

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 55

21STCP03671

September 12, 2022

PADRES BUSCANDO EL CAMBIO vs HARBOR

8:30 AM

DEVELOPMENTAL DISABILITIES FOUNDATION, INC., et al.

Judge: Honorable Malcolm Mackey
Judicial Assistant: S. Ontiveros
Courtroom Assistant: M Kinney

CSR: Marco Neilly #13564
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Petitioner(s): Melinda Bi and Nishanthi Kurukulasuriya (x)

For Respondent(s): Aly Parker for Nancy Bargmann, Director of the Department of
Developmental Services (x); Aaron Abramowitz (Telephonic); Jordan Beres for Katherine Jean
Grainger (Telephonic)

NATURE OF PROCEEDINGS: Hearing on Demurrer - without Motion to Strike; Hearing on
Demurrer - without Motion to Strike

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956,
Marco Neilly #13564, certified shorthand reporter is appointed as an official Court reporter pro
tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter
Agreement. The Order is signed and filed this date.

Matter is called for hearing.

The Court has read and considered all documents filed hereto regarding the above-captioned
Motion. A copy of the court's tentative ruling was published to the court's website.

Parties are given the opportunity to argue. After hearing from the parties, the Court adopts its
tentative ruling set forth below as the Final Ruling:

The Demurrer - without Motion to Strike filed by Harbor Developmental Disabilities
Foundation, Inc. on 04/21/2022 is Overruled.

The Demurrer - without Motion to Strike filed by Nancy Bargmann on 04/14/2022 is Overruled.

Twenty days to answer.

Procedure

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Defendants err in encouraging the Court to require allegations supporting standing. Plaintiffs have no such burden. A demurrer lies if the lack of standing already appears from the complaint.

Where the lack of standing does not appear from the face of the complaint, it cannot be resolved by way of a demurrer. *Pillsbury v. Karmgard* (1994) 22 Cal. App. 4th 743, 758. “Where the complaint shows the plaintiff does not possess the substantive right or standing to prosecute the action, ‘it is vulnerable to a general demurrer on the ground that it fails to state a cause of action.’” *Schauer v. Mandarin Gems of Cal., Inc.* (2005) 125 Cal. App. 4th 949, 955. Accord *Estate of Bowles* (2008) 169 Cal.App.4th 684, 690 (“Where someone other than the real party in interest files suit, the complaint is subject to a general demurrer.”); *Martin v. Bridgeport Community Ass’n, Inc.* (2009) 173 Cal.App.4th 1024, 1031 (“lack of standing may be raised by demurrer.”); *Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583, 1589 (“‘lack of standing may be raised by demurrer....’”).

Modernly, a demurrer based upon a defense lies only where it was revealed on the face of the complaint or by judicial notice. E.g., *Union Carbide Corp. v. Sup. Ct.* (1984) 36 Cal. 3d 15, 25 (rejecting motion to strike based on uncertainty as to whether Statute of Limitations applied).

Further, identifying members in discovery is a different procedure than testing pleading allegations. “[S]pecific dates and details . . . are properly addressed during discovery, not on demurrer.” *People v. Highland Fed. Sav. & Loan* (1993) 14 Cal. App. 4th 1692, 1716.

As for applicable law, independent research revealed a dearth of California case law on point. The cited federal authorities do not govern, and are advisory, at most. Federal case law is not binding upon California courts, and may be only persuasive in some circumstances. *Alameida v. State Personnel Bd.* (2004) 120 Cal. App. 4th 46, 61. California courts are not bound to follow decisions of lower federal courts. *People v. Sup. Ct.* (2002) 103 Cal. App. 4th 409, 431. California courts follow procedures governing litigation in their courts, and are not bound by federal procedural law. *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal. 4th 394, 409.

So, here, the Court is largely given the task to interpret statutes, as issues of first impression. Legislative interpretation begins by examination of the language of the statute, giving the words their ordinary meaning and considering them in the context of the statutory framework. *Barnes v. Dept. of Corrections* (1999) 74 Cal. App. 4th 126, 131. Judges should not disregard express

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statutory language, or add language that is not there. Yao v. Sup. Ct. (2002) 104 Cal. App. 4th 327, 333. Issues of legislative interpretation involve pure questions of law that the reviewing courts independently review de novo, without any according any deference to the lower courts. E.g., Wolf v. CDS Devco (2010) 185 Cal.App.4th 903, 913; Regents of Univ. of Cal. v. Sup. Ct. (1999) 20 Cal.4th 509, 531.

Standing

Associational

The Court concludes that the lack of associational standing is not revealed by the pleading.

If a statute accords standing, then the Court need not apply associational standing requirements. Applicable statutory requirements for standing overcome associational standing elements. Amalgamated Transit Union, Loc. 1756, AFL-CIO v. Superior Ct. (2009) 46 Cal. 4th 993, 1005. As analyzed below, this representative case is expressly authorized by statute.

In nonbinding federal case law, plaintiffs have been allowed associational standing in cases challenging reduced benefits to disabled individuals, including under the Lanterman Act, even involving reference to individualized proof in the post-pleading stages. E.g., Arc of California v. Douglas, 757 F.3d 975, 978–79 (9th Cir. 2014) (“plaintiffs in this case, Arc of California and the United Cerebral Palsy Association of San Diego (together, *979 “Arc”)—non-profit organizations representing developmentally disabled persons, their families, and the organizations that serve them—allege that California's implementation of those statutes was inconsistent with the Medicaid Act; violated the federal Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132, and the federal Rehabilitation Act, 29 U.S.C. § 794(a); and was invalid under California's Lanterman Developmental Disabilities Services Act,...”).

Taxpayer

The Complaint sufficiently alleges race-based, and disability-based, discrimination in violation of various statutory provisions clearly outlawing such discrimination, in order for courts to accord taxpayer standing.

“Cases that challenge the legality or constitutionality of governmental actions fall squarely within the purview of section 526a.” California Dui Laws. Ass'n v. California Dep't of Motor

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Vehicles (2018) 20 Cal. App. 5th 1247, 1261.

Exhaustion

Complainants are allowed to bring representative actions, without exhaustion as to individual claims. “Each consumer or any representative acting on behalf of any consumer or consumers, who believes that any right to which a consumer is entitled has been abused, punitively withheld, or improperly or unreasonably denied by a regional center, state-operated facility, or service provider, may pursue a complaint as provided in this section.” Welfare and Institutions Code Sections 4731(a).

In contrast, Welfare and Institutions Code Sections 4710 et seq. expressly addresses complaints by individuals for their own experiences, which is not the alleged basis of the instant pleading.

It is immaterial that statutory mechanisms exist for Plaintiff to work towards resolution outside of court, where applicable statutory provisions do not mandate that. The mere opportunity to participate in administrative resolution efforts, does not equate with administrative exhaustion requirements. *Lindelli v. Town of San Anselmo* (2003) 111 Cal. App. 4th 1099, 1106.

Additionally, whether taxpayer exhaustion is required, depends on the underlying statutory provisions. See *Collins v. Thurmond* (2019) 41 Cal. App. 5th 879, 912–13 (“But the plain language of the provision suggests just the opposite, the filing of an administrative complaint is a requirement to resolving allegations of discrimination and the provision only provides that once a complaint is filed, the parties can submit it to an alternate method for resolution.”). Here, a specifically applicable statutory section does not require administrative exhaustion before a court case-- Welfare and Institutions Code Sections 4731.

Thus, the subject complaint involves an exception to exhaustion requirements.

Plaintiffs have the burden to plead and prove administrative exhaustion, or exceptions thereto. *Holland v. Union Pacific R. Co.* (2007) 154 Cal.App.4th 940, 945. “[T]he administrative remedies exhaustion rule has several exceptions, including, but not limited to...: (1) when the administrative agency cannot provide an adequate remedy, and (2) when the subject of controversy lies outside the agency's jurisdiction” *Campbell v. Regents of Univ. of Cal.* (2005) 35 Cal. 4th 311, 322.

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Declaratory Relief

Discretion in funding can be the subject of a claim for declaratory relief, as opposed to a petition for writ of mandate, where ongoing discrimination allegedly is involved, as distinguished from one administrative handling. “Declaratory relief has been held to be the proper remedy when it is alleged an agency has a policy of ignoring or violating applicable laws.” *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal. App. 4th 1547, 1566.

Procedurally, with exceptions, a demurrer must be overruled, if an actual controversy is alleged, even if plaintiffs are not entitled to a judgment in their favor. *Nede Mgmt. Inc. v. Aspen American Ins. Co.* (2021) 68 Cal. App. 5th 1121, 1132 (where complainants adequately allege an actual controversy in support of a declaratory relief claim, demurrers technically should be overruled, but sustaining and declaring adversely is nonprejudicial error, when the pleading fails to allege entitlement to relief on the merits, as questions of law based on undisputed allegations.); *Osseous Technologies of Amer., Inc. v. DiscoveryOrtho Partners LLC* (2010) 191 Cal.App.4th 357, 364 (judges lack discretion to dismiss claims for declaratory relief where complaints are sufficiently alleged and reveal that the relief is entirely appropriate); *Lockheed Martin Corp. v. Continental Ins. Co.*, (2005) 134 Cal. App. 4th 187, 221, disapproved on other grounds by *State v. Allstate Ins. Co.* (2009) 45 Cal.4th 1008, 1036 n.11; *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 606; *Farmers Ins. Exchange v. Zerlin* (1997) 53 Cal. App. 4th 445, 460 (“Strictly speaking, a demurrer is not an appropriate weapon to attack a claim for declaratory relief inasmuch as the plaintiff is entitled to a declaration of its rights, even if adverse.”). See also *Osseous Technologies of Amer., Inc. v. DiscoveryOrtho Partners LLC* (2010) 191 Cal.App.4th 357, 364 (“The mere circumstance that another remedy is available is an insufficient ground for refusing declaratory relief, and doubts regarding the propriety of an action for declaratory relief ... generally are resolved in favor of granting relief.”); *Cal. Ins. Guar. Ass'n v. Sup. Ct.* (1991) 231 Cal. App. 3d 1617, 1624 (“availability of another form of relief that is adequate will usually justify refusal to grant declaratory relief” but “[t]he refusal to exercise the power is within the court's legal discretion....”); *Pellegrini v. Weiss* (2008) 165 Cal.App.4th 515, 529 (“The question whether declaratory relief is appropriate in a given case is addressed to the trial court’s discretion.”).

Notice is waived.