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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

FATIMA ABDELRAHMAN, an individual; NADIA ABDULRAHMAN, an individual; NATALINA KANTIEKO, an individual, and IDZAI MUBAIWA, an individual,

Plaintiffs,

v.

CITY HEIGHTS COMMUNITY DEVELOPMENT CORPORATION, a California Non-Profit Corporation; and DOES 1-50, inclusive,

Defendants.

CITY HEIGHTS COMMUNITY DEVELOPMENT CORPORATION, a California Non-Profit Corporation

Cross-Complainant,

v.

THE CITY OF SAN DIEGO, a California municipality; FATIMA ABDELRAHMAN, an individual; NADIA ABDULRAHMAN, an individual; NATALINA KANTIEKO, an individual, and, ROES 1 through 25, inclusive,

Cross-Defendants.

Case No. 37-2024-00027594-CU-OR-CTL

CITY OF SAN DIEGO'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO CITY HEIGHTS COMMUNITY DEVELOPMENT CORPORATION'S CROSS-COMPLAINT FOR DECLARATORY RELIEF AND EQUITABLE INDEMNITY

I/C Judge: Hon. Katherine A. Bacal
Dept.: 63
Date: August 1, 2025
Time: 11:00 a.m.

Complaint filed: June 12, 2024
Trial: Not Set

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Cross-Defendant City of San Diego (City) respectfully submits the following Memorandum of Points and Authorities in support of its Demurrer to Cross-Complainant City Heights Community Development Corporation's (CHCDC) unverified Cross-Complaint for Declaratory Relief and Equitable Indemnity (Cross-Complaint).

I.

INTRODUCTION

In 2008, the City purportedly issued a neighborhood development permit and use and occupancy permit to CHCDC's predecessor to operate a community farm on property that, at the time, the City believed that it owned. Contrary to the terms of the permits and long after the permits expired, CHCDC began operating and managing the farm in January 2020. In 2024, following further review, the City determined that it did not actually own the property in fee and lacked authority to issue a permit or enter an agreement for the use of the property as a farm.

CHCDC now requests a declaration that the City is in fact the owner of the property and seeks equitable indemnity from the City for costs and damages CHCDC may incur because of its operation and management of the farm. CHCDC's cross-complaint is without merit. CHCDC has admitted that the City does not own the property. Further, CHCDC never had any valid agreement with the City to occupy the property or operate the farm and any alleged claim is barred by the statute of limitations. CHCDC's claim for equitable indemnity also fails as the City is immune from liability for the alleged injury and there is no underlying basis for liability for the doctrine of equitable indemnity to apply.

The City respectfully request that the Court sustain its demurrer to the First and Second Causes of Action without leave to amend and dismiss the Cross-Complaint in its entirety.

II.

STATEMENT OF FACTS

CHCDC alleges that the City has been the fee owner of 5326 Chollas Parkway North in San Diego (Site), the property where New Roots Farm (Farm) is located since the 1950s. Cross-Complaint, ¶¶ 11, 16. In October 2008, the City issued a purported 36-month Neighborhood Use Permit and Site Development Permit (2008 Use-Development Permit) to the International

Rescue Committee (IRC) to establish and operate the Farm. *Id.*, ¶ 18; Exh. A. The 2008 Use-Development Permit was recorded on October 17, 2008. *See id.* In November 2008, the City issued a three-year Use and Occupancy Permit (2008 Use-Occupancy Permit) to IRC for the Site. *Id.*, ¶ 20; Exh. B. IRC developed, operated and managed the Farm pursuant to the 2008 Use-Development Permit and 2008 Use-Occupancy Permit. *Id.,* ¶ 23. The 2008 Use-Development and 2008 Use-Occupancy Permit expired pursuant to their terms in 2011. *Id.*, ¶ 24; Exh. A; Exh. B.

In December 2019, CHCDC and IRC allegedly entered into a Memorandum of Understanding under which, effective December 31, 2019, IRC transferred operation and management of the Farm to CHCDC. *Id.,* ¶ 28. Starting in January 2020, CHCDC developed, operated, and managed the Farm in reliance on the 2008 Use-Development Permit and 2008 Use-Occupancy Permit. *Id.,* ¶ 31.

On February 12, 2024, the City, through the City Attorney, sent a written letter to community members informing them that the City did not own the Farm and lacked authority to issue the 2008 Use-Occupancy Permit or enter into a new agreement with the CHCDC. *Id.*, ¶ 36; Exh. C. The City informed the community members that the City only holds a public easement on the Site and that a community farm is not an allowed use of the public right of way. *Id.*

Counsel for the parties met and conferred but were unable to resolve the City's objections to the Cross-Complaint, making the filing of this demurrer necessary. *See* Declaration of Benjamin P. Syz, ¶¶ 2-6.

III.

LEGAL STANDARD

A demurrer tests the sufficiency of the plaintiff's complaint, i.e., whether it states facts sufficient to constitute a cause of action upon which relief may be based. Code Civ. Proc. § 430.10(e); *Young v. Gannon*, 97 Cal. App. 4th 209, 220 (2002). "A complaint showing on its face the cause of action is barred by the statute of limitations is subject to general demurrer." *Iverson, Yoakum, Papiano & Hatch v. Berwald*, 76 Cal. App. 4th 990, 995 (1999). A demurrer may be sustained upon defects that appear on the face of the pleading, or upon any matter of

which the court takes judicial notice. Code Civ. Proc. § 430.30(a). This includes matters shown in exhibits attached to the complaint. *See Frantz v. Blackwell*, 189 Cal. App. 3d 91, 94 (1987). "[T]o the extent the factual allegations conflict with the content of the exhibits to the complaint, [the court relies] on and accepts as true the contents of the exhibits and treat as surplusage the pleader's allegations as to the legal effect of the exhibits." *Barnett v. Fireman's Fund Ins. Co.*, 90 Cal. App. 4th 500, 505 (2001). "[A]llegations in the pleading may be disregarded if they are contrary to facts judicially noticed." *Scott v. JP Morgan Chase Bank, N.A.,* 214 Cal. App. 4th 743, 751 (2013) (citations omitted). "[T]he plaintiff *may not plead facts that contradict the facts or positions that the plaintiff pleaded in earlier actions or suppress facts that prove the pleaded facts false." Cantu v. Resolution Trust Corp.,* 4 Cal. App. 4th 857, 877 (1992) (emphasis in original; citation omitted).

When a plaintiff cannot possibly amend a complaint to state a cause of action, a demurrer should be granted without leave to amend. *Camsi IV v. Hunter Technology Corp*., 230 Cal. App. 3d 1525, 1538-1539 (1991). The burden of showing that the defect can be cured rests squarely on the plaintiff. *Id.* at 1539.

IV.

CHCDC's FIRST CAUSE OF ACTION IS SUBJECT TO DEMURRER WITHOUT LEAVE TO AMEND

A. CHCDC Fails to State Facts Sufficient to Constitute a Cause of Action Because CHCDC Is Estopped by Verified Judicial Admission from Seeking a Declaration that the City Owns the Site

On March 4, 2024, in a separate action, CHCDC filed a Verified Complaint for Quiet Title By Adverse Possession (Quiet Title Action). Request for Judicial Notice (RJN), Exh. 1. In the verified complaint, CHCDC admitted that the Site is owned by Hubner Building Company and Union Title and Trust Company and claims that CHCDC is now the owner by adverse possession. *Id.*, ¶¶ 4, 5, 9; pg. 7 (Verification); Cross-Complaint, ¶ 37; *see* Cal. Code Civ. Proc § 761.020 (quiet title complaint shall be verified).

As a claim for title by adverse possession cannot be brought against the City and because CHCDC admitted in its verified complaint that the Site was owned by two unrelated third

parties, CHCDC is now prohibited from alleging that the Site is owned by the City. *See* Cal. Civ. Code § 1007; *Cantu,* 4 Cal. App. 4th at 877-878. This admission is conclusive on CHCDC and CHCDC is factually and judicially estopped from seeking a declaration that the City owns the Site, that the City is estopped from denying it owns the Site, or that CHCDC was operating or managing the Site pursuant to authority granted by the City. *See Valerio v. Andrew Youngquist Construction*, 103 Cal. App. 4th 1262, 1271-1272 (2002) (judicial admission in pleading prohibits consideration of contrary evidence); Cross-Complaint, ¶ 47.

B. <u>The First Cause of Action for Declaratory Relief Fails to State Facts Sufficient to Constitute a Cause of Action Because CHCDC Never Had a Valid Agreement with the City to Occupy the Site or Operate the Farm</u>

CHCDC alleges that the City is the owner of the Site and that CHCDC is operating the Farm in "reasonable reliance on the 2008 Use-Development Permit and the 2008 Use-Occupancy Permit" issued by the City to IRC in 2008. *See* Cross-Complaint, ¶¶ 20, 21, 31. CHCDC alleges that IRC operated the New Roots Farm pursuant to the 2008 Use-Development and 2008 Use-Occupancy Permit and "transferred operation and management of the New Roots Farm to CHCDC" in 2008, and that CHCDC was operating and managing the Farm "under agreement, lease, and/or license, express or implied, with, and/or with the granted authority and/or consent, express or implied, of and from the City." *Id.,* ¶¶ 27, 28, 43.

The City disputes CHCDC's claim that it owns or has authority over the Farm. Because the City does not own fee title to the Site and because a community farm is not an allowed use of a public street easement, the City lacks authority to renew, revive, or enter into a new agreement for use of the Site for the Farm. *Id.,* Exh. C, pg. 2.

1. The Purported 2008 Use-Occupancy Agreement Expired

Assuming *arguendo* that the City had authority to issue the 2008 Use-Occupancy Permit, CHCDC never had any right to operate, develop or manage the Farm pursuant to the permit. By its own terms, the 2008 Use-Occupancy Permit, with an effective date of November 1, 2008, had a term of three years. *Id.*, ¶ 20; Exh. B. (pg. 1, Definition E. "Term"; pg. 2, ¶ 5). As such, the permit expired at the latest on October 31, 2011. *See id.,* ¶ 24; Exh. B., ¶ 5. Pursuant to the terms of the permit, IRC's continued occupation of the Site did not constitute a renewal or extension of

the permit and did not give IRC, or CHCDC, any right in or to the Site or the Farm. *Id*, Exh. B., pg., 2, ¶ 7. Because the 2008 Use-Occupancy Permit expired more than eight years before CHCDC allegedly entered into a Memorandum of Understanding with IRC to operate and manage the Farm, CHCDC never had any right to occupy the Farm or the Site, much less develop, operate or manage the Farm. *See id.*, ¶ 28, Exh. B.

Further, even if the 2008 Use-Occupancy Permit were valid when executed in 2008, it is now void for failure to comply with the City Charter. The City Charter states: "No contract, agreement, or obligation extending for a period of more than five years may be authorized except by ordinance adopted by a two-thirds' majority vote of the members elected to the Council." RJN, Exh. 2 (San Diego City Charter section 99). As CHCDC expressly admits, the 2008 Use-Occupancy Permit had a term of three years and expired in 2011. Cross-Complaint, ¶¶ 20, 24. For the permit to remain valid and for CHCDC to currently have any claim to the Site or the Farm in 2025, nearly a decade and a half after the permit expired, the permit for CHCDC's use and occupancy of the Site would have had to be authorized by City Council pursuant to the terms of the Charter. CHCDC did not allege, and cannot allege, that City Council adopted an ordinance to provide such authority. As such, CHCDC does not have any claim to the Site or the Farm under the 2008 Use-Occupancy Permit.

2. The Purported 2008 Use-Occupancy Agreement Terminated by Operation of Law

Again assuming *arguendo* that the City had authority to issue the permit and the permit had not expired, the 2008 Use-Occupancy Permit automatically terminated when IRC purportedly assigned its rights to the Site to CDCHC. The permit explicitly states: "PERMITEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY's prior written consent, which may be unreasonably withheld or delayed in CITY's sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit." *Id.,* Exh. B., ¶ 25. The City did not provide written consent, and CHCDC does not allege the City provided written consent, to the assignment of the permit and, by its express terms, the permit cannot be assigned and terminated when IRC attempted to transfer its

rights under the permit to CHCDC in 2019. Because the permit would have terminated, CHCDC never had any legal right to occupy the Site or develop, operate, or manage the Farm.

As the First of Action is premised on CHCDC's claim that it had a property interest in the Site based on the 2008 Use-Occupancy Permit and, even if the City had authority to issue the permit and the permit were valid, the permit expired years before CHCDC's occupied the Site and, alternatively, terminated by operation of law as a result of the purported transfer of the Site from IRC to CHCDC.

C. Any Cause of Action Based on Allegations of a Non-Written Agreement, Lease, or License Is Void Because It Conflicts with the City Charter

Article V, Section 40, of the City of San Diego Charter provides that the City Attorney shall "prepare *in writing* all . . . contracts . . . or other instruments in which the City is concerned." RJN, Exh. 3 (emphasis added). A charter city may not act in conflict with its charter, and any act that is violative of or not in compliance with its charter is void. *Domar Electric, Inc. v. City of Los Angeles,* 9 Cal. 4th 161, 171 (1994). It is well settled law that the mode of contracting, as prescribed by a city's charter, is the measure of the city's power to contract, and a contract made in disregard of the prescribed mode is unenforceable. *Amelco Electric v. City of Thousand Oaks*, 27 Cal. 4th 228, 235 (2002). Moreover, it is the responsibility of the party contracting with the City to see that the charter is complied with. "If the statute forbids the contract which he has made, he knows it, or ought to know it, before he places his money or services at hazard." *Id*.

There is no provision in the City Charter for the execution of oral contracts and any alleged representations made by City employees are insufficient to bind the City. *See Katsura v. City of Buenaventura*, 155 Cal. App. 4th 104, 109 (2007); *G.L. Mezzetta, Inc. v. City of American Canyon*, 78 Cal. App. 4th 1087, 1093-1094 (2000) (failure to comply with all requirements of municipal code regarding formation of contracts rendered alleged oral contract invalid). "It is settled that 'a private party cannot sue a public entity on an implied-in-law or quasi-contract theory, because such a theory is based on quantum meruit or restitution

considerations which are outweighed by the need to protect and limit a public entity's contractual obligations.'" *Katsura*, 155 Cal. App. 4th at 109-110 (citation omitted).

As admitted by CHCDC, the 2008 Use-Occupancy Permit expired in 2011 and CHCDC has no written lease or other agreement with the City. Cross-Complaint, ¶¶ 24, 33. CHCDC's allegations that it reasonably relied on the City's alleged "express representations", "actions and representations", "alleged awareness" and "knowledge", and "express and/or implied consent" are of no consequence because any alleged non-written agreement or contract to occupy the Site or operate the Farm, is void and unenforceable as it conflicts with the requirements of the City Charter. *See, e.g.,* Cross-Complaint, ¶ 31; *Domar Electric, Inc.,* 9 Cal. 4th at 171. Further, as discussed above, any alleged non-written agreement for the Site for a period of more than five years, and any claim based on such alleged agreement, would be void because it conflicts with the City Charter. *See* RJN, Exh. 2 (San Diego City Charter section 99).

Because the City's ability to contract or enter into agreements is expressly limited by the City Charter, CHCDC's claim to the Farm pursuant to a non-written agreement conflicts with the City Charter and is invalid.

D. <u>Any Cause of Action Based on Allegations of a Non-Written Agreement, Lease, or License Is Barred by the Statute of Frauds</u>

CHCDC alleges that it is operating and managing the Farm "under agreement, lease, and/or license, express of implied, with, and/or with the granted authority and/or consent, express or implied, of and from the cross-defendant City." *Id.,* ¶ 31; *see also id.,* ¶ 43; Prayer 1. However, CHCDC expressly admits that there is no written lease between it and the City. *Id.,* ¶ 33.

Under the statute of frauds, an agreement "that by its terms is not to be performed within a year from the making thereof" and "for the leasing for a longer period than one year" are "invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent." Cal. Code Civ. Proc. § 1624(a)(1), (3). As there is no written agreement between the City and CHCDC for the Site or the Farm, CHCDC's alleged claim to the Site and the Farm based on an "express or implied" agreement with the City or the

City's "express and/or implied consent" is invalid and barred by statute of frauds.

CHCDC has not alleged any valid claim to the Site or the Farm and is not entitled to a declaration that it is operating and managing the Farm under any agreement or authority from the City. *See id.*, ¶ 47; Prayer, 1.

E. The First Cause of Action Is Barred by the Section 339's Two-Year Statute of Limitations

California Code of Civil Procedure section 339 establishes a two-year statute of limitations for:

> An action upon a contract, obligation or liability not founded upon an instrument of writing, except as provided in Section 2725 of the Commercial Code or subdivision 2 of Section 337 of this code; or an action founded upon a contract, obligation or liability, evidenced by a certificate, or abstract or guaranty of title of real property, or by a policy of title insurance; provided, that the cause of action upon a contract, obligation or liability evidenced by a certificate, or abstract or guaranty of title of real property or policy of title insurance shall not be deemed to have accrued until the discovery of the loss or damage suffered by the aggrieved party thereunder.

Cal. Code Civ. Proc. § 339(1).

The purported 2008 Use-Occupancy Permit had a term of three years and expired on October 31, 2011. Cross-Complaint, ¶ 24; Exh. B, ¶ 5. As discussed, the First Cause of Action is based on CHCDC's allegations that it has rights to the Site pursuant to the 2008 Use-Occupancy Permit or alleged representations by the City. *See id.*, ¶ 31. Again, assuming *arguendo* that the City had the authority to issue the permit or otherwise authorize the use of the Site for operation of the Farm, any claim to the Site founded on the 2008 Use-Occupancy Permit, or "a contract, obligation, or liability", either written or non-written, must have been brought against the City by October 31, 2013, at the latest. *See* Cal. Code Civ. Proc. § 339(1). Any action brought after this date is barred by the statute of limitations.

"It is well settled that the burdens of permits run with the land once the benefits have been accepted." *See Ojavan Investors, Inc. v. California Coastal Com.*, 26 Cal. App. 4th 516, 525-526 (1994) (holding time to challenge coastal development permit is within statutory period after issuance of permit, not when successor in interest chooses to challenge permit condition); *County of Imperial v. McDougal*, 19 Cal. 3d 505, 510-511 (1977) (discussing and citing cases for

proposition that successor is barred from challenging permit if it accepted benefits). Here, as the purported permit runs with the land, CHCDC is bound by the two-year statute of limitations to bring an action pursuant to the permit that began to run in 2013, even though it was not a party to the permit when it was issued.

Even if the statute of limitations did not begin to run until CHCDC discovered the facts to allow it to bring an action against the City, CHCDC is still barred by section 339(1)'s two-year statute of limitations. CHCDC expressly admitted that, "in or around January 2020", "CHCDC understood and believed, in good faith, and in reasonable reliance on the 2008 Use-Development Permit and the 2008 Use-Occupancy Permit" that "in operating and managing the [Farm], CHCDC was doing so under agreement, lease and/or license, express or implied, with and/or with the granted authority and/or consent, express or implied, of and from" the City. Cross-Complaint, ¶ 31. As CHCDC was aware of the purported 2008 Use-Occupancy Permit in December 2020, as well as the fact that the permit expired by its own terms in 2011, and allegedly believed it was occupying the Site and operating the Farm pursuant to the terms of the permit, or other unwritten agreement with the City, the two-year statute of limitations began to run and expired, at the latest, in or around January 2023. *See* Cal. Code Civ. Proc. § 339(1).

CHCDC's allegation that it "learned, for the first time, there was no written lease, license, or other agreement between it" and the City in October 2023 is immaterial and should be disregarded. *See* Cross-Complaint, ¶ 33. CHCDC expressly admitted that it had knowledge of the purported 2008 Use-Occupancy Permit and its terms in January 2020 and was occupying the Site pursuant to the permit or other agreement. *See id.*, ¶ 31. It is irrelevant that "new leadership" allegedly learned of the absence of a written agreement between CHCDC and the City in October 2023 as CHCDC is bound by its prior admission. *See Sanfran Co. v. Rees Blow Pipe Mfg. Co.*, 168 Cal. App. 2d 191, 205 (1959) ("[K]nowledge by any agent of the corporation, whether presently an officer or not, is the knowledge of the corporation."); Cal. Civ. Code § 2332; *Valerio*, 103 Cal. App. 4th at 1271-1272.

CHCDC has admitted that the City does not own the Site and has not alleged any valid claim to the Site or the Farm. Further, the First Cause of Action is barred by the statute of

limitations. The City's demurrer to the First Cause of Action should be sustained without leave to amend.

V.

THE SECOND CAUSE OF ACTION IS SUBJECT TO DEMURRER WITHOUT LEAVE TO AMEND

A. The Second Cause of Action Is Subject to Demurrer Because the City Is Not Liable for Injury Caused by Alleged Misrepresentations of a City Employee

CHCDC's Second Cause of Action seeks equitable partial and complete indemnity based on two alternative theories. First, it brings a claim for partial or complete indemnity for fees, damages, and costs it has and may incurred in the Quiet Title Action, Forcible Detainer Action, and Damages Action if it is found by the trier of fact that the City is the owner of the Farm and CHCDC was operating and managing the Farm "under agreement, lease, and/or license, express or implied, with, and/or with the granted authority and/or consent, express or implied, of and from the City." Cross-Complaint, ¶ 49. CHCDC alleges it is entitled to equitable indemnity because it initiated the Quiet Title Action in "reasonable reliance" on the representations in the City Attorney's February 12, 2024 letter and because the Forcible Detainer Action and the Damages Action are based on the "City's erroneous February 12, 2024 declaration that it did not own the [Farm]" and that it lacked the authority to issue, renew or revive the 2008 Use-Occupancy Permit, or enter agreement with CHCDC. *Id.,* ¶ 50.

Alternatively, CHCDC alleges it is entitled to equitable indemnity for damages it may be adjudged liable for in the Forcible Detainer Action and the Damages Action if it is found that the City is not the owner of the Farm and CHCDC was not operating and managing the Farm "under agreement, lease, and/or license, express or implied, with, and/or with the granted authority and/or consent, express or implied, of and from the City." *Id.*, ¶ 52. CHCDC alleges it is entitled to equitable indemnity because the Forcible Detainer Action and the Damages Action "are both based in large part on alleged actions and/or actions of CHCDC as to the plaintiffs . . . with understanding and belief, because of, and in good faith and reasonable reliance on, the actions and inaction of [the City] alleged above that the City was the owner" of the Farm. *Id.*, ¶ 53.

CHCDC is not entitled to equitable partial or complete indemnity under either scenario because the City is immune to such liability. For the doctrine of equitable indemnity to apply, there must be a basis for liability against the proposed indemnitor. *BFGC Architects Planners, Inc. v. Forcum/Mackey Construction, Inc.*, 119 Cal. App. 4th 848, 852 (2004). While there generally must be tort liability against the proposed indemnitor, vicarious liability, strict liability, and implied contractual indemnity may also give rise to equitable indemnity. *See id.* "A key restrictive feature of traditional equitable indemnity is that, on matters of substantive law, the doctrine is 'wholly derivative and subject to whatever immunities or other limitations on liability would otherwise be available' against the injured party. . . . This rule 'is often expressed in the shorthand phrase ". . . there can be no indemnity without liability."'" *Prince v. Pacific Gas & Electric Co.*, 45 Cal. 4th 1151, 1158-1159 (2009) (citations omitted).

Under the Tort Claims Act, a "public entity is not liable for an injury caused by misrepresentation by an employee of the public entity, whether or not such misrepresentation be negligent or intentional." Cal. Gov. Code 818.8. "[T]he immunity of a public entity for misrepresentation by its employee, whether intentional or negligent, *is absolute*." *Masters v. San Bernardino County Employees Retirement Ass'n*, 32 Cal. App. 4th 30, 42-43 (1995) (emphasis added).

Both of CHCDC's alternative claims for equitable partial or complete indemnity rely on alleged misrepresentations by the City. The first is based the City's alleged misrepresentation in the City Attorney's February 12, 2024 letter to community members that the City does not own the Farm, if the trier of fact declares that it actually does. *See id.*, ¶¶ 49, 50. The City denies that the statements made in the letter were misrepresentations and reaffirms its position taken in the letter that it does not own fee title to the portion of the Site where the Farm is located and only holds a public street easement. *See id.*, Exh. C. However, even if the City is incorrect and the statements in the letter were misrepresentations, the City still cannot be held liable for any injury or damages that CHCDC could potentially incur because of the injury and damages would be based on representations for which the City is immune. *See* Cal. Gov. Code § 818.8; *Prince*, 45 Cal. 4th at 1158-1159.

The second, alternative claim for equitable indemnity relies on the City's alleged misrepresentations that it owned the Farm. *Id.,* ¶ 53. CHCDC allegedly operated and managed the Farm pursuant to the representations of City ownership, evidenced by the issuance of the 2008 Use-Development Permit and 2008 Use-Occupancy Permit, and "the express representation of City ownership . . . and otherwise on the actions and representations of the City." *Id.*, ¶ 31. CHCDC claims it now faces potential liability related to its actions involving the plaintiffs in the Forcible Detainer and Damages Action based on the City's alleged misrepresentations of ownership of the Farm. *See id.*, ¶ 53. Again, the City cannot be liable for damages caused by misrepresentations. *See* Cal. Gov. Code § 818.8; *Prince*, 45 Cal. 4th at 1158-1159.

Because both bases for equitable partial or complete indemnity in the Second Cause of Action are based on alleged misrepresentations by the City and the City is immune from liability for these damages, the Second Cause of Action fails to state facts sufficient to constitute a cause of action and is subject to demurrer without leave to amend. *See* Cross-Complaint, ¶¶ 49, 52; Prayer, 2.

B. <u>The Second Cause of Action for Equitable Partial or Complete Indemnity Fails to State Facts Sufficient to Constitute a Cause of Action Because the City Is Not Liable for Injury Caused by Issuance of Discretionary Permits</u>

"A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked." Cal. Gov. Code § 818.4; *see* Cal. Gov. Code § 821.2 (applying immunity to public employees). A public agency is immune from liability for the erroneous or negligent issuance of a discretionary permit. *See Friedman v. City of Los Angeles,* 52 Cal. App. 3d 317, 321-322 (1975); *Sonoma Ag Art v. Department of Food & Agriculture*, 125 Cal. App. 4th 122, 126 (2004) (State immune for erroneous certificating grapevines as diseased); *Chaplis v. County of Monterey*, 97 Cal. App. 3d 249, 256 (1979) (Sections 818.4 and 821.2 apply to "discretionary acts in issuing, revoking, suspending, or denying permits or licenses and the like.").

Here, the Second Cause of Action's alternative claims seek equitable indemnity from the City for costs and damages CHCDC may incur from operating and managing the Farm "in reasonable reliance" on the 2008 Use-Development Permit and the 2008 Use-Occupancy Permit and depend on whether the City had authority to issue the permits to operate the Farm. *See* Cross-Complaint, ¶¶ 31, 50, 53. The 2008 Use-Development Permit and 2008 Use-Occupancy Permit were both discretionary permits issued by the City. *See id.*; Exh. A, pg. 3, ¶ 9 ("discretionary body which approved the Permit . . . shall have absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein"); Exh. B, pg. 2, ¶ 6 (license may be revoked at the City's "sole discretion"); RJN, Exh. 4 (Neighborhood Use Permit Procedures); RJN, Exh. 5 (Neighborhood Development Permit Procedures). Regardless of whether the City had authority to issue the 2008 Use-Development or the 2008 Use-Occupancy Permit or if the City issued the permits in error, the City is immune from any injury or damages CHCDC may claim based on its alleged reliance on the issuance of these discretionary permits and the Second Cause of Action fails to state facts to constitute a cause of action. *See* Cal. Gov. Code § 818.4.

C. <u>The Second Cause of Action for Equitable Partial or Complete Indemnity Fails to State Facts Sufficient to Constitute a Cause of Action Because There Is No Basis for Underlying Liability Against the City</u>

As discussed above, CHCDC brings a claim for equitable partial and complete indemnity based on two alternative theories that rely on the City's ownership of the Site and the Farm. *See* Cross-Complaint, ¶¶ 49, 50, 52, 53.

CHCDC's first theory for equitable partial or complete indemnity is premised on the necessary finding by the trier of fact in the First Cause of Action for declaratory relief that the City owned the Farm and that CHCDC was operating and managing the Farm "under agreement, lease, and/or license, express or implied, with, and/or with the granted authority and/or consent, express or implied, of and from the City" and the City is now liable to CHCDC as a result. *See id.*, ¶ 49.

As discussed in Section IV.A.-E., CHCDC's First Cause of Action for declaratory relief fails to state facts sufficient to constitute a cause of action and is also barred by the statute of

limitations, and the demurrer must be sustained without leave to amend. Because there is no basis for City liability to CHCDC for declaratory relief, as alleged in the First Cause of Action, there can necessarily be no basis for equitable partial or complete indemnity against the City, as alleged in the Second Cause of Action. *See BFGC Architects, Inc.*, 119 Cal. App. 4th at 852; *Prince*, 45 Cal. 4th at 1158-1159 (no indemnity where no liability).

CHCDC's second, alternative theory for equitable partial or complete indemnity relies on a determination that that the City owned the Farm and that CHCDC was not operating and managing the Farm "under agreement, lease, and/or license, express or implied, with, and/or with the granted authority and/or consent, express or implied, of and from the City" and the City is now liable to CHCDC as a result. *See id.,* ¶ 52.

However, the First Cause of Action does not seek a declaration that the City does not own the Farm and the Cross-Complaint does not otherwise contain any cause of action that would impose liability on the City based on the City's non-ownership of the Farm. In the absence of liability against the City, there can be no claim for indemnity against the City. *See BFGC Architects, Inc.*, 119 Cal. App. 4th at 852; *Prince*, 45 Cal. 4th at 1158-1159.

Accordingly, the Second Cause of Action for equitable partial or equitable indemnity fails to state facts sufficient to constitute a cause of action against the City and the City's demurrer must be sustained without leave to amend.

VI.

CONCLUSION

For the reasons discussed above, the City respectfully requests that the Court sustain its demurrer to the First and Second Causes of Action without leave to amend and dismiss the Cross-Complaint in its entirety.

Dated: May 29, 2025

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