CVA's applications after finding the City and HDL had failed to score and arbitrarily assigned low scores without considering applications. *Id.* Thereafter, the Defendant again failed to score CVA's license applications and then rejected the applications based on arbitrarily and capriciously assigned scores, disparate treatment of CVA and by invention of the "400 Threshold". SAC, ¶ 15.

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After nearly two years of litigation with City, initially in the Superior Court for the State of California and then before the California Court of Appeal ("Writ Action"), confirmed the City's and its agent HDL's violations of the law, shockingly, the City and HDL did not immediately score and rank CVA against all applicants after the California Court of Appeal published its decision on July 19, 2022 (*CV Amalgamated LLC v. City of Chula Vista* 82 Cal. App. 5th 265 (2022) ("Decision")). SAC, ¶ 1. The Superior Court of the County of San Diego issued a Writ of Mandate ordering the City to score and rank CVA's applications – as it should have done in 2020. SAC, ¶ 17. But again, in September 2023, the City and Defendant still arbitrarily rejected CVA's applications without having ranked them against all other applications. SAC, ¶ 18. On October 13, 2023, CVA submitted a California Government Code section 910, et seq., claim against the City. SAC, ¶ 20. However, the City rejected the claim on November 27, 2023, and CVA initiated this lawsuit to hold the City accountable. SAC, ¶ 21.

III

LEGAL STANDARD ON MOTION TO DISMISS

A court should deny a motion to dismiss for failure to state a claim when a plaintiff alleges "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see* Fed. R. Civ. P. 12(b)(6). A claim has facial plausibility when plaintiff pleads facts that allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). When determining plausibility, the court must accept as true all well-pleaded factual allegations in the complaint. *Id.* at 679. Plausibility "does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of [the claims]." *Twombly*, 550 U.S. at 556. A complaint should survive a motion to dismiss when there are two alternative explanations, one advanced by defendant

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and the other advanced by plaintiff, both of which are plausible. *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). It is beyond the scope of a motion to dismiss to determine the truth or probability of the disputed facts. *Id.* at 1217.

When ruling on a 12(b)(6) motion, the complaint must be construed in the light most favorable to the plaintiff. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Moreover, the court may consider documents attached to the complaint, documents incorporated by reference in the complaint, and matters of judicial notice without converting the motion to dismiss into a motion for summary judgment. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

Even if the court finds a complaint does not state a cause of action, then leave to amend must be granted if there is a possibility that the defect can be cured by amendment. *Knappenberger v. City of Phoenix*, 566 F.3d 936, 942 (9th Cir. 2009) (quoting *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000)).

Furthermore, affirmative defenses may not be raised by motion to dismiss when the defense raises disputed issues of fact. *Scott v. Kuhlmann*, 746 F.2d 1377, 1378 (9th Cir. 1984). A motion to dismiss on an affirmative defense will only be sustained if "the complaint establishes the defense." *U.S. Commodity Futures Trading Comm'n v. Monex Credit Co.*, 931 F.3d 966, 972 (9th Cir. 2019).

IV

LEGAL ARGUMENT

A. Plaintiff's Complaint Is Not Prematurely Barred by the Fact-Intensive Equitable Defenses of Unclean Hands and Illegality

Defendant contends CVA's entire complaint is barred by the equitable defenses of "unclean hands" and "illegality" because CVA seeks to obtain a business license to sell cannabis, an activity federally proscribed by the Controlled Substances Act. This argument misapplies controlling precedent and

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seeks premature dismissal based on defenses ill-suited for the pleading stage. Equitable defenses like unclean hands and illegality are not absolute and require a fact-specific inquiry into the conduct of both parties, the direct relationship between any alleged misconduct and the specific claims, and broader public policy implications. Such defenses can only form the basis for a Rule 12(b)(6) dismissal if the facts establishing the defense are unequivocally clear from the face of the complaint itself. That is not the case here.

1. The "Unclean Hands" Defense Is Inapplicable at This Stage

Defendants' reliance on *Johnson v. Yellow Cab Transit Co*., 321 U.S. 383 (1944), is misplaced. While defendants cite it for the principle that courts should not aid illegal transactions, the Supreme Court in Johnson refused to apply the unclean hands doctrine to bar relief. *Id.* at 387. The Court emphasized that the maxim "is not applied by way of punishment for an unclean litigant, but 'upon considerations that make for the advancement of right and justice,'" and is not a "rigid formula." *Id.* (quoting *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 245 (1933)). Application of the doctrine is discretionary and requires a balancing of equities unsuitable for a motion to dismiss.

Moreover, unclean hands requires that the plaintiff's alleged misconduct bear an "immediate and necessary relation to the equity that [the plaintiff] seeks in respect of the matter in litigation." *Keystone Driller Co.*, 290 U.S. at 245. Here, general involvement in the state-licensed cannabis industry is insufficient; the alleged wrongdoing must encompass the cause of action itself. Defendant's broad assertion that CVA's "primary right" is simply to obtain a license oversimplifies CVA's claims. CVA's complaint does not on its face establish the requisite direct nexus between its cannabis operations and each specific claim to warrant dismissal.

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2. The CSA Does Not Mandate Dismissal of All Civil Claims Involving Cannabis Businesses

Defendants' argument that the CSA's federal prohibition on cannabis automatically bars CVA from any relief in federal court is too broad. The CSA does not divest federal courts of jurisdiction over all civil claims involving state-licensed cannabis businesses, nor does it mandate dismissal of every such claim under an "illegality" defense. Federal courts have adjudicated various civil claims involving such businesses. *See, e.g., Bart St. III v. ACC Enters., LLC*, No. 217CV00083GMNVCF, 2020 WL 1638329, (D. Nev. Apr. 1, 2020) (addressing enforceability of a loan to a cannabis business). The issue is often whether enforcing the specific right inherently compels an illegal act under the CSA.

While CVA seeks a license to operate a cannabis business, its request for this Court's intervention is not to "assist its violation of federal law" by seeking a judicial override of the CSA. Rather, CVA seeks an adjudication of its rights under state and local law, contending that Defendants have failed to comply with their own mandated processes or have violated CVA's due process rights in the license application procedure. The core of this dispute is whether Defendants acted lawfully in their specific administrative capacities. Because the specific relief sought by CVA does not require this Court to directly order a federal agency to contravene the CSA, or to declare the CSA itself invalid, the illegality defense fails.

The adverse precedents cited by Defendants, such as *Crocroft v. Graham*, 122 F.4th 176 (5th Cir. 2024) (addressing First Amendment protection for advertising an illegal product), *Original Invs. LLC v. Oklahoma*, 542 F. Supp. 3d 1230 (W.D. Okla. 2021) (challenging state licensing rules to broadly facilitate a cannabis market in defiance of federal law), and *Jensen v. Md. Cannabis Admin.*, 719 F. Supp. 3d 466 (D. Md. 2024) (same), involved plaintiffs whose claims, unlike CVA, directly sought to compel broader market participation or rights in a

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federally proscribed interstate market, or to strike down regulations in a manner that would widely "encourage participation in activities that Congress has expressly prohibited." These decisions have no bearing on this case, where CVA's claims focus on alleged failures in Defendant's failure to follow the law governing the licensing scheme. Adjudicating the arbitrary and capricious, and unlawful conduct of Defendants in violation of due process is a legitimate judicial function, distinct from compelling a direct violation of the CSA's core prohibitions by a federal entity or invalidating the CSA itself.

B. CVA Has Adequately Pleaded a Claim Against HDL

Defendant objects to factual allegations as to its responsibilities and the roles it is alleged to have played in harming CVA. ECF No. 28-1 at 12. The arguments of Defendant should be rejected fundamentally as they hinge on factual determinations that are not appropriate at this stage.

Defendant objects it does not owe mandatory and ministerial duties and cites to the entirety of the CO&R as support. The citation is vague and unintelligible. Of course, there is no provision of the CVMC that states: "Agents of the City retained to score, rank and process applications do not owe mandatory and ministerial duties to follow the law." The contention lacks merit and is disputed. HDL was hired to score, rank and process applications per the CO&R and conspired with the City to not score, rank and process CVA's applications in violation of the law. Nor does Defendant provide any legal authority to support its argument that it owes no duty to CVA. This argument should be rejected. HDL as agent of the City, like all City actors, had a duty to all applicants to follow the law and it failed to do so, all as alleged.

Defendant objects that it did not conspire to engage in litigation to delay the application process. First, even if such an allegation is struck and/or disregarded, the claim against HDL is still adequately pleaded. HDL is alleged to have conspired with the City to establish a policy to reject eligible and qualified

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applicants that did not meet the 400 Threshold and without scoring them. SAC, ¶¶ 14, 25. The litigation privilege is not applicable to allegations that HDL, as agent of the City per its contract, was authorized to conduct scoring and ranking of applications per the CO&R and did not do it. The City, through the actions of the City Manager and HDL, adopted a policy that all applications scoring less than 400 be arbitrarily rejected ("400 Threshold"). SAC, ¶¶ 22-29. This unlawful policy violates the CO&R, which requires all applicants to be scored and ranked and thereafter selected in the order of that ranking. The adoption of this policy by the City Manager and HDL and its improper application across all applicants by Defendants, including but not limited to CVA, is alleged in detail in the SAC. SAC, ¶¶ 22-29. In sum, 39 of 95 applicants scored 400 or greater and each and every one of these 39 applicants and **only these** 39 applicants received interviews. SAC, ¶ 24. All other applicants were rejected. *Id.* In sum, but for the policy adopted and implemented by the City, the City Manager, and/or HDL of rejecting CVA based on the 400 Threshold, the City, and specifically the City Manager, would not have been able to execute Cannabis Licensee Operating Agreements (see SAC, ¶¶ 18-19), and CVA subsequently rejected in 2023. Rather, had HDL followed the CO&R it would have had to consider CVA's applications along with other similarly situated applicants. CVA alleges that the City, the City Manager, and/or HDL are responsible for these constitutional violations and has adequately pleaded its claim.

C. CVA's Claims Are Timely

Defendant's contention the claims of CVA are time barred lacks merit. The earliest date for the accrual of this claim is September of 2023 when the City, City Manager and HDL reaffirmed all of their past tortious and unconstitutional policies and conduct by finally rejecting CVA. At that time, the City, City Manager and/or HDL finally scored but failed to rank and process CVA's applications. Here the instant action was filed on May 21, 2024, in state

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court, and thus CVA's claims are timely if they accrued on or after May 21, 2022. Accordingly, the claim is timely. *Harlow v. Cnty. Of Riverside*, 295 F. App'x 252, 254 (9th Cir. 2008); Cal. Code of Civ. Proc. § 335.1; *Olsen v. Idaho State Bd. Of Med.*, 363 F.3d 916, 926 (9th Cir. 2004).

Defendant's contention the claims accrued no later than early 2020, is incorrect. Under federal law, accrual occurs when the plaintiff has a complete and present cause of action and the plaintiff can "file suit and obtain relief." *Wallace v. Kato*, 549 US 384, 388 (2007). This did not occur until 2023. In fact, in *Olsen*, the Court found the plaintiff's claim accrued when she received the final letter denying her license reinstatement. *Olsen v. Idaho State Bd. Of Med.*, 363 F.3d 916, 926 (9th Cir. 2004). Here, the claim of CVA is timely.

Further, the doctrine of equitable tolling under California law applies in this case. See *Hardin v. Straub*, 490 US 536 (1989). The California Supreme Court in *Addison v. California*, 21 Cal.3d 313 (1978) stated in part that "courts have adhered to the general policy which favors relieving plaintiff from the bar of a limitations statute when, possessing several legal remedies, he, reasonably and in good faith, pursues one designed to lessen the extent of his injuries or damage." *Id.* at 317-318. Here, this policy dictates that a good faith litigant like CVA have its day in court.

D. CVA Has Adequately Alleged a 1983 Claim Under *Monell*

Defendant joins the City's Motion as to the 1983 allegations. CVA similarly incorporates its opposition to the City's motion to dismiss at ECF No. 30.

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1. CVA Had No Right to Appeal To the City Manager in 2023

The Defendant argues that CVA was required to appeal to the City Manager. ECF No. 28-1 at 14. This is incorrect. The final decision in 2023 was not appealable to the City Manager. The CO&R provides in key part at Section 0501, subdivision (P)(4)(a), with bolding added:

> If the City Manager makes a determination that an Applicant's score is erroneous and no other basis for rejection of the application exists, the City Manager shall grant the appeal….City must then cause a reassessment of the Applicant's score to be conducted, and thereafter issue a new Notice of Decision to the applicant; **such Notice of Decision shall be final and contain no right to appeal to the City Manager.**

Defendant further claims the City Manager did not deny CVA's applications. ECF No. 28-1 at 14. This is disputed by CVA which alleges that correspondence utilizing the City Manager's letterhead is from the City Manager. At minimum, the fact is disputed and must be rejected at this stage.

Moreover, as a matter of law, exhaustion of state remedies is not a prerequisite to a 1983 action. *Knick v. Township of Scott*, 588 US 180, 184 (2019). Thus, the argument should be rejected.

2. CVA Adequately Alleges Ratification

The City adopted and ratified a policy established by either or both of the City Manager and HDL that violated the CO&R and the constitutional rights of CVA. SAC, ¶¶ 10, 24-29. In short, assuming the allegations to be true, as is required at the motion to dismiss stage, CVA has properly alleged an official government policy, practice, custom, or pattern to proceed with a Section 1983 claim.

3. CVA Adequately Alleges a Constitutional Violation

Defendant asserts the SAC does not contain sufficient allegations that Defendant violated a federal right. However, the argument is premised on a mischaracterization of the allegations in the SAC as being limited, in effect, to a

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claim of negligence. ECF No. 28-1 at 16. The actual complaint alleges in key part that HDL scored and ranked applications by all applicants other than CVA and no rational bases exists for its disparate treatment of CVA. SAC, ¶ 16. The SAC alleges that by decision dated August 21, 2020, HDL rejected CVA's applications based on the 400 Threshold. SAC, ¶ 17. The SAC alleges that in 2023 HDL did not rank and process Plaintiff's applications in accordance with the CO&R. SAC, ¶ 18. The SAC alleges that to "ensure no more than 60 interviews were conducted, City Manager and HDL conspired and agreed to reject otherwise eligible and qualified applicants that did not meet the 400 Threshold." SAC, ¶ 25. The SAC alleges that HDL, by failing to score CVA per the CO&R and by failing to rank CVA and grant an interview based on the 400 Threshold, Defendant conspired with the City to cause the rejection of CVA's applications without them being scored, ranked and processed per the CO&R. By this conduct Defendant intentionally violated the due process rights of CVA under the color of state law. SAC, ¶¶ 36-38. The paraphrasing of the SAC by Defendant sets up a straw man argument and ignores the actual allegations. The actual allegations in the complaint do allege a constitutional violation by HDL.

4. CVA Properly Alleges an Equal Protection Claim

Defendant ignores relevant allegations in the SAC and makes arguments outside the scope of a motion to dismiss. CVA pleaded facts sufficient to show that Defendant scored applications by all applicants other than CVA with no rational basis for its disparate treatment. SAC, ¶¶ 15-16, 32. CVA further details the way the Defendant treated its applications differently than other applicants and non-applicants with specific dates and outcomes. SAC, ¶¶ 17-19. CVA alleges it was similarly situated when "HDL scored applications by all applicants other than CVA." SAC, ¶ 16. Further, CVA alleges it is similarly situated to

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other applicants using its charts pertaining to score and rank of other applicants. SAC, ¶ 18. The allegation of irrational differential treatment is all that is required from CVA at this stage of the proceedings.

5. CVA Properly Alleges a Due Process Claim

CVA properly alleges a due process claim under the Constitution. CVA alleges it has a protected property interest in its applications for a City License in Districts 1 and 3 of the City and that HDL had no discretion to choose not to score and rank these applications in accord with the CO&R and specifically the CVMC. SAC, ¶¶ 28-29. CVA further alleges that the Defendant purported to act under the color of state law and policy enacted in the CO&R by depriving CVA of these protected property rights without authority under the CO&R. SAC, ¶ 37.

This is a case of first impression. There is no case precedent addressing analogous facts cited by Defendant or of which CVA is aware. The cases cited by Defendant are not controlling here. Defendant incorrectly seeks to treat the property interest at issue as the final vested permit. The property interest violated in this case is in the application and the fair handling of that application. Again, there is no case law on point. CVA's argument is simple and powerful. The discussions in *Wedges/Ledges of Cal. v. City of Phx.*, 24 F.3d 56, 64 (9th Cir. 1994) and *N. Pacifica, L.L.C. v. City of Pacifica*, 234 F. Supp. 2d 1053, 1057 (N.D. Cal. 2002) are instructive and support CVA. The only case of interest cited by Defendant is the District Court decision in *ARMLA One, Inc. v. City of Los Angeles,* NO. 2:20-CV-07965-SB-RAO, 2020 WL 8372965 (C.D. Cal. Dec. 9, 2020). The rationale of *ARMLA One* is of limited use, as that case dealt with a Los Angeles ordinance, did not address a mandatory and ministerial process like that at hand, did not address a case where the City simply failed to consider an application, as it did here, and in any event, that Court wrongly focused on the guaranty of a permit as the be all end all consideration. It is not. An application, under the circumstances of this case, is a property interest.

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Once CVA timely applied and met all requirements it was holding an application that the CO&R and the Defendants had promised to score, rank and process per the law. At that moment, CVA held a vested interest in that application and it was a constitutionally protected property interest. As the CO&R set up a limited playing field CVA could trade on its asset in commerce with third parties. CVA had spent money and time developing this asset. While there was not yet a permit, it held the vested right to an application that would be scored, ranked and processed. This asset held value to CVA and it had an undeniable expectation that the scoring, ranking and processing would occur. When the Defendants violated the law, they took this property interest from CVA in violation of the Constitution. The case law in this area and the underlying rationale of that body of law supports CVA.

In contrast, finding that CVA has no property interest swings wide open the door to corruption by empowering state actors to ignore instructions of the democratically elected legislative branch as set forth in the laws and regulations, and to take whatever actions they choose for whatever reasons they choose and without direct accountability to the electorate.

Thus, State law creates a legitimate claim of entitlement that gives rise to a protected property interest if it "impose[s] 'significant limitation[s] on the discretion of the decision maker.'" *Nunez v. City of Los Angeles*, 147 F.3d 867, 873 n.8 (9th Cir. 1998). Here, CVA alleges the Defendant had no discretion to not even score its applications and to reject these applications without scoring them in accord with the CO&R since they meet all requirements under the CO&R. SAC, ¶ 32. Moreover, throughout its SAC CVA alleges Defendant's obligations to score the applications was mandatory, and ministerial, rather than discretionary. SAC, ¶¶ 12-19, 33-35. This scoring and ranking procedure and

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the City's and HDL's total lack of discretion as alleged created CVA's expectation that its applications would be scored, ranked, and processed in accord with the CO&R.

Defendant argues any violations of substantive due process must shock the conscience and offend the community's sense of fair play and decency. However, the SAC alleges Defendant failed to score CVA's applications multiple times. CVA alleges the Defendant had no rational basis and proceeded with no regard for CVA's rights and in flagrant violation of the CO&R. SAC, ¶ 15. CVA's allegations in the SAC plausibly suggest that the Defendant unreasonably, and arbitrarily and capriciously, favored other license applicants over CVA. Therefore, assuming these allegations are true, CVA has sufficiently pleaded a due process claim that shocks the conscience and survives the City's motion to dismiss.

6. Qualified Immunity Does Not Protect Defendant

Qualified immunity doctrine shields government officials performing discretionary functions. *Anderson v. Creighton*, 483 US 635, 638. This doctrine does not apply here where the allegations are all premised on an absence of discretion. Even assuming the doctrine does apply, which it does not, the plaintiff need only allege facts showing (1) official's conduct violated a constitutional right; and, if so, (2) the right was clearly established in light of the specific context of the case. *Phillips v. Hust*, 588 F.3d 652, 655 (9th Cir. 2009). Defendant mischaracterizes the allegations of the SAC as sounding exclusively in negligence when the allegations are of intentional deprivation of constitutional property interests conducted in plain violation of the CO&R. Thus, HDL is alleged to have violated a constitutional right, and it is plainly alleged that this right was clearly established – namely it is in the plain language of the CO&R. Thus, there is no qualified immunity.

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E. CVA's Negligence Claim Does Not Fail as a Matter of Law

Defendant claims throughout its motion that it owes no duty to follow the law. ECF No. 28-1 at 13:5; 13:6: 13:7; 19:20; 19:21; 19:26-28. Preliminarily, it is indisputable that "[p]ublic agencies have a duty to comply with applicable state statutes and local ordinances." *Citizens for Amending Proposition L v. City of Pomona,* 28 Cal.App.5th 11259, 1187 (2018). The City Manager of Chula Vista swears an oath of office per Section 513 of the CVMC and California law to uphold the law, including the federal and state constitutions. Section 513 requires these oaths of all full-time employees. CVA alleges this duty to follow and uphold the law is likewise a duty of Defendant. The SACs general allegations in this respect are sufficient, however, certainly CVA can may amend to include specific allegations as to HDL taking on the duty to follow the law set forth in its contract with the City, as Defendant insists it has no such duty.

CVA has alleged liability for HDL arising under California Civil Code § 1714, CVMC 5.02.080 and California Government Code sections 815.2, 815.4 and 815.6. Section 1714 of the Civil Code states in key part that it applies to "everyone". This includes Defendant and no argument or case law is presented to refute this position. The overarching argument of Defendant is that it can work for the City and not follow the law, violate constitutional rights of those it is servicing, and suffer no consequence. Defendant is wrong.

Moreover, Defendant argues disputed facts should be determined in its favor when it argues that the claim makes no sense when Defendant "had no authority to control the issuance of licenses" and cites to *Wilson v. Workers' Comp. Appeals/ Bd.*, 91 Cal.App.3d 759 (1987). ECF No. 28-1 at 20:9. First, the allegation in the SAC is that HDL established a policy to reject eligible and qualified applicants that did not meet the 400 Threshold and without scoring them. SAC, ¶¶ 14, 25. Defendant apparently disputes the allegations but such issues are not appropriate for resolution at this stage. Second, the *Wilson* case is

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a citation that has no bearing here and is mistaken on multiple levels. The page citation of Defendant is empty as Defendant cites to pages 797-98 but the decision spans pages 759 to 766. More importantly, the case does not fairly stand for the proposition that there is no duty where "legislation put the duty on state official" as contended by Defendant. The case involved a decision that the employer City was not liable for injuries suffered by an employee that were suffered while off-duty. *Wilson v. Workers' Comp. Appeals Bd.,* 91 Cal.App.3d 759, 766. It has no bearing here. In sum, Defendant fails to refute the sufficiency of the pleading and the motion to dismiss on these grounds should be denied.

F. Plaintiff's Third Cause of Action For Failure To Follow the Law Is Sufficiently Pleaded

CVA's third cause of action is not invalid or untimely. It is an alternative cause of action to the first and second causes to recover for the wrongful conduct of the Defendant. Fed. R. Civ. P. 8(d)(2). The SAC adequately alleges that Defendant failed to follow the law. Again, the emphasis on duty and a lack of a duty to follow the law is misguided as discussed above. The duty of Defendant is either or both a basis for a negligence claim or the basis for a claim for failure to follow the law. Nor is this claim duplicative of the Writ Action as it is based on facts that did not exist 5 years ago and that had not accrued. Further, CVA's remedy in the Writ Action is not monetary relief for the wrongful illegal conduct, it is strictly injunctive. Defendant's additional arguments to dismiss this third cause of action are not persuasive. In fact, the Defendant's argument that a 90-day statute of limitation at Government Code section 65009 applies in this case is frivolous. First, the issuance of a business license under Chapter 5.19 of the CVMC is not a land use decision. Section 5.19.050, subdivision (D)(3) of the CVMC provides: "Issuance of a City License does not create a land use entitlement." CVMC § 5.19.050, subd. (D)(3). Second, the 90-day statute

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applies only to decisions of a "legislative body." (Govt. Code § 65009, subd. (c)(1)). Third, the processing of CVA's application with the potential for issuance of this business license is not one of the types of decisions described under Govt. Code section 65009, subd. (c)(1)(E). The Defendant's kitchen sink argument is wrong and a waste of time.

V

CONCLUSION

For the foregoing reasons, CVA respectfully requests that the Court deny the Defendant's motion to dismiss the SAC in its entirety. In the alternative, if the Court does find any element to require additional factual exposition, CVA should be granted leave to amend.

DATE: May 23, 2025

Respectfully submitted,

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