UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

CITY OF CHULA VISTA et al.,

Defendants.

Case No.: 24-cv-1348-RSH-DDL

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTIONS TO DISMISS AND REMANDING CASE

[ECF Nos. 26, 28]

Pending before the Court is a motion to dismiss plaintiff CV Amalgamated LLC's Second Amended Complaint, filed by defendants City of Chula Vista (the "City") and Maria A. Kachadoorian, ECF No. 26, and a separate motion to dismiss filed by defendant Hinderliter, De Llamas & Associates ("HDL"), ECF No. 28. As set forth below, the City and HDL's motions to dismiss are granted as to Plaintiff's sole federal claim, and the remainder of the case is remanded to California Superior Court.

I. BACKGROUND

A. Plaintiff's License Applications and Initial State Lawsuit

In 2018, the City enacted an ordinance regulating commercial cannabis businesses

(the "Ordinance"), and thereafter adopted regulations to implement the Ordinance (collectively the "CO&R").[1] ECF No. 14 at 1. The CO&R set forth a procedure to apply for a license to sell cannabis, with a merit-based system of scoring and ranking determining the award of licenses. *Id.* at 1–2. The CO&R provided for a maximum of eight licenses for storefront retail cannabis sales, with two licenses available in each of its four districts for electing City Council members (the "Districts"). *Id.* at 2. The City engaged defendant HDL to review, interview, score, and rank applicants. ECF No. 15 ¶ 10.

Plaintiff's operative pleading alleges that in January 2019, Plaintiff submitted applications for licenses in Districts One, Three, and Four. *Id.* ¶ 13. In January 2020, the City assigned scores to Plaintiff's applications, but rejected those applications for failure to rank high enough in the merit-based evaluation process. *Id.* ¶ 14. Plaintiff filed an administrative appeal. *Id.* On July 7, 2020, Plaintiff prevailed on its appeal, and the hearing officer ordered the City to re-score Plaintiff's applications. *Id.* The City then re-scored the applications by "arbitrarily and capriciously assign[ing] a score of 385 to each application … and then arbitrarily and capriciously rejected each of [Plaintiff's] applications because they did not score at least 400." *Id.* ¶ 15. The City rejected Plaintiff's applications by way of a letter sent on August 21, 2020. *Id.* ¶ 17.

Plaintiff thereafter filed a lawsuit in San Diego Superior Court, seeking a writ of mandate compelling the City, the City Manager, and HDL to again re-score Plaintiff's applications. *Id.* Although the Superior Court initially denied the writ, on July 19, 2022 the California Court of Appeal reversed, ordering the trial court to issue a writ compelling the City to rescind its rejection and to re-score Plaintiff's applications. *See CV Amalgamated*, 82 Cal. App. 5th at 289.

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[1] The City's regulatory regime for cannabis, and the procedural history of this case up to the decision by the California Court of Appeal, are detailed in *CV Amalgamated LLC v. City of Chula Vista*, 82 Cal. App. 5th 265, 270-77 (Ct. App. 2022). The Court takes judicial notice of this decision.

On August 2, 2023, the Superior Court issued a writ of mandate as directed by the Court of Appeal. ECF No. 15 ¶ 17. However, over three months earlier, on April 14, 2023, the City had already issued the last available license for any District in which Plaintiff had applied for a license. *Id.* ¶ 19.

In September 2023, the City, the City Manager, and HDL re-scored Plaintiff's applications in Districts One and Three, "resulting in application scores of exactly 400." *Id.* ¶ 18. Defendants then interviewed Plaintiff, and added an interview score of 475 for a total of 875 points. *Id.* However, as noted above, the City had already issued all of the available licenses for the Districts in question; thus, the City again rejected Plaintiff's applications. *Id.*

Plaintiff alleges that, based on the scores as ultimately calculated for Plaintiff, it would have ranked higher than any qualified applicant for District One, and would have had the second-highest ranked application for District Three. *Id.* Plaintiff alleges that "[r]ather than immediately scoring and ranking [Plaintiff's] applications in July of 2022 [when the Court of Appeal issued its decision], the City and the City Manager instead paid outside legal counsel to present frivolous legal arguments to delay the Trial Court's issuance of the Writ of Mandate … until it was finally issued in August 2023." *Id.* ¶ 19.

B. This Lawsuit

On May 21, 2024, Plaintiff filed a new lawsuit against the City in San Diego Superior Court. ECF No. 1-2 at 9. The City removed the suit to this Court on July 30, 2024. ECF No. 1.

On September 5, 2024, Plaintiff filed its First Amended Complaint (the "FAC") against the City. ECF No. 6. On February 21, 2025, the Court granted the City's motion to dismiss the FAC for failure to state a claim, while also granting leave to amend. ECF No. 14.

Plaintiff filed its Second Amended Complaint (the "SAC"), its operative pleading, on March 7, 2025. ECF No. 15. The SAC added as defendants Chula Vista City Manager Maria Kachadoorian and HDL.

The SAC alleges that the City "arbitrarily and capriciously failed to score and rank [Plaintiff's] applications for cannabis permits in 2019, 2020, and again in 2022." *Id.* ¶ 1. The SAC brings three claims: (1) a federal claim pursuant to 42 U.S.C. § 1983 for violation of the due process and equal protection clauses; (2) a state claim for negligence; and (3) a claim for "failure to follow law." *Id.* ¶¶ 30–49. Plaintiff seeks money damages, and in the alternative, an order declaring Plaintiff "the highest ranked applicant in District 1 and the second ranked applicant in District 3." *Id.* at 17.

On April 16, 2025, the City and Ms. Kachadoorian filed a motion to dismiss the SAC. ECF No. 26. On May 2, 2025, HDL filed a separate motion to dismiss. ECF No. 28. The motions are fully briefed. ECF Nos. 30, 32 (oppositions); ECF Nos. 31, 33 (replies).

II. LEGAL STANDARD

A motion to dismiss under Rule 12(b)(6) "tests the legal sufficiency of a claim." *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). However, plaintiffs must also plead "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). The plausibility standard demands more than a "formulaic recitation of the elements of a cause of action," or "'naked assertions' devoid of 'further factual enhancement.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555, 557). Instead, a complaint "must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

When reviewing a motion to dismiss under Rule 12(b)(6), courts assume the truth of all factual allegations and construe them in the light most favorable to the nonmoving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996) (citing *Nat'l Wildlife Fed'n v. Espy*, 45 F.3d 1337, 1340 (9th Cir. 1995)). But a court "disregard[s] '[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.'" *Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010) (quoting

Ashcroft v. Iqbal, 556 U.S. 662, 678–79 (2009)). Likewise, "conclusory allegations of law and unwarranted inferences are not sufficient to defeat a motion to dismiss." *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998) (citing *In re Syntex Corp. Sec. Litig.*, 95 F.3d 922, 926 (9th Cir. 1996)). "After eliminating such unsupported legal conclusions, [courts] identify 'well-pleaded factual allegations,' which [are] assume[d] to be true, 'and then [courts] determine whether they plausibly give rise to an entitlement to relief.'" *Telesaurus VPC*, 623 F.3d at 1003. Dismissal under Rule 12(b)(6) is proper where there is no cognizable legal theory to support the claim or when there is an absence of sufficient factual allegations to support a facially plausible claim for relief. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010).

III. ANALYSIS

A. Due Process and Equal Protection Claim (Claim One)

The SAC's federal claim under Section 1983 alleges that Plaintiff "has a protected property interest in its applications for a City License in Districts 1, 3 and 4 of the City." ECF No. 15 ¶ 32. The SAC further alleges:

> Defendants deprived Plaintiff of its due process and equal protection rights under the color of state law. Defendants' conduct included, among other unlawful, systematic, and unauthorized acts: (a) the refusal to score Plaintiff's applications despite the ministerial and mandatory duty under the CO&R to score Plaintiff's applications; (b) the arbitrary, capricious, and unauthorized rejection of Plaintiff's applications without scoring them and based on the 400 Threshold; and (c) the erroneous and unauthorized issuance of City Licenses in Districts 1 and 3 to applicants other than Plaintiff that were not scored, ranked and processed as required by the CO&R.

Id. ¶ 36. The SAC asserts that Defendants thereby unlawfully "deprived Plaintiff of its protected property rights." *Id.* ¶ 37.

1. Due process

The Court begins with Plaintiff's due process theory. The Due Process Clause of the Fourteenth Amendment prohibits "governmental deprivation of substantive rights without

constitutionally adequate procedure." *Shanks v. Dressel*, 540 F.3d 1082, 1090–91 (9th Cir. 2008). To succeed on either a substantive or procedural due process claim based on deprivation of property rights, a plaintiff "must first demonstrate that he was deprived of a constitutionally protected property interest." *Gerhart v. Lake Cnty., Mont.*, 637 F.3d 1013, 1019 (9th Cir. 2011).

Here, the asserted property interest is Plaintiff's interest in its applications for permits to sell cannabis. ECF No. 15 ¶¶ 1, 7, 13, 36. Plaintiff does not dispute that for it to sell cannabis, pursuant to the permit it seeks, would violate the federal Controlled Substances Act (the "CSA"). *See* ECF No. 32 at 5. Plaintiff argues, however, that "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." ECF No. 32 at 5. But accepting this assertion – that a commercial cannabis business does not fall outside the jurisdiction and protection of the federal courts – does not mean that Plaintiff states a valid *due process* claim under the U.S. Constitution for deprivation of an asserted property interest in selling cannabis in violation of federal law.

District courts within the Ninth Circuit have rejected due process claims similar to Plaintiff's claim. In *Citizens Against Corruption v. County of Kern*, No. 1:19-CV-0106 AWI GSA JLT, 2019 WL 1979921 (E.D. Cal. May 3, 2019), the district court held that the plaintiffs failed to state a due process claim based on the county's denial of their applications for licenses to continue to operate as marijuana dispensaries. The district court explained:

> Here, Plaintiffs face the insurmountable hurdle that federal law does not recognize any protectible liberty or property interest in the cultivation, ownership, or sale of marijuana. Even though "state law creates a property interest, not all state-created rights rise to the level of a constitutionally protected interest." *Brady v. Gebbie*, 859 F.2d 1543, 1548 n.3 (9th Cir. 1988). "The Supreme Court has held that no person can have a legally protected interest in contraband per se …. under federal law, marijuana is contraband per se, which means no person can have a cognizable legal interest in it." *Schmidt v. Cty. of Nev.*, 2011 U.S. Dist. LEXIS 78111, *15-16 (E.D. Cal. July 19, 2011), citing *United*

> *States v. Jeffers*, 342 U.S. 48, 53 (1951). … As framed, Plaintiffs cannot make a due process claim.

Id. at *3. Other district courts have reached the same conclusion in the context of the denial of licenses to cultivate cannabis. *See, e.g.*, *Borges v. Cnty. of Mendocino*, 506 F. Supp. 3d 989, 998-99 (N.D. Cal. 2020) ("[M]arijuana cultivation remains illegal under federal law. As such, the Court agrees with the reasoning of the other courts that have addressed this question and concludes that plaintiffs do not have federally protected property interest in cultivating medical marijuana and thus that they cannot state a claim under § 1983 for violation of their due process rights."), *aff'd*, No. 22-15673, 2023 WL 2363692, at *1 (9th Cir. Mar. 6, 2023) ("As no federally protected property interest exists in cultivating marijuana, the district court properly dismissed Plaintiffs' substantive due process claims."). *See also Salazar v. City of Adelanto*, No. ED CV 19-2333-PA-SP, 2020 WL 5778122, at *7 (C.D. Cal. Aug. 31, 2020) ("[D]istrict courts within the Ninth Circuit have uniformly found that no private person can have a cognizable property interest in marijuana, even where the state has decriminalized its possession, cultivation, and/or sale.") (collecting cases), *report and recommendation adopted*, No. ED CV 19-2333-PA-SP, 2020 WL 5764404 (C.D. Cal. Sept. 24, 2020).[2]

Here, Plaintiff's asserted property interest amounts to the intangible right to engage in commercial acts that violate federal law. Plaintiff fails to state a federal due process claim.

2. Equal protection

The Court turns next to Plaintiff's equal protection theory. Plaintiff does not allege that it was treated differently on the basis of any protected status. The Court therefore infers that Plaintiff is advancing a "class of one" theory. "To plead a class-of-one equal protection claim, [plaintiffs] must allege facts showing that they have been '[1] intentionally [2]

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[2] Plaintiff does not cite cases to the contrary in support of its due process claim, but asserts that this is a "case of first impression." ECF No. 30 at 9.

treated differently from others similarly situated and that [3] there is no rational basis for the difference in treatment.'" *SmileDirectClub, LLC v. Tippins*, 31 F.4th 1110, 1122-23 (9th Cir. 2022) (quoting *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)). "[A] class-of-one plaintiff must be similarly situated to the proposed comparator in all material respects." *Id.* at 1123. A failure to plead adequate facts supporting differential treatment from others similarly situated is fatal to a "class of one" claim. *See Evans Creek, LLC v. City of Reno*, No. 21-16620, 2022 WL 14955145, *2 (9th Cir. Oct. 6, 2022) ("[B]ecause [plaintiff] has not plausibly pleaded the 'similarly situated' element of its class-of-one claim, its equal protection claim as a whole fails[.]").

Here, the SAC does not adequately plead that Plaintiff was treated differently from others similarly situated, a requirement for a "class of one" claim. The SAC makes no reference to whether other applicants were similarly situated, much less does it allege facts sufficient to establish this element.

In opposing the motions to dismiss, Plaintiff's brief asserts that the SAC "pleaded facts sufficient to show that Defendant scored applications by all applicants other than CVA with no rational basis for the disparate treatment." ECF No. 32 at 10. Plaintiff's brief similarly asserts, "[Plaintiff] alleges it was similarly situated when 'HDL scored applications by all applicants other than CVA.'" *Id.* (citing SAC ¶ 16). According to Plaintiff, therefore, its "class of one" claim is based on the theory that Plaintiff was similarly situated to the other applicants for cannabis licenses, but was treated differently in that it was the sole applicant that Defendants declined to score.

The problem with this theory is that it is contradicted by the SAC itself. The SAC alleges that the City *did* score Plaintiff's applications, resulting in rejections of Plaintiff's applications in January 2020, in August 2020, and in September 2023. *See* ECF No. 15 ¶ 14 (alleging that on an administrative appeal from the City's January 2020 rejection, the former city manager found that the City had "arbitrarily assigned low scores"); ¶ 15 (alleging for the first time in the SAC that in the summer of 2020, the City "arbitrarily and capriciously assigned a score of 385 to each application"); ¶ 18 (alleging for the first time

in the SAC that "[i]n September 2023, the City, the City Manager, and HDL finally scored Plaintiff's applications, resulting in application scores of exactly 400."). The Court of Appeal decision that Plaintiff references in the SAC likewise recites that the City did indeed score Plaintiff's application. *See, e.g.*, *CV Amalgamated*, 82 Cal. App. 5th at 274-75 (reciting that Plaintiff's applications received an initial score of 339, which following Plaintiff's successful administrative appeal was increased to a score of 385).

Indeed, the SAC also complains that the City treated Plaintiff and dozens of other applicants unfairly based on the scores they did in fact receive. In new material added since the FAC, the SAC alleges that the City, after assigning a score of 385 to each of Plaintiff's applications in the summer of 2020, "arbitrarily and capriciously rejected each of [Plaintiff's] applications because they did not score at least 400." ECF No. 15 ¶ 15. The SAC continues, "[t]he City established the policy and practice of rejecting all applications the City scored lower than 400 (the '400 Threshold')." *Id.* The SAC attaches exhibits purporting to show that "39 of the 95 applicants received scores of 400 or greater on their applications," and that "only these 39 applicants, and each and every one of these applicants, received interviews." *Id.* ¶ 24 & Exs. 1, 2. The SAC continues, "[t]he other 56 applications, including [Plaintiff's] applications, were rejected by the City, arbitrarily, capriciously, and in violation of the CO&R, for failing to reach the 400 Threshold." *Id.* ¶ 24. These allegations do not establish a "class of one" claim based on the City's failure to score Plaintiff and only Plaintiff; instead, they allege that Plaintiff was treated the *same* as the other 55 applicants who received a score below 400 and did not receive interviews.[3]

In short, the SAC fails to plead a "class of one" equal protection claim; and the equal protection theory advanced in Plaintiff's brief is undermined by the allegations in the SAC.

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[3] Plaintiff's brief also asserts, in generalized terms, that the SAC "details the way the Defendant treated its application differently than other applicants and non-applicants with specific dates and outcomes." ECF No. 32 at 8. But despite this assertion, no identified portion of the SAC actually details how Plaintiff's application was treated differently from other applications that were similarly situated in all material respects.

Plaintiff fails to state a federal equal protection claim.

3. Leave to amend

"Although a district court should grant the plaintiff leave to amend if the complaint can possibly be cured by additional factual allegations, [d]ismissal without leave to amend is proper if it is clear that the complaint could not be saved by amendment." *Zixiang Li v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013) (internal quotations and citations omitted).

Based on the allegations in the SAC, Plaintiff cannot plead a viable due process claim. Plaintiff's equal protection theory, as articulated in its briefing, is contradicted by the SAC itself. Indeed, many of these allegations that undermine Plaintiff's equal protection theory were added for the first time in the SAC. *See* ECF No. 17 (redline comparing SAC to FAC) ¶¶ 15, 17, 18. Under these circumstances, the Court concludes that amendment would be futile and denies leave to amend. *See Lipton v. Pathogenesis Corp.,* 284 F.3d 1027, 1039 (9th Cir. 2002) ("Because any amendment would be futile, there was no need to prolong the litigation by permitting further amendment.").[4]

B. Supplemental Jurisdiction (Claims Two and Three)

The Court's subject matter jurisdiction over Plaintiff's remaining claims is based on supplemental jurisdiction. The supplemental jurisdiction statute, 28 U.S.C. § 1367, provides that where "the district court has dismissed all claims over which it has original jurisdiction," the district court may decline to exercise supplemental jurisdiction over the remaining claims. 28 U.S.C. § 1367(c)(3).

The decision to decline or retain supplemental jurisdiction is informed by considerations of economy, convenience, fairness, and comity. *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997). "When all federal claims have been dismissed before

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[4] In light of the disposition above, the Court denies as moot the Parties' requests for judicial notice [ECF Nos. 26-2, 28-3], apart from the judicial notice taken above of the California Court of Appeal decision in *CV Amalgamated LLC v. City of Chula Vista*, 82 Cal. App. 5th 265 (Ct. App. 2022).

trial, the interests promoted by supplemental jurisdiction are no longer present, and a court should decline to exercise jurisdiction over state-law claims." *Souch v. Howard*, 27 F. App'x 793, 795 (9th Cir. 2001). *See also Gini v. Las Vegas Metro. Police Dep't*, 40 F.3d 1041, 1046 (9th Cir. 1994) ("In the *usual* case in which federal-law claims are eliminated before trial, the balance of factors . . . will point toward declining to exercise jurisdiction over the remaining state law claims.").

Here, the case is still at the pleading stage, and a state-law claim for negligence remains. The Parties' arguments regarding the viability of that claim center on questions of timeliness, exhaustion, and immunity under state law. Defendants argue that they are entitled to dismissal, while Plaintiff responds in part that "there is no case precedent on point and controlling of the facts at hand." ECF No. 30 at 13. The Court concludes that this case is no different from the usual case in which federal claims are eliminated before trial, and declines to exercise supplemental jurisdiction over Plaintiff's remaining claims.

IV. CONCLUSION

For the foregoing reasons, the Court:

1. **GRANTS IN PART** Defendants' Motions to Dismiss [ECF Nos. 26, 28], and **DISMISSES** without leave to amend Claim One of the SAC; and

2. **REMANDS** this action to the Superior Court of California, County of San Diego.

IT IS SO ORDERED.

Dated: July 9, 2025

Robert S Huie

Hon. Robert S. Huie
United States District Judge