

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 55

21STCP03671

**PADRES BUSCANDO EL CAMBIO vs HARBOR
DEVELOPMENTAL DISABILITIES FOUNDATION, INC., et
al.**

May 22, 2024

8:30 AM

Judge: Honorable Alison Mackenzie
Judicial Assistant: Steve Temblador
Courtroom Assistant: Monique Jimenez

CSR: Pam Myers
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Respondent(s): Aaron Abramowitz; Alyson Reed Parker

Other Appearance Notes: Jordan R. Beres appearing for Defendant Nancy BargmannElizabeth
N. Lake appearing for Defendant Nancy BargmannClaudia Menjivar appearing for the
PlaintiffAndrea Rodriguez appearing for the Plaintiff

NATURE OF PROCEEDINGS: Hearing on Motion for Judgment on the Pleadings

The matte comes on for hearing.

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956,
Pam Myers, CSR # 12940, 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.

Counsel argue the matter.

The Court takes the matter under submission.

Counsel will be provided email notice of the Court's final ruling.

Post-Mediation Status Conference is scheduled for 07/24/2024 at 08:30 AM in Department 55 at
Stanley Mosk Courthouse.

Notice is waived.

Later, the Court having read and considered the moving papers and oral argument, hereby rules
as follows:

The Motion for Judgment on the Pleadings filed by Nancy Bargmann on 04/26/2024 and Joinder

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to Motion IN DEFENDANT NANCY BARGMANN'S MOTION FOR JUDGMENT ON THE PLEADINGS filed by Harbor Developmental Disabilities Foundation, Inc. on 04/30/2024 are Denied.

BACKGROUND

Plaintiff Padres Buscando El Cambio aka Coalision De Padres Buscando El Cambio ("Plaintiff") filed a Verified Second Amended Complaint (SAC) against NANCY BARGMANN, in her official capacity as Director of California Department of Developmental Services (DDS) ("Bargmann") and HARBOR DEVELOPMENTAL DISABILITIES FOUNDATION ("Harbor") (Bargmann and Harbor referred to collectively as "Defendants") based on Defendants' alleged discriminatory practices with respect to the regional center run by Defendants.

As alleged in the SAC, Plaintiff is an association of Hispanic/Latinx families having developmentally disabled children entitled to state-funded services under the Lanterman Developmental Disabilities Services Act, Welf. & Inst. Code §§ 4500 et seq. (Lanterman Act). Defendants, who run a regional center serving southeast Los Angeles County as one of 21 state-funded regional centers, are required to administer the assistance in a non-discriminatory manner. Plaintiff alleges that Harbor provides fewer comprehensive services and spends less money on Hispanic/Latinx children as compared to white children. Plaintiff alleges that DDS, overseeing California regional centers, has failed to adequately correct actions having disparate impacts on Hispanic/Latinx families. Based on these allegations, Plaintiff alleges three causes of action against Defendants: (1) Discrimination in State-Funded Programs (Gov't Code § 11135); (2) Waste of Public Funds (Civ. Proc. Code § 526a); and (3) Declaratory and Injunctive Relief (Civ. Proc. Code §§ 526, 1060).

Bargmann moves for judgment on the pleadings on the entirety of the SAC and each cause of action in the SAC. Harbor joins in the motion. Plaintiff opposes the motion and joinder.

REQUEST FOR JUDICIAL NOTICE

Plaintiff seeks judicial notice of court records and agency statements/opinions/reports. The Court sustains all of Bargmann's objections to the RJN. See, e.g., *Johnson & Johnson v. Superior Court* (2011) 192 Cal.App.4th 757, 768 (cannot take judicial notice of hearsay in court filings, but only their existence); *Unruh-Haxton v. Regents of Univ. of Cal.* (2008) 162 Cal.App.4th 343, 365 (judicial notice as to demurrer requires there cannot be a factual dispute about the item); *Arce ex*

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rel. Arce v. Kaiser Found. Health Plan, Inc. (2010) 181 Cal.App.4th 471, 482 (judicial notice of official records does not include the truth of the matters); Barratt Amer., Inc. v. City of San Diego (2004) 117 Cal.App.4th 809, 812, fn. 2 (court denied judicial notice of government resolutions as being irrelevant to demurrer).

LEGAL STANDARD

A motion for judgment on the pleadings involves the same type of procedures that apply to a general demurrer. E.g., Burnett v. Chimney Sweep (2004) 123 Cal.App.4th 1057, 1064. Demurrers are to be sustained where a pleading fails to plead adequately any essential element of the cause of action. Cantu v. Resolution Trust Corp. (1992) 4 Cal.App.4th 857, 879-880. However, judgment on the pleadings does not involve resolving material factual issues requiring evidentiary considerations. Schabarum v. California Legislature (1998) 60 Cal.App.4th 1205, 1216.

ANALYSIS

A. Procedure

Plaintiff asserts that the Court should exercise its discretion to deny the motion as untimely. A statutory motion for judgment on the pleadings may not be made "if a pretrial conference order has been entered pursuant to Section 575, or within 30 days of the date the action is initially set for trial, whichever is later, unless the court otherwise permits." Code Civ. Proc., § 438, subd. (e). Courts have discretion to consider late statutory motions for judgment on the pleadings, without any requirement of good cause. Burnett v. Chimney Sweep (2004) 123 Cal.App.4th 1057, 1063. The Court exercises its discretion to address the merits of the motion.

B. Merits

1. First Cause of Action-- Discrimination in State-Funded Programs Gov't Code § 11135.

Plaintiff's first cause of action alleges that Defendants violated Government Code section 11135 by denying Hispanic/Latinx families with full access to services at the Harbor regional center. SAC, ¶ 124. Defendants contend that Plaintiff has not adequately alleged a discrimination claim under either a disparate impact or a discriminatory treatment theory.

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To allege disparate-impact claims, plaintiffs must plead facts that establish a facially neutral policy or practice that caused disproportionate harm to a protected class of people. *Villafana v. Cnty. of San Diego* (2020) 57 Cal. App. 5th 1012, 1017–1018.

To evidence a prima facie case of disparate impact, plaintiffs must use an appropriate comparative measure such as statistics considering the correct population base and racial makeup. *Ibid.* As to claims of disparate impact, plaintiffs usually prove the disproportionate harm piece of the claim with statistical disparities, showing that facially neutral employment practices, adopted without any discriminatory motive, had significant adverse effects on protected groups, making those the equivalent of intentional discrimination. *Jumaane v. City of L.A.* (2015) 241 Cal.App.4th 1390, 1404-1405. A disparate impact claim involves comparing the people affected and those unaffected by a facially neutral policy as to the total group to which the policy or decision applies. *Cnty. Inmate Tel. Serv. Cases* (2020) 48 Cal.App.5th 354, 368.

Harbor's joinder reply cites United States Supreme Court decisions for the proposition that supporting statistics must be pled, and not just proven at trial. Reply, 2:12-18. But California courts follow procedures governing litigation in their courts. E.g., *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 409. In addition, the federal decisions often cited by Defendants do not govern in California trial courts. The state courts are not free to depart from California Supreme Court precedent by applying different federal law. *Fujifilm Corp. v. Yang* (2014) 223 Cal.App.4th 326, 333.

Also, evidentiary statistics can be obtained via discovery. "There is no need to require specificity in the pleadings because 'modern discovery procedures necessarily affect the amount of detail that should be required in a pleading.'" *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 608.

California opinions often reference analogous statutes as including omissions as being a practice supporting a claim of disparate impact, without always requiring affirmative acts. E.g., *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 258–259 (City's failure to adopt zoning accommodations qualified as a discriminatory practice). More particularly, the regulations applicable here do not require only affirmative actions, but instead include various alternatives such as an entity using methods of administration that perpetuate discrimination caused by another recipient on the basis of ethnic group identification. See Cal. Code Regs. tit. 2, § 11154, subd., (I).

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Applying the full scope of governing law summarized above, the Court observes that the SAC adequately alleges that Defendants took no steps to end discrimination caused by unequal distribution of funds to Hispanic/Latinx children having developmental disabilities. E.g., SAC, ¶¶ 1-4. Beyond statistical underfunding, Defendants also have allowed intimidation to deter the families from requesting possibly needed services. E.g., *ibid.* at ¶ 5. The relevant scope of the statistics about underfunding in discrimination relate to an alleged population of a state-funded regional center obligated to serve the geographical areas of southeast Los Angeles County that Harbor administers. E.g., SAC, ¶¶ 2 and 36-40. Above-cited case law does not necessarily require state-wide statistics. Further, the specifics of supportive statistics, such as race-based differences, are a matter of proof, and not of pleading sufficiency. Additionally, Defendants' discrimination flows from their policies, administration and methods of not evaluating services that Hispanic/Latinx families need. E.g., *ibid.* at ¶¶ 52-66 and 71-93. While DDS took some steps against the alleged discrimination, it knowingly refused to take meaningful steps to address all concerns. E.g., *ibid.* at ¶¶ 94-119.

Hence, the Court denies the motion as to the First Cause of Action.

2. Waste of Public Funds Civ. Proc. Code § 526a

Plaintiff's second cause of action alleges that Defendants administer their state-funded programs and services in a manner that discriminates against Hispanic/Latinx consumers in violation of Government Code section 11135, and thus Defendants are engaged in an illegal expenditure of public funds. SAC, ¶ 131. Pursuant to Code of Civil Procedure section 526a, Plaintiff seeks a declaration and injunction to prevent Defendants from continuing their allegedly illegal expenditure of taxpayer funds. *Id.*, ¶ 132.

Defendants argue that this claim is derivative of the discrimination claim and thus fails because the first cause of action fails. "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 Vehicles* (2018) 20 Cal.App.5th 1247, 1261. In contrast, a claim for waste of taxpayer funds will not lie if the challenged governmental conduct is legal or discretionary. *Collins v. Thurmond* (2019) 41 Cal.App.5th 879, 910.

As analyzed above, the SAC sufficiently alleges illegal race-based, and disability-based, discrimination in violation of various statutory provisions outlawing such discrimination. Thus, Plaintiff's second cause of action, which is premised on the allegations of illegal discrimination

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as alleged in the first cause of action, survives the MJOP.

3. Declaratory and Injunctive Relief Civ. Proc. Code §§ 526, 1060

Plaintiff's third cause of action alleges that a controversy exists between Plaintiff and Defendants regarding whether Defendants' actions violate various laws. SAC, ¶ 134. Defendants seek dismissal of this claim, arguing that the claim is derivative of the "defective" first and second causes of action. Mot. at 20:5. As discussed above, those claims are not defectively pleaded and thus this argument fails.

Defendants further argue the cause of action should be dismissed because declaratory and injunctive relief are remedies unsupported by a viable claim.

The great weight of authorities establish that declaratory relief is a stand-alone claim, without any need for an underlying claim. E.g., *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 605-606. But see *Batt v. City and County of San Francisco* (2007) 155 Cal. App. 4th 65, 82 (declaratory relief is an equitable remedy, not an independent cause of action), disapproved on other grounds by *McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613, 626. Similarly, injunctive relief is a cognizable cause of action, according to the weight of authorities. E.g., *Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1352. But see, e.g., *Marlin v. Aimco Venezia, LLC* (2007) 154 Cal.App.4th 154, 162 ("An injunction is a remedy, not a cause of action.").

Where there is a split of authority, trial courts have discretion to choose between the decisions. *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456. Here, the Court follows the authorities approving declaratory and injunctive relief as stand-alone claims.

Finally, Defendants argue that the request for declaratory relief fails because Plaintiff improperly seeks to litigate the effectiveness of Defendants' actions. As a matter of procedure, a demurrer (and thus likewise, a motion for judgment on the pleadings) 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. Importantly, "[d]eclaratory 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.

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Plaintiff alleges that Defendants failed to take steps to end discrimination at the Harbor regional center. Plaintiff seeks a declaration that Defendants administer Lanterman Act programs and services at the regional center in a discriminatory manner in violation of state law. SAC, ¶¶ 134-136. Also, Plaintiff seeks injunctive relief enjoining Defendants from further violating the Lanterman Act and illegally expending public funds, as well as an injunction mandating Defendants to adopt and implement policies and procedures free from discrimination. Id., ¶¶ 127, 132, 137. Substantively, the Court determines that Plaintiff's third cause of action is supported by the allegations.

Therefore, the motion is denied as to the claim seeking declaratory and injunctive relief.

CONCLUSION

The Court denies the motion and joinder.

Clerk's Certificate of Service By Electronic Service is attached.

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