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COUNTY OF SAN MATEO &
BOARD OF SUPERVISORS OF COUNTY OF SAN MATEO

Exempt from filing fees pursuant to Government Code § 6103

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

CITY OF MILLBRAE, a municipal corporation,

Plaintiff/Petitioner,

v.

COUNTY OF SAN MATEO; a public entity and political subdivision of the State of California; BOARD OF SUPERVISORS OF THE COUNTY OF SAN MATEO; ALL PERSONS INTERESTED IN THE MATTER OF SAN MATEO COUNTY RESOLUTION NO._____ DECLARING THE BOARD OF SUPERVISORS' INTENTION TO PURCHASE THE PROPERTY LOCATED AT 1390 EL CAMINO REAL, MILLBRAE (ASSESSOR PARCEL NUMBER 021-281-700) FOR PURPOSES OF CONVERTING THE LA QUINTA INN TO PUBLIC HOUSING; DOES 1 through 10, inclusive; and ROES 1 through 10, inclusive,

Defendants/Respondents.

Case No. 23-CIV-05426

COUNTY AND BOARD OF SUPERVISORS' NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFF'S COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

Hearing

Date: February 13, 2024
Time: 2:00 p.m.
Location: Department 4
Courtroom G
Central Courthouse
800 Humboldt Street,
San Mateo, CA 94401

HONORABLE NANCY L. FINEMAN

Complaint filed: November 13, 2023

NOTICE OF DEMURRER

TO PLAINTIFF AND TO THEIR ATTORNEY(S) OF RECORD:

PLEASE TAKE NOTICE that on February 13, 2024, at 2:00 p.m., or as soon thereafter as the matter may be heard in Department 4, Courtroom G of the San Mateo County Superior Court, located at 800 North Humboldt, San Mateo, California, Defendants County of San Mateo and Board of Supervisors of the County of San Mateo (collectively, the "County") will, and hereby do, demur generally and specially and move the Court for an order sustaining its demurrer to the Second, Third and Fourth causes of action alleged in the Complaint for Validation and Petition for Writ of Mandate (the "Complaint") filed on behalf of Plaintiff City of Millbrae, without leave to amend.

The demurrer is brought pursuant to California Code of Civil Procedure § 430.10 and Rule of Court 3.1320 and is based upon this Notice of Demurrer, Demurrer and Memorandum of Points and Authorities in support thereof; the Declaration of Lauren F. Carroll in support of Demurrer; the [Proposed] Order sustaining demurrer filed concurrently herewith, and the pleadings, records, and files in this action, and other documents that may be judicially noticed and upon such oral argument that may be presented at the hearing on this demurrer.

DEMURRER

The County hereby demurs, generally and specially, to the following causes of action alleged in the Complaint, on the following grounds:

1) The Second Cause of Action for Writ of Mandate Rescinding and Vacating Resolution No._ fails to allege facts sufficient to constitute a cause of action pursuant to Code of Civil Procedure § 430.10(e).

2) The Third Cause of Action for Declaratory Relief fails to allege facts sufficient to constitute a cause of action pursuant to Code of Civil Procedure § 430.10(e).

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3) The Fourth Cause of Action for Injunctive Relief fails to allege facts sufficient to constitute a cause of action pursuant to Code of Civil Procedure § 430.10(e).

Dated: January 8, 2024

Respectfully submitted,

JOHN D. NIBBELIN, COUNTY COUNSEL

By: _____

Lauren F. Carroll, Deputy
Daniel McCloskey, Lead Deputy
Kimberly A. Marlow, Deputy

Attorneys for Defendants
COUNTY OF SAN MATEO & BOARD OF SUPERVISORS OF COUNTY OF SAN MATEO

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER

I. INTRODUCTION

The City of Millbrae filed this meritless lawsuit to derail a San Mateo County supportive housing project that would protect the health and safety of unhoused seniors and families who are especially vulnerable to the impacts of the COVID-19 pandemic. The City relies solely on a 1950s law with racist roots: Article 34 of the California Constitution, which requires some "low-rent" housing projects be put to a local vote. Nearly 75 years after Article 34 was adopted, at the height of the COVID-19 pandemic and amid a raging homelessness crisis, the State made funds available to local governments to purchase hotels to house homeless residents ("Project Homekey"). The Legislature has expressly determined by statute that these and other projects funded by specified sources are not subject to Article 34's voter approval requirement. Accordingly, the County acted lawfully when it adopted a resolution to purchase a Millbrae hotel for supportive housing, as it has several times before, without challenge and without first obtaining voter approval.

Recognizing that an Article 34 vote was plainly not required by current law, the City asks this Court to set aside clear Legislative action and declare unconstitutional the statute exempting Project Homekey and other projects using COVID-era funding sources from Article 34. Thus, the City's baseless effort to thwart the County's worthy and lawful project has broad implications. If successful, it would jeopardize a statewide program intended to protect the health and safety of California's most vulnerable residents, duly enacted by the Legislature during a time of emergency. The City wants this Court to invalidate and override the Legislature's statutorily enacted interpretation of Article 34—all so that Millbrae can prevent this supportive housing project and others like it from going forward, in communities where these projects are urgently needed. The City should not prevail on the merits. Rather, the Court should defer to and uphold the Legislature's well-informed interpretation of the Constitution, as courts have in prior Article 34 cases.

Before the merits of the City's lawsuit are addressed, however, the County brings this demurrer to three of the city's four causes of action because they are barred and cannot proceed. The Complaint asserts four causes of action: validation, writ of mandate, declaratory relief, and injunctive relief, each alleging that the County violated Article 34 by adopting a resolution to purchase the Millbrae hotel. But validation is the only cause of action a plaintiff can use to bring an Article 34 challenge. Validation actions are

proceedings *in rem,* designed to quickly and conclusively determine the validity of certain types of government actions. As the California Supreme Court confirmed just last year in *Davis v. Fresno Unified Sch. Dist*., 14 Cal. 5th 671 (2023), when validation is available, it is the plaintiff's exclusive remedy. Because Health and Safety Code § 36003 says Article 34-based challenges are to be brought as a validation action, the City's other causes of action are superfluous, unauthorized, and must be dismissed.

II. BACKGROUND

A. Article 34 of the California Constitution and its Limits

Article 34, Section 1, of the California Constitution generally requires voter approval before a city or county can "develop, construct, or acquire" any "low-rent housing project." It was adopted via ballot initiative in 1950, amid a backlash to federal investment in affordable housing and the Federal Housing Act of 1949, which banned racial segregation in public housing. Sen. Comm. on Housing, analysis of S.B. 469, 2023-2024 regular sess., at 3. Critics of Article 34 consider it "an antiquated relic of the pre-Civil Rights Era that sought to limit the development of affordable housing and to bar families of color from accessing housing in affluent communities." *Id.* California is the only state that requires voter approval for public housing. *Id.* at 5. The Legislature recently voted to repeal Article 34, subject to ratification by the electorate in November 2024. S. Constitutional Amendment No. 2, 2021-2022 sess.

Since Article 34's adoption in 1950, the California Legislature has, on multiple occasions, clarified the meaning of "low-rent housing project." Health & Safety Code § 37001. For example, a development is not a "low-rent housing project" within the meaning of Article 34 if it is privately owned, subject to property taxation, and allocates 49% or fewer of the units for low-income residents. *Id.* § 37001(a). The California Supreme Court has upheld this interpretation of Article 34 by the Legislature as valid and reasonable. *See Cal. Housing Finance Agency v. Patitucci*, 22 Cal.3d 171 (1978).

In recent years, the Legislature has similarly determined that housing projects receiving money from certain COVID-19 relief funds—including Project Homekey and the American Rescue Plan Act—are not "low-rent housing projects" for Article 34 purposes and therefore do not require prior voter approval. Cal. Health & Safety Code § 37001(h).

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B. The City's Complaint Seeks to Determine the Validity, Under Article 34, of the County's Decision to Purchase a Millbrae Hotel.

The City's Complaint challenges a September 12, 2023, resolution, in which the County Board of Supervisors declared its intent to purchase a hotel located at 1390 El Camino Real in Millbrae for use as "permanent rental housing [for] low-income County residents experiencing homelessness" ("Resolution"). Compl. ¶ 2, Ex. A at 1. The City "seeks to invalidate the County's September 12, 2023, adoption of the Resolution because it was adopted without the vote required under Article XXXIV." Compl. ¶ 6.

To that end, the Complaint includes a cause of action for validation of the Resolution, brought under Health & Safety Code § 36003. Compl. ¶¶ 49-55. But the Complaint also includes three unauthorized causes of action. First, the City "seeks a writ of mandate ordering the County to rescind and vacate the Resolution, unless and until the County places the proposed Millbrae Permanent Supportive Housing Project on the ballot for a vote of Millbrae's qualified electorate." Compl. ¶¶ 7, 56-61. Second, the City seeks declaratory relief, specifically, a "declaration that the County cannot take any steps towards acquiring, converting or developing the Property without first putting the proposed public housing project to a vote of Millbrae's qualified electorate." Compl. ¶¶ 62-64. And third, the City seeks—again based solely on the County's alleged failure to comply with Article 34—an injunction restraining the County from taking "actions in furtherance of the acquisition, conversion, and development of the Property for public housing unless and until the qualified electorate of the City of Millbrae votes to approve such a project." Compl. ¶¶ 65-67.

III. LEGAL STANDARD ON DEMURRER

The Court must sustain a demurrer when the complaint or claim therein "does not state facts sufficient to constitute a cause of action." Cal. Civ. Proc. Code § 430.10(e); *see Blank v. Kirwan*, 39 Cal. 3d 311, 318 (1985). For the purpose of testing the sufficiency of the cause of action only, the "demurrer is to be treated as admitting the truthfulness of all properly pleaded factual allegations of the complaint, but not contentions, deductions or conclusions of fact or law." *Porten v. Univ. of S.F.*, 64 Cal. App. 3d 825, 827 (1976). The Court must consider not only the allegations in the complaint but also "any matter of which the court is required to or may take judicial notice." Civ. Proc. Code § 430.30(a); *Groves. v. Peterson*, 100 Cal. App. 4th 659, 667 (2002).

IV. ARGUMENT

A. Validation is the Sole Appropriate Cause of Action for Article 34 Challenges.

By statute, any interested person who suspects a public agency has not complied with Article 34's voter approval requirements must use the validation procedures if they want to challenge the agency action. Specifically, California Health and Safety Code § 36003 says: "An action may be brought pursuant to [the validation procedures found in] the Code of Civil Procedure to determine the validity of the action of a state agency or local public entity in giving preliminary or final approval to a proposal or application which may result in housing assistance benefiting persons of low income without obtaining prior referendum approval pursuant to Article XXXIV of the California Constitution." Any such validation action must be brought within 60 days of "the notice of funding commitment or the date of adoption of the ordinance or resolution approving the proposal, as appropriate." *Id.* § 36005.

A "validation action" is "a lawsuit filed and prosecuted for the purpose of securing a judgment determining the validity of a particular local governmental decision or act." *N.T. Hill Inc. v. City of Fresno*, 72 Cal. App. 4th 977, 991 (1999). The procedures for bringing a validation action are set forth in Code of Civil Procedure §§ 860-870.5. Validation cannot be used to challenge any government decision or act; it is available only to challenge certain decisions or actions specifically identified by statute, like Health and Safety Code § 36003. *Bonander v. Town of Tiburon*, 46 Cal. 4th 646, 656 (2009). A validation action can either be brought by the public entity itself, or by third parties who have an interest in the decision or action. Code Civ. Proc. §§ 860, 863. When, as in this case, a third party initiates the lawsuit, it is often called a "reverse validation action." *Davis v. Fresno Unified Sch. Dist*., 14 Cal. 5th 671, 685 (2023).

"A validating proceeding differs from a traditional action challenging a public agency's decision because it is an *in rem* action whose effect is binding on the agency and on all other persons." *Millbrae Sch. Dist. v. Superior Ct*., 209 Cal. App. 3d 1494, 1497 (1989). In a validation action, "the plaintiff cannot obtain injunctive relief against a party to the action, for such relief would be *in personam*." *Davis*, 14 Cal. 5th at 685. If an agency matter is subject to validation, and no one seeks validation within 60 days of the challenged action, the action is deemed valid and "immune from attack." *Id.*

At its core, the City's Complaint seeks to invalidate the County's Resolution to purchase property and convert that property into supportive housing, on the grounds that the Resolution violated Article 34.

The Complaint falls squarely within the ambit of Health and Safety Code § 36003, and therefore the validation procedures apply.

B. The City's Causes of Action for Writ of Mandate, Injunctive and Declaratory Relief Must be Dismissed Because Validation is the Exclusive Method for Bringing an Article 34 Challenge.

Just last year, the California Supreme Court affirmed the "rule precluding alternative remedies whenever the validation remedy is available." *Davis,* 14 Cal. 5th at 686. As the Court explained, "when the validation statutes apply, they supersede other mechanisms by which an interested private party might seek to challenge the same agency matter." *Id.* This rule stems from Code of Civil Procedure section 869, which states in pertinent part: "No contest except by the public agency or its officer or agent of any thing or matter under this chapter shall be made other than within the time and the manner herein specified." *See Millbrae School Dist.*, 209 Cal. App. 3d at 1499 (explaining application of rule to reverse validation actions). "This preclusion of alternative remedies is necessary if the validation statutes are to serve their purpose of once and for all determining the validity of the agency matter." *Davis*, 14 Cal. 5th at 685. Further, allowing plaintiffs to challenge agency actions through other means would render meaningless the 60-day limitations period for initiating validation actions. *Id.* If no one initiates a validation action within 60 days, the agency decision is insulated from attack, whether it is legally valid or not. *See id.*; *City of Ontario v. Sup. Ct*., 2 Cal. 3d 335, 341–42 (1970). Here, the validation remedy is available to the City through Health & Safety Code § 36003, so the City is therefore precluded from pursuing the three additional causes of action asserted in its Complaint.

Plaintiffs in a reverse validation action can join additional claims only when those additional claims seek relief unrelated to a determination of validity of the challenged government action, which is not the case here. *Davis*, 14 Cal. 5th at 686; *See also Friedland v. City of Long Beach*, 62 Cal. App. 4th 835, 848-849 (1998). In *Katz v. Campbell Union High Sch. Dist*., 144 Cal. App. 4th 1024 (2006), for example, the plaintiff brought a reverse validation action to invalidate a parcel tax. The Sixth District Court of Appeal upheld dismissal of plaintiff's causes of action for injunction and declaratory relief because they were "merely a request for invalidation of the tax stated in other words." *Id.* at 1034. The cause of action for declaratory relief sought a declaration that the tax was invalid, and the cause of action for injunction sought

to block the agency from levying the tax because it was invalid. *Id.*

Here, as in *Katz,* the City's additional causes of action for mandamus, declaratory relief, and injunctive relief all seek the same outcome: invalidation of the County's Resolution on Article 34 grounds. The City's cause of action for mandamus asks the Court to issue a writ of mandate ordering the Court to rescind and vacate the Resolution because it violates Article 34. Compl. ¶ 61. The cause of action for declaratory relief asks the Court to issue a declaration that the County cannot move forward with the project without first complying with Article 34. Compl. ¶ 64. Lastly, the City's cause of action for injunctive relief asks the Court to enjoin the County from moving forward with the project without first complying with Article 34. Compl. ¶ 67. Because these causes of action all seek to invalidate the County's Resolution for allegedly failing to comply with Article 34, they are redundant of the validation action and must be dismissed. *See Katz*, 144 Cal. App. 4th at 1034. Indeed, these causes of action are superfluous because if the validation action is unsuccessful, there would be no basis for the other claims; likewise, if the validation claim is successful, there would be no need for them.

Even if the City's extraneous claims were not barred by the validation statutes and the rule stated in *Davis*, they would still be unavailable. It is well-settled that a plaintiff cannot seek mandamus, declaratory, or injunctive relief when there is another available plain, speedy, and adequate remedy. Cal. Civ. Proc. Code § 1086; *Cnty. of San Diego v. State of California*, 164 Cal. App. 4th 580, 595-96 (2008) (holding that traditional mandamus is "improper" and "unnecessary" and "will not issue when the petitioner's rights are otherwise protected"); *Flying Dutchman Parc. v. City & Cnty. of San Francisco*, 93 Cal. App. 4th 1129, 1138 (2001) (upholding dismissal of declaratory and injunctive relief claims and holding that "[t]he rule in this state is that injunctive and declaratory relief will not be granted where there is a plain, complete, speedy, and adequate remedy at law"). Here, the City has a speedy and adequate remedy through its validation action. Courts have thus denied equitable relief such as mandamus when the plaintiff can seek validation instead. *Water Users Assn. v. Bd. of Directors*, 34 Cal. App. 3d 131, 135 (1973) (explaining that validation "represents a speedy and adequate remedy at law, precluding a mandamus aimed at the identical objective"); *Barratt Am. v. City of Rancho Cucamonga*, 37 Cal. 4th 685, 705 (2005) (same).

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V. CONCLUSION

For the reasons explained herein, validation is the sole mechanism for the City to challenge this project on Article 34 grounds. The City's redundant causes of action for mandamus, declaratory relief, and injunctive relief are superseded by the validation action and must be dismissed.

Dated: January 8, 2024

Respectfully submitted,

JOHN D. NIBBELIN, COUNTY COUNSEL

By: _____

Lauren F. Carroll, Deputy
Daniel McCloskey, Lead Deputy
Kimberly A. Marlow, Deputy

Attorneys for Defendants
COUNTY OF SAN MATEO & BOARD OF SUPERVISORS OF COUNTY OF SAN MATEO