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EXEMPT FROM FILING FEES
GOV'T CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

CITY OF CALABASAS, a California municipal corporation,

Petitioner and Plaintiff,

v.

COUNTY OF LOS ANGELES, a California county; LOS ANGELES SANITATION DISTRICT NO.2, an independent special district; and ROES 1-10,

Respondents and Defendants.

Case No. 25STCP00642
Related to Case No. 25STCP00671

COUNTY OF LOS ANGELES' NOTICE OF DEMURRER AND DEMURRER TO PETITION FOR WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES

Date: May 2, 2025
Time: 9:30 a.m.
Dept.: 82

Assigned for All Purposes to:
Hon. Stephen I. Goorvitch, Department 82

Action Filed: February 19, 2025
Trial Date: None Set

TO THE COURT, PETITIONER CITY OF CALABASAS AND ITS COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on May 2, 2025, at 9:30 a.m., or as soon thereafter as counsel may be heard, in Department 82 of the above-captioned Court, located at 111 North Hill Street, Los Angeles, CA 90012, Respondent and Defendant County of Los Angeles (the "County") will and hereby does demur to the Petition filed by Petitioner and Plaintiff City of Calabasas pursuant to Sections 430.10, *et seq.*, of California Code of Civil Procedure.

The demurrer to the first cause of action for Writ of Mandate is made on the ground that this cause of action fails to state facts sufficient to constitute a cause of action.

The demurrer to the first cause of action for Writ of Mandate is made on the further ground that it contains a defect or misjoinder of parties.

The demurrer is based on this notice, the attached demurrer, the accompanying Memorandum of Points and Authorities, the Declaration of Cristina Talley, and the Request for Judicial Notice, and on all other pleadings and papers in this action, and on any oral argument as may be presented at the hearing on this demurrer.

DATED: April 8, 2025

MEYERS NAVE

By: 

DEBORAH J. FOX
DAVID MEHRETU
CRISTINA L. TALLEY
Attorneys for Respondent/Defendant
COUNTY OF LOS ANGELES

MEET AND CONFER NOTICE

As set forth in the concurrently filed declaration of attorney Cristina Talley, County's counsel met and conferred with Petitioner's counsel, to discuss the basis for this Demurrer more than five (5) days before this Demurrer was due to be filed, as required by Code of Civil Procedure § 430.41. The parties did not reach an agreement resolving the objections raised in this Demurrer.

DATED: April 8, 2025

MEYERS NAVE

By: 

DEBORAH J. FOX
DAVID MEHRETU
CRISTINA L. TALLEY
Attorneys for Respondent/Defendant
COUNTY OF LOS ANGELES

DEMURRER

Pursuant to Sections § 430.10, *et seq.*, of the California Code of Civil Procedure, Respondent and Defendant County of Los Angeles (the "County") generally demurs to the Complaint filed by Petitioner and Plaintiff the City of Calabasas (the "City" or "Calabasas") on the following grounds:

1. The First Cause of Action of the Complaint fails to state facts sufficient to constitute a cause of action for Writ of Mandate. (Code of Civil Procedure § 430.10(e).)

2. The First Cause of Action of the Complaint has a defect or misjoinder of parties. (§ 430.10(d).)

Because the City's cause of action fails as a matter of law and amendment cannot cure the Petition's defects, this Demurrer must be sustained in its entirely without leave to amend.

DATED: April 8, 2025

MEYERS NAVE

By: 

DEBORAH J. FOX
DAVID MEHRETU
CRISTINA L. TALLEY
Attorneys for Respondent/Defendant
COUNTY OF LOS ANGELES

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner City of Calabasas (the "City" or "Calabasas") seeks the issuance of a writ of mandamus to compel Respondent County of Los Angeles (the "County") to exercise its discretion in keeping with a manner dictated by the City. The City asserts that there needs to be compliance with state law here by:

(i) Mandating that the County develop a process and procedure to ensure that hazardous materials from multiple wildfire events in Los Angeles County are not taken to and disposed of at the Class III Calabasas Landfill that is different from that already established and in place by the County and the federal agencies responsible for the cleanup and disposal of fire debris, and

(ii) Demanding that the County take steps to keep the public informed of this new process and procedure through, holding townhall-type meetings.

However, as a matter of law, the County has no ministerial duty to undertake either of these actions. Mandamus cannot issue to compel the County to exercise its discretion in a particular manner – which is exactly what the City seeks in this action.

The City's Petition is also fatally flawed because this is a federal project under FEMA's control and accordingly, the various federal agencies that are, in fact, responsible for the cleanup and disposal of the fire debris are indispensable parties and cannot, absent an express waiver of sovereign immunity, be named as respondents/defendants.

As will be demonstrated below, this action has no merit as a matter of law and the County's demurrer should be sustained without leave to amend.

II. LEGAL STANDARD ON DEMURRER

On a demurrer, all properly pled facts are deemed to be true. (*Balikov v. Southern California Gas Co.* (2001) 94 Cal.App.4th 816, 819.) However, only ultimate facts are deemed true, not evidentiary facts or conclusions of law. (*Careau & Co. v. Security Pacific Business Credit, Inc*. (1990) 222 Cal.App.3d 1371, 1390.) Thus, while the Demurrer admits all material and issuable facts, it does not admit contentions, deductions or conclusions of law.) *Fisher v. San Pedro Peninsula Hosp.* (1989) 214 Cal.App.3d 590, 604.) Additionally, "'In determining the

sufficiency of a complaint against demurrer a court will consider matters that may be judicially noticed.' (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374.) A court may take judicial notice of something that cannot reasonably be controverted, even if it negates an express allegation of the pleading. (*Columbia Casualty Co. v. Northwestern Nat. Ins. Co.* (1991) 231 Cal.App.3d 457, 468–69, 282 Cal.Rptr. 389.)" (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117, *as modified* (July 24, 2007.)

A Complaint is subject to a demurrer if, among other grounds, "[t]here is a defect or misjoinder of parties" or "[t]he pleading does not state facts sufficient to constitute a cause of action." (*Code Civ. Proc.* §430.10 (d), (e).) To overcome the Demurrer, a Plaintiff bears the burden of proving there is a reasonable possibility to cure any defect in the Complaint by amendment. (*Balikov, supra,* 94 Cal.App.4th at p. 819.) If a plaintiff fails to meet this burden, the demurrer should be sustained without leave to amend. (*Id.; Flying Dutchman Park. Inc. v. City and County of San Francisco*. (2001) 93 Cal.App.4th 1129, 1134-35.)

III. STATEMENT OF FACTS

A. The Los Angeles County Wildfires and the State Response

On January 7, 2025, the Palisades and Eaton wildfires broke out causing widespread devastation. As a result, the Governor of California proclaimed a State of Emergency and, on January 8, 2025, issued Executive Order N-2-25 that, among other things, suspended state statutes, rules, regulations, and requirements under the California Environmental Protection Agency and the California Natural Resources Agency to the Extent necessary for the removal of debris and cleanup from these disasters. (RJN, Exh. 1, Executive Order N-2-25.) A week later, the Governor issued another Executive Order, N-8-25, with even broader implications and which states, in part:

> **WHEREAS** in response to my request, President Biden quickly issued a Major Disaster Declaration on January 8, 2025, …
>
> ***
>
> **WHEREAS** on January 14, 2025, I announced that the *Federal Emergency Management Agency mission-tasked the United States Environmental Protection Agency (US EPA) to remove and dispose of* hazardous debris from homes and structures impacted by these fires as soon as it is safe to enter the affected areas; and

> **WHEREAS** US EPA Stands ready to commence their hazardous debris removal work, if authorized under state law to access affected properties; …
>
> ***
>
> **IT IS HEREBY ORDERED THAT:** *The United States Environmental Protection Agency (US EPA), the Federal Emergency Management Agency (FEMA), and any other individual or entity performing work at their direction, shall have full power to provide mutual aid to the State of California and any areas affected by the proclaimed state of emergency*, and shall have the authority to enter private property in Los Angeles County to remove debris that may contain hazardous substances and to conduct any testing appropriate to ensure the hazards are mitigated. *Any state law, regulation, or rule impeding provision of this mutual aid is suspended to the extent necessary to provide this mutual aid to impacted areas of Los Angeles County…*

(RJN, Exh. 2, Executive Order N-8-25; emphasis added.)

B. The Federal Agency Cleanup Process

It cannot be overemphasized that the federal government is responsible for the cleanup and disposal of fire debris. In its absolute discretion, the federal government through FEMA has established a two-phase process for removing and disposing of the fire debris.

First, **Phase 1** is being conducted by the EPA. The purpose of the Phase 1 cleanup is for the EPA to remove hazardous material from burned properties. The EPA "will inspect [the] property and remove household hazardous materials to prevent potential threats to human health, animals, and the environment." (RJN, Exh. 3, LA County Recovers - Phase 1: Hazardous Material Removal.[1]) Phase 1 cleanup is automatic for properties that burned and does not require any homeowner pre-approval. (*Id.*; see also RJN, Exh. 4, LA County Recovers – Frequently Asked Questions About Phase 1 Hazardous Debris Removal by US Environmental Protection Agency ("Phase 1 FAQs")[2].)

During this Phase 1 cleanup, the EPA will remove hazardous materials such as paints, cleaners, oils, pesticides, aerosols, and visible asbestos. (RJN, Exh. 4, Phase 1 FAQs; RJN, Exh.

[1] Available at https://recovery.lacounty.gov/debris-removal/phase-1/, last accessed April 8, 2025.

[2] Available at https://file.lacounty.gov/SDSInter/lac/1176747_Phase1HazardousDebrisRemovalbyUSEnvironmentalProtectionAgencyFAQs.pdf, last accessed April 8, 2025

5, EPA Phase 1 Fact Sheet[3].) The hazardous material that the EPA removes during Phase 1 is not being taking to the Calabasas landfill. (RJN, Exh. 4, Phase 1 FAQs.)[4] Once the Phase 1 cleanup is completed, the EPA posts a sign on the property that states, "**This property's Hazardous Materials removal is COMPLETE**." (RJN, Exh. 5, EPA Phase 1 Fact Sheet; emphasis added.) The EPA recognizes that completion of the Phase 1 process removes the majority of these hazardous waste material but does not serve to guarantee the removal of *all* such materials as a practical matter.

Next, **Phase 2** is being conducted by the Army Corps.[5] The Army Corps explains Phase 2 as follows:

> The Corps of Engineers was tasked to support FEMA and the Consolidated Debris Removal Program in the affected cities and communities. Objectives of this mission include:
>
> 1) Reducing immediate threats to public health and safety,
>
> 2) Expediting economic recovery of the affected cities and communities.
>
> These efforts involve the removal of ash, burned structural remains, hazardous materials, foundations, ACM, vehicles, vessels, contaminated soil and debris from private and public properties. And foundations, if specified on the right-of-entry (ROE) form by the owner.

(RJN, Exh. 6, U.S. Army Corps of Engineers FAQs.[6])

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[3] Available at https://file.lacounty.gov/SDSInter/lac/1176389_EPAPhaseIHouseholdHazardousWasteFactSheet.pdf, last accessed April 8, 2025.

[4] "The EPA will be taking materials to temporary staging areas, including the . . .Topanga Staging Area in Malibu for Palisades Fire debris, with additional staging areas to be identified. Once collected there, the debris will be sorted, secured and packaged for transport to permitted disposal facilities."

[5] Owners may instead opt to hire a private company to handle their Phase 2 removal. The City has not put at issue any such private debris removal.

[6] Available at https://www.spl.usace.army.mil/Portals/17/docs/Emergency%20Management/FAQs%20Wildfire%20Debris%20Removal%20Mission.pdf?ver=2v6qMcJmq-7Qhd4pjugT8A%3d%3d, last accessed April 8, 2025.

The Army Corps' Phase 2 cleanup efforts include both clearing of "phase 2 debris" as well as any "hazardous material not removed by the EPA." (RJN, Exh. 6, U.S. Army Corps of Engineers FAQs.) This hazardous material is taken to appropriate facilities, and again is not taken to the Calabasas Landfill.

As part of the Phase 2 cleanup, the Army Corps will sort the debris into "metals, concrete, soil and ash." (RJN, Exh. 6, U.S. Army Corps of Engineers FAQs.) The concrete and metal will be sent to recycling facilities (*id.*), meaning no concrete or metal will go to the Calabasas Landfill.

Finally, the Army Corps will also remove up to six inches of soil. (*Id.*) It is this soil and ash, along with other fire debris (other than hazardous materials, metals, and concrete), that is then taken to a Class III landfill such as the Calabasas. Before it is taken, however, it is wrapped in plastic and wetted. (*Id.*)

C. The Calabasas Landfill May Accept Ash and Fire Debris Provided a Certificate is Presented that Hazardous Waste has been Removed

The Calabasas Landfill is a "Class III" landfill which can only accept non-hazardous waste. (Pet. ¶ 23.) It is owned by the County and operated by the Respondent/Defendant Los Angeles County Sanitation District No 2. (Pet. ¶ 17.) Non-hazardous waste, as explained below, includes burn ash, such as the type from the recent fires.

The State Water Resources Control Board issued an Order in 2020 addressing the disposal of disaster-related waste. (RJN, Exh. 7, State Water Resources Control Board Order WQ 2020-0004-DWQ entitled General Waste Discharge Requirements for Disaster Related Wastes ("WRCB Order").) The WRCB Order was intended to address "emergency cleanup" of disaster related waste, including "burn ash," following "[c]atastrophic events such as fires[.]" (*Id.* at p. 1.) The Order generally allows for nonhazardous waste to be disposed of in Class III landfills. (*Id.* at pp. 10–11, ¶ D.4.) The definition of "Nonhazardous solid waste" is defined to include, among other things, "ashes." (*Id.* at p. 19, Attachment A - Definitions.)

And, in contrast, the WRCB Order sets out prohibitions on what *cannot* be disposed of in a Class III landfill:

> Wastes such as paint cans, gas cans, solvents, poisons, household cleaners, drums with unknown contents, electronic wastes, refrigerators, or any potentially hazardous wastes (***other than ash from fire disaster areas***) are prohibited from being discharged at a Class II or III landfill[.]

(RFJN, Exh. 7, WRCB Order at p. 7, ¶ A.8, emphasis added.)

Ash from fire disaster areas is specifically and expressly excluded from the list of debris that is prohibited from being disposed in a Class III landfill—resolving the double negative means the WRCB Order contemplates and approves of disposal of ash from the Palisades Fire at the Calabasas landfill. (*Id*. at p. 22 where the Calabasas Landfill is specifically identified as a permissible site for this type of debris.)

Another State agency, the Department of Toxic Substances Control ("DTSC"), provides the same. The Department explains that:

> Ash and contaminated debris from residential structures should be contained and disposed of at a municipal solid waste landfill (class three) under the direction of the local solid waste enforcement agency.

(RJN, Exh. 8, DTSC Emergency Guidance on Wildfires #1 Fact Sheet.[7])

The Calabasas Landfill is one of the landfills subject to the WRCB Order. In issuing the Order, the State Water Board notified owners and operators of the potentially affected landfills that debris ash would be disposed of at the Calabasas facility. (RJN, Exh. 7, WRCB Order at p. 3, ¶ 12.) Indeed, the Calabasas Landfill is expressly listed in Attachment B of the Order in the list of "Landfills that can Accept Disaster-Related Waste." (*Id.* at p. 22, Attachment B.)

In addition to the two-step process utilized by the federal agencies in charge of the fire cleanup to remove hazardous wastes from the material sent to the Calabasas Landfill, a certification process is in place by the County and Sanitation District to ensure that only non-hazardous waste from the fires is disposed of at the Calabasas Landfill; fire debris will not be

[7] Available at https://dtsc.ca.gov/emergency-guidance-on-wildfires-1/, last accessed April 8, 2025.

accepted without such a certificate. (Pet. ¶ 1, 25.) A copy of the certificate that the Calabasas Landfill is requiring for fire debris is found at Exhibit 9 of the County's RJN.

IV. ARGUMENT

A. The Petition Fails to State Facts Sufficient to Constitute a Cause of Action for Writ of Mandate Because the City has Failed to Allege a Ministerial Duty on the Part of County

The law governing issuance of writs of mandamus under Code of Civil Procedure § 1085 is well settled. Two essential elements are required to obtain the writ: 1) clear, present ministerial duty on part of respondent, and 2) clear, present, and beneficial right in the petitioner to the performance of that duty. (*California Hospital Assn v. Maxwell-Jolly* (2010) 188 Cal.App.4th 559, 568.) Mandamus will not lie to compel an officer or entity to exercise discretion in a particular manner. (*Id.*, at 570.) Furthermore, if a duty is part ministerial and party discretionary, mandamus will not issue. (*Childhelp, Inc. v. City of Los Angeles* (2023) 91 Cal.App.5th 224, 239; see also, *Unnamed Physician v. Board of Trustees* (2001) 93 Cal.App.4th 607, 618 ["Mandate will not issue to compel action unless it is shown the duty to do the thing asked for is plain and unmixed with discretionary power or the exercise of judgment. (Citation.)"].)

In this case, the City seeks a writ of mandate to "compel an act that is required under the Hazardous Waste Control Act (Health & Safety Code, Chapter 6.5) and to ensure compliance with the existing Title V permit issued by the AQMD for this facility No. 42514 and Rule 3200." (Pet. ¶ 36.) Specifically, the City asks the Court to issue a writ of mandate commanding the County to "[v]acate and rescind any approvals, decisions, or website announcements to the general public suggesting acceptance of any fire debris waste at the Calabasas Landfill until such time as the Respondents have developed processes and procedures to ensure that the fire debris to be disposed of at the Landfill does not contain any hazardous wastes." (Pet. Prayer, ¶1.a), and, "provide clear and explicit notice to the City of Calabasas, its residents, and all adjacent communities of the exact nature of the certification program specific to fire debris wastes and provide at least two separate town-hall type meetings to explain such terms to local residents and school administrators." (Pet.

Prayer, ¶1.b.) For the reasons set forth below, a writ of mandate may not issue, as a matter of law, to compel these actions.

The City's Petition acknowledges the County's existing process for confirming that no hazardous wastes from the fires are being deposited at the Calabasas Landfill, namely, the certification required to be presented by the haulers when the trucks arrive at the landfill (Pet. ¶ 25) but questions the efficacy and alleged transparency of that process. (Pet. ¶¶ 26-28, 37.) There is nothing, however, in the Hazardous Waste Control Act or in the Title V permit issued by the AQMD for the Calabasas Landfill that imposes a ministerial duty on the County to adopt a different process and procedure, including independently testing the materials, which this Court has already concluded.[8]

The City also attacks the processes in place to ensure no hazardous materials are being taken to the Calabasas Landfill by suggesting some improper motive of the third-party vendor selected by the Army Corps to lie about what is in the materials in order to save money. (Pet. ¶ 28.) This speculative allegation is completely undermined by the fact that the materials in the trucks of the third-party haulers are the result of the two-phase process undertaken by the Federal agencies, in their sole discretion. There is nothing in either the Hazardous Waste Control Act or the Title V permit that prevents the County from relying on that two-phase process to meet its legal obligations under the law or permit.

Any writ of mandate requiring the County to change its process, including the imposition of testing requirements, necessarily interferes with the County's discretion to determine the best process to ensure hazardous wastes are not taken to the landfill. Similarly, the County is under no ministerial duty to provide any notice to the City, its residents or adjacent communities of the exact nature of the certification program or to hold townhall-type meetings. Thus, there is no basis, as a matter of law, upon which a writ of mandate can issue.

[8] See, February 25, 2025, Order Denying Ex Parte Application for Temporary Restraining Order ("TRO Order"), p. 4.

B. This Action Should Be Dismissed because the Federal Agencies are Indispensable Parties

A demurrer may be sustained if there has been a defect or misjoinder of parties. (Code of Civil Procedure §430.10(d). Civil Code §389(a) provides for compulsory joinder of any party if:

> (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

If a party described in subsections (1) or (2) above cannot be made a party, the Court may dismiss the action without prejudice if it determines the absent party is "indispensable." The factors to be considered by the Court in making that determination include:

> (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder.

(Code of Civil Procedure §389(b).)

Here, the Court has previously recognized it does not have authority over federal agencies absent a waiver of sovereign immunity.[9] Thus, the question is whether FEMA, the EPA, and the Army Corps are all indispensable parties, and if so, whether the Court can fashion a remedy without prejudicing their rights. It cannot. *FEMA is responsible for directing the emergency cleanup of the Palisades Fire debris at issue here.* (RFJN, Exh. 2.) FEMA assigned the EPA the responsibility of surveying, removing, and disposing of hazardous material (which will ***not*** go to the Calabasas Landfill). Once the EPA's Phase 1 work is completed, then the Army Corps takes over and is responsible for conducting Phase 2, part of which requires it to dispose of fire debris at Class III landfills, which specifically includes the Calabasas Landfill just as with prior wildfires. Assuming, *arguendo*, this Court has authority to order additional testing or monitoring

[9] See, TRO Order, p. 8.

requirements, which it has already concluded it does not,[10] any such order would necessarily impact and prejudice the rights of the federal agencies that are key parties involved in the direction, formulation, and operation of debris removal as relates to the Calabasas Landfill. They are, by any measure, indispensable parties, requiring the Court to dismiss the action for nonjoinder.[11]

V. CONCLUSION

The County has no ministerial duty to undertake the measures sought by City's Petition, and this Court has no authority to substitute its discretion for that of the County or the federal agencies mission-tasked with the cleanup and disposal of fire debris regarding the manner in which the hazardous wastes are separated from non-hazardous wastes or the proof required by the Calabasas Landfill that non-hazardous wastes are being taken to the landfill for disposal. Moreover, even if it did have such authority, it could not act in this case because the federal agencies are indispensable parties and they cannot be named as Respondents/Defendants absent a waiver of sovereign immunity.

For these reasons, and for all the reasons set forth in these Points and Authorities, the County respectfully requests that its demurrer be sustained without leave to amend.

Respectfully submitted,

DATED: April 8, 2025

MEYERS NAVE

By: 

DEBORAH J. FOX
DAVID MEHRETU
CRISTINA L. TALLEY
Attorneys for Respondent/Defendant
COUNTY OF LOS ANGELES

5989262

[10] See, TRO Order, p. 4.

[11] If the City wants to challenge the efficacy of the federal agencies' cleanup efforts, it can do so in federal court; dismissing this action does not deprive the City of a remedy.