APPENDIX

APPENDIX

TABLE OF CONTENTS

APPENDIX A

IN THE SUPREME COURT OF CALIFORNIA

Court of Appeal, Second Appellate District
Division One - B294686

S270646

En Banc

[Filed: November 17, 2021]

BALUBHAI PATEL et al.	)
Plaintiffs and Appellants,	)
v.	)
	)
JULIE A. SU, et al.	)
Defendants and Respondent.	)
	)

ORDER

The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice

APPENDIX B

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION ONE

B294686
(Los Angeles County Super. Ct. No. BC681074)

[Filed: July 30, 2021]

BALUBHAI PATEL et al.,	)
	)
Plaintiffs and Appellants,	)
	)
v.	)
	)
JULIE A. SU, as Labor Commissioner, etc., et al.,	)
	)
Defendants and Respondents.	)
	)

APPEAL from a judgment of the Superior Court of Los Angeles County, Maureen Duffy-Lewis, Judge. Affirmed.

Law Offices of Frank A. Weiser and Frank A. Weiser for Plaintiffs and Appellants Balubhai Patel, DTWO & E Inc. and Stuart Union LLC.

Division of Labor Standards Enforcement and Casey Raymond for Defendants and Respondents Department of Industrial Relations, Julie A. Su and Martha Huerta.

Law Office of Eugene Lee and Eugene D. Lee for Defendant and Respondent Manuel Chavez.

Plaintiffs and appellants Balubhai Patel, DTWO & E Inc., and Stuart Union LLC (collectively, plaintiffs) are the losing parties in an administrative action for unpaid wages brought by their former employee, defendant and respondent Manuel Chavez. Rather than appeal the Labor Commissioner's adverse decision under the procedures established in the Labor Code, plaintiffs filed a suit under section 1983 of title 42 of the United States Code (section 1983) alleging that defendants and respondents Julie Su (then Labor Commissioner), Martha Huerta (the hearing officer who made the adverse ruling), and the Labor Commissioner's Office violated plaintiffs' civil rights by deciding the administrative action in favor of Chavez. Plaintiffs also petitioned for a writ of mandate, asking the court to set aside the Labor Commissioner's order and hold a trial de novo. The trial court sustained defendants' demurrer, finding that plaintiffs failed to exhaust their administrative remedies by presenting their claim to the government prior to filing suit, and that plaintiffs were not eligible for a writ of mandate because they had an adequate remedy at law. We affirm. The operative complaint does not state a cause of action under civil rights law, and contrary to plaintiffs' claims, their petition for a writ of mandate

was not a valid notice of appeal of the Labor Commissioner's decision.

FACTS AND PROCEDURAL SUMMARY

In 2015, Chavez filed a complaint in the Labor Commissioner's Office against plaintiffs. Chavez had worked since 2002 as a property manager at a building plaintiffs owned,[1] and he alleged that plaintiffs had paid him less than the minimum wage and had failed to provide for meal and rest periods as required by law.

On September 26, 2017, Huerta, acting as hearing officer on behalf of the Labor Commissioner, issued an order, decision or award (ODA) requiring Stuart Union to pay Chavez $33,348.80, and requiring DTWO & E and Patel to pay Chavez $202,294.10. In both instances, the award consisted of amounts for unpaid wages, liquidated damages, interest, and penalties.

The ODA included a notice stating that "Labor Code section 98.2[, subdivision] (b) requires that when an employer files an appeal of an order, decision or award of the Labor Commissioner, the employer shall post a bond or undertaking with the court in the amount of the ODA and the employer shall provide written notice to the other parties and the Labor Commissioner of the undertaking." (Capitalization omitted.)

Exactly one month later, on October 26, 2017, plaintiffs filed suit in the trial court against Chavez, Huerta, Su, and the Labor Commission. The complaint,

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[1] DTWO & E owned the property from 2002 to 2015, and Patel owned DTWO & E and supervised Chavez. Stuart Union owned the property beginning in 2015.

as amended, alleged causes of action for violations of their federal civil rights under sections 1981, 1982 and 1983 of title 42 of the United States Code (sections 1981, 1982, and 1983). The complaint also alleged inverse condemnation and included a petition for a writ of mandate asking the court to vacate and reverse the ODA. Plaintiffs claimed that the requirement under Labor Code section 98.2 to post a bond or undertaking in order to challenge the Labor Commissioner's decision violated their First Amendment right to petition for redress of grievances. They also claimed that Chavez gave false testimony, that Huerta made errors in finding the facts and interpreting the law, and that defendants violated their civil rights by discriminating against them as Asian-Americans.

At the same time that they filed the complaint, plaintiffs filed a notice of intent to post a bond or undertaking pursuant to Labor Code section 98.2. Plaintiffs stated that they made the posting "under protest." The next day, insurance companies representing plaintiffs posted bonds in the amount of the award to Chavez.

Chavez filed a special motion to strike the complaint as it pertained to him under the anti-SLAPP statute (Code Civ. Proc., § 425.16). The trial court granted the motion, and we affirmed. (See *Patel v. Chavez* (2020) 48 Cal.App.5th 484.) While the anti-SLAPP motion was pending, plaintiffs filed an amended complaint. On September 13, 2018, the trial granted Chavez's new anti-SLAPP motion to strike the amended complaint. At the same time, the trial court sustained a demurrer without leave to amend brought by the remaining

defendants on the ground that plaintiffs had failed to comply with the requirements of Government Code sections 911.2 and 915 pertaining to filing a claim for damages against the state government.

On November 13, 2018, plaintiffs filed a notice of appeal from the trial court's order sustaining the demurrer.[2] The trial court later entered judgment in favor of defendants.

DISCUSSION

A. *Standard of Review*

We review a trial court's decision sustaining a demurrer without leave to amend de novo. (*Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1242.) To the extent plaintiffs' claims are based on state law, this means "determin[ing] whether the pleading alleges facts sufficient to state a cause of action under any possible legal theory." (*Ibid.*) In this case, however, plaintiffs have pleaded most of their claims under federal civil rights law. As to these claims, we apply a slightly different federal standard of review of a grant of a motion to dismiss. (*Rubin v. Padilla* (2015) 233 Cal.App.4th 1128, 1144.) "Under that standard, 'dismissal is proper only where "it appears beyond doubt that the plaintiff can prove no set of facts in

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[2] Plaintiffs acknowledge that an order sustaining a demurrer without leave to amend is interlocutory and therefore not appealable. (*Vibert v. Berger* (1966) 64 Cal.2d 65, 67 (*Vibert*).) We agree with them, however, that we must construe their notice of appeal liberally and deem it to have been an appeal from the subsequent judgment. (See *id.* at pp. 67–68.)

support of the claims that would entitle him to relief." ' [Citation.] Either way, we ' "must assume the truth of the complaint's properly pleaded or implied factual allegations. [Citation.] . . . In addition, we give the complaint a reasonable interpretation, and read it in context." ' " (*Ibid.*)

B. *The Petition for a Writ of Mandate Was Not a Notice of Appeal*

We begin with a discussion of the second cause of action, a petition for a writ of mandamus seeking a trial de novo of the Labor Commission decision. The trial court sustained the demurrer as to this claim because "[a] writ of mandamus . . . only issues when there otherwise is no speedy and adequate remedy at law." (*County of Sacramento v. Assessment Appeals Bd. No. 2 of Sacramento County* (1973) 32 Cal.App.3d 654, 672; accord, Code Civ. Proc., § 1086.) Plaintiffs do not dispute that they had an adequate remedy at law, in the form of an appeal under Labor Code section 98.2.

Nevertheless, plaintiffs contend that the trial court erred by sustaining the demurrer because, in their view, the petition for a writ of mandate *was* a notice of appeal under Labor Code section 98.2. They argue that we must remand the case for a trial de novo pursuant to that statute. We disagree.

Plaintiffs begin with the principle that "notice[s] of appeal must be liberally construed." (Cal. Rules of Court, rule 8.100(a)(2).)[3] They contend that their

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[3] Strictly speaking, title eight of the California Rules of Court does not apply to appeals to the trial court from administrative

petition for a writ of mandate gave Chavez notice of their intent to challenge the Labor Commissioner's decision. The complaint stated that "[t]his writ of mandate is filed, among other authority and limited therein, pursuant to the California Labor Code and California Labor Code [s]ection[ ] 98.2." Labor Code section 98.2 sets out the procedures for appeals of the Labor Commissioner's decisions. Plaintiffs also note that they demanded "a de novo hearing on this matter," the same relief provided in appeals under Labor Code section 98.2. According to plaintiffs, these factors together were sufficient to require treating their petition as a notice of appeal under Labor Code section 98.2.

We are not persuaded. The rule of liberal construction of notices of appeal typically applies where the appellant has explicitly stated his intent to appeal a trial court's decision, but either fails to specify the judgment appealed from, or purports to appeal from the wrong judgment. For example, in *In re Christopher A.* (1991) 226 Cal.App.3d 1154, a case in which the trial court declared a child free from parental custody, the child's father wrote a letter to the court stating, " 'I want to file a [*sic*] appeal about that last hearing.' " (*Id.* at p. 1158.) The court held that this was a sufficiently clear statement to constitute a valid notice of appeal. (*Id.* at p. 1161.) Similarly, where an appellant appeals from a nonappealable order such as an order sustaining

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decisions, but "[h]istorically, the courts have not hesitated to apply the rules governing conventional appeals to appeals in which a trial de novo is required." (*Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831, 836 (*Pressler*).)

a demurrer, courts routinely deem the notice to have been a valid appeal from the judgment entered thereafter, so long as "no prejudice would accrue to the respondent." (*Vibert*, *supra*, 64 Cal.2d at p. 68.)

To interpret a petition for a writ of mandate as a notice of appeal would require going further than any case we are aware of in interpreting a document as a notice of appeal. We decline to do so in this case because plaintiffs' decision to file their complaint rather than a notice of appeal has prejudiced Chavez by significantly delaying the case. Labor Code section 98.2 is designed to provide speedy resolution of disputes. As our Supreme Court explained, "Public policy has long favored the 'full and prompt payment of wages due an employee.' [Citation.] '[W]ages are not ordinary debts . . . . [B]ecause of the economic position of the average worker and, in particular, his dependence on wages for the necessities of life for himself and his family, it is essential to the public welfare that he receive his pay' promptly. [Citation.] Requiring strict adherence to the time requirement governing appeals from decisions of the Labor Commissioner can only help to assure the achievement of this overriding goal." (*Pressler, supra,* 32 Cal.3d at p. 837.)

As of the date this opinion is filed, nearly four years have passed since Huerta issued the ODA in favor of Chavez on September 26, 2017. Chavez has been dismissed from the case following his successful anti-SLAPP motion. Plaintiffs ask us to remand the case to the trial court and drag Chavez back into litigation in a trial de novo. This is the same result plaintiffs could have achieved years ago if they had

simply filed a straightforward appeal under Labor Code section 98.2. To order a trial de novo now would reward plaintiffs for filing a meritless civil rights claim, frustrating the policy of speedy payment of wages in cases before the Labor Commissioner.

The law gives plaintiffs a great deal of latitude in their pleadings: "In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties." (Code Civ. Proc., § 452.) Under this rule, a court may excuse a plaintiff with a valid cause of action for trespass who sues under a theory of conversion (see *Thrifty-Tel, Inc. v. Bezenek* (1996) 46 Cal.App.4th 1559, 1565–1566), or who fails to prove breach of contract but establishes evidence under theories of quasi-contract and tort (see *Hernandez v. Lopez* (2009) 180 Cal.App.4th 932, 936–940). In cases like these, the label of the cause of action does not affect the trial of the case, and the defendant is not prejudiced. That is not the case here because the multi-year delay in the resolution of the case does prejudice Chavez, and it would not provide "substantial justice between the parties" (Code Civ. Proc., § 452) to construe plaintiffs' petition for a writ of mandate as a notice of appeal.

C. *Civil Rights Claims for Damages*

In addition to their petition for a writ of mandate, plaintiffs alleged violations of federal civil rights laws under sections 1981, 1982, and 1983. In their demurrer to these causes of action, defendants alleged that plaintiffs "fail to state a cause of action upon which relief for damages can be granted because [they] have

failed to exhaust their administrative remedies by first filing a claim with the State Board of Control, as required by Government Code section 915." The trial court agreed and sustained the demurrer without leave to amend on this basis.

Ordinarily, a plaintiff's failure to present a claim against the state government to the Department of General Services prior to filing suit would indeed be fatal. (See Gov. Code, § 915, subd. (a).) Compliance with this requirement is "a procedural condition precedent; that is to say, the timely filing of a written claim with the proper officer or body is an element of a valid cause of action against a public entity." (*Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 374; accord, Gov. Code, § 945.4.) Plaintiffs did not allege that they complied with these requirements.

We agree with plaintiffs, however, that this was not a valid basis for sustaining the demurrer as to their civil rights claims. Notice-of-claim statutes such as Government Code section 915 are preempted in cases where a plaintiff seeks relief under the Civil Rights Act in state court. (See *Felder v. Casey* (1988) 487 U.S. 131, 153.) As our Supreme Court has explained, "the California remedy of recourse to the Tort Claims Act need not be first sought before a plaintiff is free to invoke the Civil Rights Act" by filing suit in state court under section 1983. (*Williams v. Horvath* (1976) 16 Cal.3d 834, 842.)

Nevertheless, this is not the end of our inquiry. "If [an] appealed judgment or order is correct on any theory, then it must be affirmed regardless of the trial court's reasoning, whether such basis was actually

invoked." (*Hoover v. American Income Life Ins. Co.* (2012) 206 Cal.App.4th 1193, 1201; accord, *Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 330 ["it is judicial action, and not judicial reasoning or argument, which is the subject of review; and, if the former be correct, we are not concerned with the faults of the latter"].) This principle is particularly apt where we are addressing a purely legal question of a demurrer, which we review de novo in any event. (See *City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 870.) It would be a waste of judicial resources to reverse the trial court where the record shows as a matter of law that the trial court's judgment was correct, albeit on a theory the parties did not address below.

For this reason, we requested supplemental briefing on the question of whether the complaint fails to state a claim because the defendants are absolutely immune for their alleged misconduct under the doctrine of quasi-judicial immunity. We conclude that the answer to that question is yes, and on that basis, we affirm the trial court's decision sustaining the demurrer as to the civil rights causes of action to the extent that they seek damages.

Judicial immunity "bars civil actions against judges for acts performed in the exercise of their judicial functions and it applies to all judicial determinations, including those rendered in excess of the judge's jurisdiction, no matter how erroneous or even malicious or corrupt they may be." (*Howard v. Drapkin* (1990) 222 Cal.App.3d 843, 851, fn. omitted (*Howard*).) An extension of this doctrine, known as quasi-judicial immunity, "extend[s] absolute judicial immunity to

persons other than judges if those persons act in a judicial or quasi-judicial capacity." (*Id.* at pp. 852–853.) The doctrine applies in cases brought under section 1983, and it affords protection to hearing officers acting in a judicial function in administrative proceedings. (See *Taylor v. Mitzel* (1978) 82 Cal.App.3d 665, 670–671.)

Plaintiffs' allegations fall squarely within the realm of quasi-judicial immunity. Plaintiffs allege that "the ODA was rendered with perjured testimony, illegally applied . . . Labor Code [s]ection 558.1 retroactively to Patel, accepted [Chavez's] testimony and claims even though he produced false personal identification, and si[m]ilarly situated parties are treated differently before the Labor Commissioner and Huert[a]." In other words, plaintiffs allege that Huerta decided the case wrongly, making incorrect factual findings, misapplying the law, and treating plaintiffs differently than other similarly situated parties. Quasi-judicial immunity applies because Huerta's actions "relat[ed] to a function normally performed by a judge." (*Howard*, *supra*, 222 Cal.App.3d at p. 851, fn. 3.) This analysis applies to plaintiffs' allegations of racial discrimination as well as to their section 1983 claim. All of the allegations in the complaint that could be construed as racial discrimination were actions Huerta took in performing the functions of a judge.

D. *Claims for Declaratory and Injunctive Relief*

In their supplemental briefing, plaintiffs contend that the doctrine of quasi-judicial immunity does not apply to their claims for declaratory or injunctive relief.

In *Pulliam v. Allen* (1984) 466 U.S. 522, the United States Supreme Court held that judicial immunity does not bar plaintiffs from seeking prospective injunctive and declaratory relief in cases brought under the Civil Rights Act. (*Id.* at pp. 541–542.) In 1996, Congress overruled the Court in part by amending section 1983 to provide that "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." (Federal Courts Improvement Act of 1996 (Pub.L. No. 104-317, § 309(c) (Oct. 19, 1996) 110 Stat. 3847, 3853).) Plaintiffs argue that because Congress did not amend sections 1981 and 1982 of the Civil Rights Act in the same way, injunctive and declaratory relief are still available for its claims under those sections. They argue further that, although section 1983 provides judicial immunity from claims of injunctive relief, it does not provide quasi-judicial immunity to non-judges acting in a judicial capacity. We are not aware of any California court cases addressing the latter question. Courts in other jurisdictions have reached different conclusions, with some holding that section 1983 provides quasi-judicial immunity against injunctive claims (see *Roth v. King* (D.C. Cir. 2006) 449 F.3d 1272, 1286–1287), and others disagreeing (see *Simmons v. Fabian* (Minn.Ct.App. 2007) 743 N.W.2d 281, 285).

We need not decide this question because even if we assume plaintiffs are correct, their complaint does not state a claim for declaratory or injunctive relief. The references to injunctive and declaratory relief in plaintiffs' complaint are minimal. In the body of each of

their causes of action for civil rights violations, plaintiffs assert "that they are also entitled to declaratory and injunctive relief against Su and Huert[a]," but they do not explain the basis for this claim, nor do they request any specific relief. We requested supplemental briefing regarding whether plaintiffs had stated a claim for declaratory and injunctive relief, and if not, whether they could amend their complaint to state a claim. In their letter brief, plaintiffs claim that they are seeking declaratory and injunctive relief to remedy various violations of their constitutional rights under the First, Fifth, and Fourteenth Amendments. In light of these violations, plaintiffs contend that the ODA must "be declared null and void as a matter of law and enjoined under 42 U.S.C. § 1983."

In other words, the declaratory and injunctive relief plaintiffs seek is a reversal of the ODA. But neither declaratory nor injunctive relief is available for that purpose. A party may seek declaratory relief to challenge a rule, regulation, or a generally applicable standard of an administrative agency, but "an action for declaratory relief does not lie to review an administrative decision." (*Californians for Native Salmon etc. Assn. v. Department of Forestry* (1990) 221 Cal.App.3d 1419, 1428.) Similarly, it is hornbook law that "[a] party seeking injunctive relief must show the absence of an adequate remedy at law." (*Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist.* (1992) 8 Cal.App.4th 1554, 1564; accord, 6 Witkin, Cal. Procedure (5th ed. 2020) Provisional Remedies, § 294.) In this case, plaintiffs had a remedy at law in the form of an appeal under Labor Code section 98.2. They

complain that the requirement that they post a bond made it difficult for them to file such an appeal, but this requirement does not violate due process because an employer who is indigent may obtain a waiver of the requirement. (See *Williams v. Freedomcard, Inc.* (2004) 123 Cal.App.4th 609, 614; *Burkes v. Robertson* (2018) 26 Cal.App.5th 334, 343.)

It is not much of an exaggeration to say that all of plaintiffs' efforts in this case have been devoted to circumventing the requirements for filing an appeal under Labor Code section 98.2. Their claims for declaratory and injunctive relief are no more successful than their other efforts.

E. *Inverse Condemnation*

The final cause of action in plaintiffs' complaint is for inverse condemnation. Plaintiffs allege that defendants' adverse actions constitute a wrongful taking in violation of article I, section 19 of the California Constitution. The trial court dismissed the claim because plaintiffs failed to follow the notice of claim requirement, but Government Code section 905.1 provides that inverse condemnation claims are not subject to the notice of claim requirements.

Nevertheless, this cause of action also fails because a claim of inverse condemnation does not lie for the kind of conduct alleged here. As the Supreme Court explained in *Customer Co. v. City of Sacramento* (1995) 10 Cal.4th 368, "an 'inverse condemnation' action may be pursued when the state or other public entity improperly has taken private property for public use without following the requisite condemnation

procedures—as when the state, in constructing a public project, occupies land that it has not taken by eminent domain, or when the state takes other action that effectively circumvents the constitutional requirement that just compensation be paid before private property is taken for public use." (*Id.* at p. 377.) Courts have been reluctant to extend the application of the doctrine outside this context, however. Inverse condemnation "never was intended, and never has been interpreted, to impose a constitutional obligation upon the government to pay 'just compensation' whenever a governmental employee commits an act that causes loss of private property." (*Id.* at p. 378.) We will not now extend the doctrine radically to encompass an adverse decision of an administrative official after a hearing in which plaintiffs had an opportunity to present evidence and cross-examine witnesses against them.

DISPOSITION

The judgment of the trial court is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P.J.

We concur:

CHANEY, J.

App. 18

CRANDALL, J.[*]

[*] Judge of the San Luis Obispo County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

APPENDIX C

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

CASE NO.: BC681074

[Filed: July 23, 2020]

BALUBHAI PATEL, an individual; DTWO & E INC., a California corporation; STUART UNION, LLC, a California Limited Liability Company,	)
Plaintiff,	)
v.	)
JULIE A. SU, individually and as Labor Commissioner of the State of California,	)

Department of Industrial Relations, Division of Labor Standards Enforcement; Martha Huerte, individually and as Deputy Labor Commissioner of the State of California, Department of Industrial Relations, Division of Labor Standards Enforcement; Manuel Chavez, an individual; AND DOES 1 THROUGH 100 INCLUSIVE,

Defendants.

Manuel Chavez,

Real Party in Interest

REQUEST FOR ENTRY OF JUDGMENT OF DISMISSAL AFTER SUSTAINING DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT WITHOUT LEAVE TO AMEND

Defendant CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS's Demurrer to Plaintiff's First Amended Complaint came on for hearing on September 13, 2018, at 9:30 a.m; before the Hon. Maureen Duffy-Lewis, Department 38.

i. After considering the papers and oral argument, the Court Sustained Defendant's Demurrer without Leave to Amend.

ii. Judgment of Dismissal has not yet been entered.

iii. This action is currently on appeal in the Second Appellate District.

Accordingly, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the entire above-entitled action be Dismissed with Prejudice and that Plaintiff takes nothing as against Defendant Department of Industrial Relations, Judgment is entered against Plaintiff.

Dated: 7-23-20

/s/ Maureen Duffy-Lewis
Hon. Maureen Duffy-Lewis

*[*** Proof of service omitted for printing purposes ***]*

APPENDIX D

SUPERIOR COURT Of CALIFORNIA,
COUNTY OF LOS ANGELES

BC681074

[Filed: September 13, 2018]

BALUBHAI PATEL ET AL	)
VS	)
JULIE A SU ET AL	)
	)

NATURE OF PROCEEDINGS:

DEFENDANT MANUEL CHAVEZ, MOTION AND SPECIAL MOTION TO STRIKE THE FIRST AMENDED COMPLAINT, OR IN THE ALTERNATIVE, THE FIRST, SECOND, FOURTH AND FIFTH CAUSES OF ACTION THEREOF, AS A MERITLESS SLAPP

NOTICE OF HEARING ON RESPONDENT STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS, DIVISION OF LABOR STANDARDS ENFORCMENT'S DEMURRER TO FIRST AMENDED COMPLAINT FOR DAMAGES (trailed from 09/10/18)

CASE MANAGEMENT CONFERENCE

Second special motion to strike by defendant Manuel Chavez is called for hearing and argued.

Special motion to strike GRANTED.

Chavez is not a defendant to the original claims, his prior motion to strike was successful and amendment is not permitted.

As to the the two (2) new claims for 'racial discrimination.' the exact analysis applies.

Matter is based upon testimony made in an underlying litigation before the Labor Commission. Therefore, it constitutes protected speech within the anti-SLAPP statute. California Code of Civil Procedure 425.16(e) (1) and (2); Haight Ashbury Free Clinics v. Happening House Ventures (2010) 184 Cal App 4th 1539, 1548.

Defendant meets his burden. Statements privileged under Civil Code 47(b) - the Litigation Privilege.

Demurrer to first amended complaint trailed from 09/10/18 is called for hearing and argued. Government defendants demur to the five causes of action pled against them.

With regard to to the three causes of action for Violation of Civil Rights and the cause of action for Inverse Condemnation, demurrer SUSTAINED as to all.

These four causes of action are for damages and, thus, plaintiff must file a Government claim within six months. Government Code 915 and 911.2. Failure to comply with these rules results in a bar to any claims. Kim v. Walker (1989) 208 Cal App 3rd 375, 384. There are no allegations of filing.

With regard to Writ of Mandate demurrer SUSTAINED. Mandamus is available only where there is no other adequate remedy at law. Tivans v. Assessment Appeals Board (1973) 31 Cal App 3rd 945, 946-7. Labor Code 98.2 outlines the appeal process for Labor Commission hearings. There is an existing statutory remedy, thus no relief available by way of mandamus. No leave to amend.

Moving parties on respective motions to give notice.

APPENDIX E

42 U.S. Code § 1983 - Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX F

LABOR CODE - LAB

DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS [50 - 176] *(Division 1 enacted by Stats. 1937, Ch. 90.)*

CHAPTER 4. Division of Labor Standards Enforcement [79 - 107] *(Heading of Chapter 4 amended by Stats. 1976, Ch. 746.)*

98. (a) The Labor Commissioner is authorized to investigate employee complaints. The Labor Commissioner may provide for a hearing in any action to recover wages, penalties, and other demands for compensation, including liquidated damages if the complaint alleges payment of a wage less than the minimum wage fixed by an order of the Industrial Welfare Commission or by statute, properly before the division or the labor Commissioner, including orders of the Industrial Welfare Commission, and shall determine all matters arising under his or her jurisdiction. The Labor Commissioner may also provide for a hearing to recover civil penalties due pursuant to Section 558 against any employer or other person acting on behalf of an employer, including, but not limited to, an individual liable pursuant to Section 558.1. It is within the jurisdiction of the Labor Commissioner to accept and determine claims from holders of payroll checks or payroll drafts returned unpaid because of insufficient funds, if, after a diligent search, the holder is unable to return the dishonored

check or draft to the payee and recover the sums paid out. Within 30 days of the filing of the complaint, the Labor Commissioner shall notify the parties as to whether a hearing will be held, whether action will be taken in accordance with Section 98.3, or whether no further action will be taken on the complaint. If the determination is made by the Labor Commissioner to hold a hearing, the hearing shall be held within 90 days of the date of that determination. However, the Labor Commissioner may postpone or grant additional time before setting a hearing if the Labor Commissioner finds that it would lead to an equitable and just resolution of the dispute. A party who has received actual notice of a claim before the Labor Commissioner shall, while the matter is before the Labor Commissioner, notify the Labor Commissioner in writing of any change in that party's business or personal address within 10 days after the change in address occurs.

It is the intent of the Legislature that hearings held pursuant to this section be conducted in an informal setting preserving the rights of the parties.

(b) When a hearing is set, a copy of the complaint, which shall include the amount of compensation requested, together with a notice of time and place of the hearing, shall be served on all parties, personally or by certified mail, or in the manner specified in Section 415.20 of the Code of Civil Procedure.

(c) Within 10 days after service of the notice and the complaint, a defendant may file an answer with the Labor Commissioner in any form as the Labor Commissioner may prescribe, setting forth the

particulars in which the complaint is inaccurate or incomplete and the facts upon which the defendant intends to rely.

(d) No pleading other than the complaint and answer of the defendant or defendants shall be required. Both shall be in writing and shall conform to the form and the rules of practice and procedure adopted by the labor Commissioner.

(e) Evidence on matters not pleaded in the answer shall be allowed only on terms and conditions the Labor Commissioner shall impose. In all these cases, the claimant shall be entitled to a continuance for purposes of review of the new evidence.

(f) If the defendant fails to appear or answer within the time allowed under this chapter, no default shall be taken against him or her, but the Labor Commissioner shall hear the evidence offered and shall issue an order, decision, or award in accordance with the evidence. A defendant failing to appear or answer, or subsequently contending to be aggrieved in any manner by want of notice of the pendency of the proceedings, may apply to the Labor Commissioner for relief in accordance with Section 473 of the Code of Civil Procedure. The labor Commissioner may afford this relief. No right to relief, including the claim that the findings or award of the Labor Commissioner or judgment entered thereon are void upon their face, shall accrue to the defendant in any court unless prior application is made to the Labor Commissioner in accordance with this chapter.

(g) All hearings conducted pursuant to this chapter are governed by the division and by the rules of practice and procedure adopted by the Labor Commissioner.

(h) (1) Whenever a claim is flied under this chapter against a person operating or doing business under a fictitious business name, as defined in Section 17900 of the Business and Professions Code, which relates to the person's business, the division shall inquire at the time of the hearing whether the name of the person is the legal name under which the business or person has been licensed, registered, incorporated, or otherwise authorized to do business.

(2) The division may amend an order, decision, or award to conform to the legal name of the business or the person who is the defendant to a wage claim, if it can be shown that proper service was made on the defendant or his or her agent, unless a judgment had been entered on the order, decision, or award pursuant to subdivision (d) of Section 98.2. The Labor Commissioner may apply to the clerk of the superior court to amend a judgment that has been issued pursuant to a final order, decision, or award to conform to the legal name of the defendant, if it can be shown that proper service was made on the defendant or his or her agent.

(Amended by Stats. 2015, Ch. 803, Sec. 3. (SB 588) Effective January 1, 2016.)

98.2. (a) Within 10 days after service of notice of an order, decision, or award the parties may seek review by filing an appeal to the superior court, where the appeal shall be heard de novo. The court shall charge the first paper filing fee under Section 70611 of the Government Code to the party seeking review. The fee shall be distributed as provided in Section 68085.3 of the Government Code. A copy of the appeal request shall be served upon the Labor Commissioner by the appellant. For purposes of computing the 10-day period after service, Section 1013 of the Code of Civil Procedure is applicable.

(b) As a condition to filing an appeal pursuant to this section, an employer shall first post an undertaking with the reviewing court in the amount of the order, decision, or award. The undertaking shall consist of an appeal bond issued by a licensed surety or a cash deposit with the court in the amount of the order, decision, or award. The employer shall provide written notification to the other parties and the Labor Commissioner of the posting of the undertaking. The undertaking shall be on the condition that, if any judgment is entered in favor of the employee, the employer shall pay the amount owed pursuant to the judgment, and if the appeal is withdrawn or dismissed without entry of judgment, the employer shall pay the amount owed pursuant to the order, decision, or award of the Labor Commissioner unless the parties have executed a settlement agreement for payment of some other amount, in which case the employer shall pay the amount that the employer is obligated to pay under the terms of the settlement agreement. If the employer fails to pay the amount owed within 10 days of entry of

the judgment, dismissal, or withdrawal of the appeal, or the execution of a settlement agreement, a portion of the undertaking equal to the amount owed, or the entire undertaking if the amount owed exceeds the undertaking, is forfeited to the employee.

(c) If the party seeking review by filing an appeal to the superior court is unsuccessful in the appeal, the court shall determine the costs and reasonable attorney's fees incurred by the other parties to the appeal, and assess that amount as a cost upon the party filing the appeal. An employee is successful if the court awards an amount greater than zero.

(d) If no notice of appeal of the order, decision, or award is filed within the period set forth in subdivision (a), the order, decision, or award shall, in the absence of fraud, be deemed the final order.

(e) The Labor Commissioner shall file, within 10 days of the order becoming final pursuant to subdivision (d), a certified copy of the final order with the clerk of the superior court of the appropriate county unless a settlement has been reached by the parties and approved by the Labor Commissioner. Judgment shall be entered immediately by the court clerk in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered. Enforcement of the judgment shall receive court priority.

(f) (1) In order to ensure that judgments are satisfied, the Labor Commissioner may serve upon the judgment

debtor, personally or by first-class mail at the last known address of the judgment debtor listed with the division, a form similar to, and requiring the reporting of the same information as, the form approved or adopted by the Judicial Council for purposes of subdivision (a) of Section 116.830 of the Code of Civil Procedure to assist in identifying the nature and location of any assets of the judgment debtor.

(2) The judgment debtor shall complete the form and cause it to be delivered to the division at the address listed on the form within 35 days after the form has been served on the judgment debtor, unless the judgment has been satisfied. In case of willful failure by the judgment debtor to comply with this subdivision, the division or the judgment creditor may request the court to apply the sanctions provided in Section 708.170 of the Code of Civil Procedure.

(g) (1) As an alternative to a judgment lien, upon the order becoming final pursuant to subdivision (d), a lien on real property may be created by the Labor Commissioner recording a certificate of lien, for amounts due under the final order and in favor of the employee or employees named in the order, with the county recorder of any county in which the employer's real property may be located, at the Labor Commissioner's discretion and depending upon information the Labor Commissioner obtains concerning the employer's assets. The lien attaches to all interests in real property of the employer located in the county where the lien is created to which a judgment lien may attach pursuant to Section 697.340 of the Code of Civil Procedure.

(2) The certificate of lien shall include information as prescribed by Section 27288.1 of the Government Code.

(3) The recorder shall accept and record the certificate of lien and shall index it as prescribed by law.

(4) Upon payment of the amount due under the final order, the Labor Commissioner shall issue release, releasing the lien created under paragraph (1). The certificate of release may be recorded by the employer at the employer's expense.

(5) Unless the lien is satisfied or released, a lien under this section shall continue until 10 years from the date of its creation.

(h) Notwithstanding subdivision (e), the Labor Commissioner may stay execution of any judgment entered upon an order, decision, or award that has become final upon good cause appearing therefor and may impose the terms and conditions of the stay of execution. A certified copy of the stay of execution shall be filed with the clerk entering the judgment.

(i) When a judgment is satisfied in fact, other than by execution, the Labor Commissioner may, upon the motion of either party or on its own motion, order entry of satisfaction of judgment. The clerk of the court shall enter a satisfaction of judgment upon the filing of a certified copy of the order.

(j) The Labor Commissioner shall make every reasonable effort to ensure that judgments are taking all appropriate legal action and requiring the employer to deposit a bond as provided in Section 240.

(k) The judgment creditor, or the Labor Commissioner as assignee of the judgment creditor, is entitled to court costs and reasonable attorney's fees for enforcing the judgment that is rendered pursuant to this section.

(Amended by Stats. 2013, Ch. 750, Sec. 1. (AB 1386) Effective January 1, 2014.)