

## APPENDIX

**Appendix A.** *Do v. County of Santa Clara*, S283544; California Supreme Court; Petition for review case H051044 denied 3/20/2024.

S283544. In the Supreme Court of California En Banc, “David (Anh Quan) Do, Plaintiff and Appellant, v. County of Santa Clara, Defendant and Respondent”. The petition for review is denied. Guerrero, Chief Justice. Filed 3/20/2024, Jorge Navarrete Clerk.

<https://supreme.courts.ca.gov/case-information/docket-search>

**Appendix B.** *Do v. County of Santa Clara*, H051044; California Court of Appeals, Sixth Appellate District; Appeal from Order to Sustain County’s Demurrer to Plaintiff’s Second Amended Complaint (22CV397515). Final judgment entered 1/5/2024.

<https://appellatecases.courtinfo.ca.gov/search.cfm?dist=6>

Plaintiff David (Anh Quan) Do was hired as a physician in 2013 by defendant Santa Clara County, for whom plaintiff provided health care services at two county-run methadone clinics for several years. Plaintiff sued... in 2022, alleging causes of action for breach of contract and fraud in the inducement.

The operative second amended complaint alleged the county breached the memorandum of understanding that constitutes plaintiff’s employment contract by requiring him to work at more than one clinic. The complaint also alleged plaintiff was

fraudulently induced to work for the county on the promise that he would work only at a single clinic.

This appeal followed the trial court sustaining the county's demurrer... without leave to amend. We will affirm the judgment of dismissal.

## **I. TRIAL COURT PROCEEDINGS**

According to the operative second amended complaint, the county operates three methadone clinics, the South County Clinic, Central Valley Clinic, and Alexian Health Clinic. Plaintiff alleged the county offered him a full-time position at the South County Clinic in 2013, which he accepted. At the county's request, plaintiff also performed work at the Central Valley Clinic beginning in 2013. When plaintiff informed the county in November 2021 that he no longer wished to work at two clinics, the county responded that he was required to work at both...

Plaintiff sued the county in May 2022, apparently for breach of contract. (We do not find plaintiff's initial or first amended complaints in the record on appeal, nor the claim plaintiff states he presented to the county in February 2022.) The trial court sustained the county's demurrer to the first amended complaint with leave to amend.

Representing himself, plaintiff filed the operative second amended complaint in October 2022, alleging three causes of action. The first cause of action alleged that in November 2021 the county breached section 6.8 of the memorandum of understanding that constitutes plaintiff's employment contract by denying plaintiff's "request to end extra work" at the Central Valley Clinic. Section 6.8 of the

memorandum of understanding between the county and the Union of American Physicians and Dentists states, in relevant part: "When an employee is assigned to work at a location different from her/his regularly assigned work location, she/he shall be allowed to travel on County time to that work location. Time allotted for travel shall be based on distance to and from her/his regular work location or home and the temporary work location, whichever is lesser." The second cause of action alleged the county breached section 6.8 of the memorandum of understanding "sometime from July 2013 to 11/1/2021" by converting plaintiff's "full-time single position ... into 2 half-time codes." The third cause of action alleged breach of contract and fraud in the inducement. It alleged plaintiff was fraudulently induced into accepting a contract for what he understood would be a full-time position at a single clinic when the county's actual intention was to "obtain multiple clinic coverage on a permanent basis off the books." The operative complaint alleged the fraud occurred "in 2013 on [the] first day" plaintiff was hired, but plaintiff did not discover the county's intention until 2021 when his request to end work at multiple locations was denied. The operative complaint also alleged a later January 2022 accrual date, when the county disclosed information demonstrating its practice of having "physicians provide multiple clinic coverage on a permanent basis off the books since 2005."

The county demurred, and the trial court granted the county's request for judicial notice of the memorandum of understanding between the county

and the Union of American Physicians and Dentists. By written order, the trial court sustained the demurrer without leave to amend. The court ruled the breach of contract allegations failed to state facts sufficient to support the first two causes of action because the memorandum of understanding sections plaintiff cited “have nothing to do with his claims regarding ‘extra work’ or splitting a full-time position into half-time positions.” The court further ruled that plaintiff’s third cause of action asserted a new claim that was beyond the scope of the leave to amend that had been granted.

## II. DISCUSSION

We review de novo a judgment of dismissal based on a sustained demurrer. (*Organizacion Comunidad de Alviso v. City of San Jose* (2021) 60 Cal.App.5th 783, 790.) We will reverse the dismissal if the allegations of the petition state a cause of action under any legal theory. (*Ibid.*) We assume the truth of all facts alleged in the complaint (*id.* at pp. 790–791), but we do not consider conclusory factual or legal allegations. (*B & P Development Corp. v. City of Saratoga* (1986) 185 Cal.App.3d 949, 953.) “The plaintiff has the burden of showing that the facts pleaded are sufficient to establish every element of the cause of action and overcoming all of the legal grounds on which the trial court sustained the demurrer.” (*Martin v. Bridgeport Community Assn., Inc.* (2009) 173 Cal.App.4th 1024, 1031.) “We will affirm if there is any ground on which the demurrer can properly be sustained.” (*Ibid.*)

The operative complaint alleges that plaintiff and the county are bound by the memorandum of

understanding. Plaintiff does not dispute the accuracy of the terms of the memorandum of understanding, but rather the interpretation of those terms.

We take judicial notice of the memorandum of understanding as a document that was properly noticed in the trial court (Evid. Code, § 459, subd. (a)), however we deny plaintiff's request for judicial notice of a civil grand jury report as irrelevant.

#### **A. NO CAUSE OF ACTION FOR BREACH OF CONTRACT**

A breach of contract action contains the following elements: a contract; plaintiff's performance under the contract (or excuse for nonperformance); defendant's breach; and damages. (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.) The operative complaint alleged that the county breached section 6.8 of the memorandum of understanding in two ways: by denying his request to stop working at the Central Valley Clinic, and by converting his full-time position into two "half-time codes." The fatal problem with plaintiff's breach of contract causes of action is that he points to nothing in the memorandum of understanding that can be construed as a promise that he would work at only one clinic. Section 6.8, titled "Temporary Work Location," expressly contemplates work at multiple locations. As we have noted, it states: "When an employee is assigned to work at a location different from her/his regularly assigned work location, she/he shall be allowed to travel on County time to that work location. Time allotted for travel shall be based on distance to and from her/his regular work location or home and the temporary work location, whichever is lesser." (Underscoring omitted.) The operative complaint

claims the “appropriate interpretation” of that section is that plaintiff “agreed to work at ONE regularly assigned work location” and that work at a second location is permissible only on a temporary basis. But section 6.8 does not define or expressly limit the duration of temporary work, nor does it promise that physicians will work at a single location. Because the county’s actions as identified in the operative complaint do not breach any express promise contained in the memorandum of understanding, the operative complaint fails to state facts sufficient to constitute a breach...

The operative complaint also references section 6.1..., which provides: “Employees in this bargaining unit are professional employees and as such are paid a pre-determined salary each biweekly period irrespective of the number of hours worked in a workweek. Hours of work are defined as those hours of the day or days of the week for which the employees are required to fulfill the responsibilities of their professional positions.” That section... does not promise that physicians will work at a single location only.

Because we conclude the operative complaint does not state a cause of action for breach of contract, we do not reach the county’s arguments based on the statute of limitations, the Government Claims Act (Gov. Code, § 810 et seq.), and the Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq.).

#### **B. NO FRAUD IN THE INDUCEMENT CAUSE OF ACTION**

“Elements of fraud are (a) a misrepresentation (false representation, concealment, or nondisclosure);

(b) scienter or knowledge of its falsity; (c) intent to induce reliance; (d) justifiable reliance; and (e) resulting damage.” (*Hinesley v. Oakshade Town Center* (2005) 135 Cal.App.4th 289, 294.) Fraud in the inducement occurs when a party to a contract is induced by fraud to enter the contract. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 415.) Fraud must be pleaded with specificity. (*Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 182.)

Here, the operative complaint alleged that fraud in the inducement “occurred in 2013 on [plaintiffs] first day ... as [a] physician employee, based on infraction of section 6.8.” It alleged a supervisor offered plaintiff “a full-time position at [South County Clinic] in 2013” and also “asked Plaintiff in 2013 to provide extra work at [Central Valley Clinic] on a temporary basis.” The operative complaint further alleged plaintiff was “fraudulently induced to accept contract in 2013 with full-time position at [South County Clinic], along with a request for extra services at [Central Valley Clinic] on temporary basis.”

The fraud cause of action is based on an alleged “infraction of section 6.8” of the memorandum of understanding. But as we have discussed, section 6.8 does not define or expressly limit the duration of temporary work, nor does it promise that physicians will work at a single location. The operative complaint therefore does not plead justifiable reliance on any written promise. Nor does it properly plead fraud based on any oral promise, as it does not include details of the supervisor’s request regarding work at the Central Valley Clinic. The operative complaint

therefore does not state facts sufficient to constitute a cause of action for fraud.

Because we will affirm the trial court's decision for the foregoing reasons, we do not reach the alternative arguments offered by the county regarding the scope and timeliness of plaintiff's allegations.

### **C. NO ABUSE OF DISCRETION SHOWN IN DENYING LEAVE TO AMEND**

We review the denial of leave to amend for abuse of discretion. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 971.) Leave to amend should be granted where it is reasonably possible an amendment would cure the defect that caused a demurrer to be sustained. (*Smith v. BP Lubricants USA Inc.* (2021) 64 Cal.App.5th 138, 145.) The plaintiff bears the burden to show how a complaint can be amended to state a cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) As plaintiff does not address the issue of further leave to amend in his appellate briefing, he has not demonstrated a reasonable possibility that further amendment would cure the defects in the operative complaint.

### **III. DISPOSITION**

The judgment of dismissal is affirmed.

Adrienne M. Grover, Cynthia C. Lie, Daniel H. Bromberg, as Justices, unsigned.

**Appendix C.** *Do v. County of Santa Clara*, Case No. 22CV397515; California Superior Court, County of Clara County; County's Demurrer to Plaintiff's Second Amended Complaint. Judgment entered 6/27/2023. Order entered 4/11/2023.  
<https://traffic.sccourt.org>



Page 6. Here the County negotiated and approved the MOU with employee bargaining units. Accordingly, basic contract principles apply, and the County's demurrer on this basis is OVERRULED.

Page 9. The demurrer to the first and second causes of action for breach of contract is sustained without leave to amend. The demurrer to the third cause of action fraud in the inducement is sustained without leave to amend. Frederick S Chung, Judge (s/)

**Appendix D.** *Do v. County of Santa Clara*, Case No 22CV397515; County of Santa Clara's Amended Notice of Demurrer to SAC, filed 4/11/2023.

1. First and Second Causes of Action for Breach of Contract a) Public employment is based on statute and not contract.

2. Third Cause of Action for Fraud in Inducement b) Collective bargaining agreement is not contract of employment.

**Appendix E.** *Do v. County of Santa Clara*, Case No. 22CV397515; California Superior Court, County of Clara County; County's Demurrer to First Amended Complaint. Order entered 10/5/2022.

Demurrer to First Amended Complaint is sustained with 20's days leave to amend. Drew Takaichi, Judge.

**Appendix F.** *Do v. County of Santa Clara*, Case No 22CV397515; County's Notice of Demurrer to First Amended Complaint, filed 7/6/2022.

Memorandum of Points and Authorities 1) Public employment is based on statute and not contract.

**Appendix G.** County's Employee Services Agency official website (Labor Relations), online early 2024.

<https://esa.santaclaracounty.gov/outside-agencies/labor-documents/memoranda-understanding-and-agreement>

Memorandum of Understanding (MOU) is written contract negotiated between County and Union which covers terms and conditions of employment.

**Appendix H.** MOU/CBA between County and UAPD is bona fide labor contract for P28 employees.

Some MOU may be mere agreement, but MOU between County of Santa Clara and UAPD is ratified collective bargaining agreement and labor contract with terms of employment for P28 employees.

[https://files.santaclaracounty.gov/migrated/Union%20of%20American%20Physicians%20and%20Dentists%20\(UAPD\)%2010-19-20%20-%2010-29-23.pdf](https://files.santaclaracounty.gov/migrated/Union%20of%20American%20Physicians%20and%20Dentists%20(UAPD)%2010-19-20%20-%2010-29-23.pdf)

County's deliberate omission of term "collective bargaining agreement" in MOU did not negate fact that MOU with UAPD was in fact CBA.

County's deliberate omission of term "contract" in MOU/CBA did not negate purpose and function of MOU/CBA as bona fide labor contract.

County's omission of term "fair consideration" in MOU/CBA/contract did not negate fact that it was basic element in any and every valid contract.

County's omission of "single clinic coverage" did not negate its existence in the plain language of MOU/CBA/contract, as a whole, in context.

**Appendix I.** Response by Board of Supervisors to Civil Grand Jury Report, filed 9/13/2017, in letter to Honorable Patricia M. Lucas, as the Presiding Judge from the Superior Court of California.

[https://www.scsccourt.org/court\\_divisions/civil/cgj/2017/Responses/Board%20of%20Supervisors%20Response-ToHaveOrHaveNot.pdf](https://www.scsccourt.org/court_divisions/civil/cgj/2017/Responses/Board%20of%20Supervisors%20Response-ToHaveOrHaveNot.pdf)

[Recommendation 5]: Santa Clara County should try to negotiate in all new union contracts a provision that performance appraisals may be utilized for promotions, transfers, and discipline.

[County Response: Agree]. The County will evaluate including such provision in its proposal for the next round of labor contract negotiations.

**Appendix J.** 2016-2017 Santa Clara County Civil Grand Jury Report titled "To Have or Have Not: Performance Appraisals for Santa Clara County Employees", adopted 6/12/2017 with County Counsel as legal representative of County & Civil Grand Jury and drafter & reviewer of MOU/CBA/contract.

[https://www.scsccourt.org/court\\_divisions/civil/cgj/2017/Performance Appraisals.pdf](https://www.scsccourt.org/court_divisions/civil/cgj/2017/Performance Appraisals.pdf)

Page 1. Grand Jury reviewed 18 labor contracts that were negotiated with County (of Santa Clara)...

Page 7. Some union contracts with County limit the utility of performance appraisals.

Page 12. MOU with Union of American Physicians and Dentists (UAPD) from 7/7/14 to 10/30/16 and Summary of Changes from 10/31/16 to 10/20/19.

**Appendix K.** *Smith v. County of Santa Clara*, Case H004448; County Respondent's Brief (misabeled as H004488) filed 6/5/1989.

[https://appellatecases.courtinfo.ca.gov/search/case/briefing.cfm?dist=6&doc\\_id=261336&doc\\_no=H004448&request\\_token=NiIwLSEnXkw8W1BZSCMtVE1IMFQ7UCxbIyNeVz5RMCAgCg%3D%3D](https://appellatecases.courtinfo.ca.gov/search/case/briefing.cfm?dist=6&doc_id=261336&doc_no=H004448&request_token=NiIwLSEnXkw8W1BZSCMtVE1IMFQ7UCxbIyNeVz5RMCAgCg%3D%3D)

[https://books.google.com/books?id=tXngGuDO8rUC&pg=PP3&lpg=PP3&dq=H004488+smith+v+county+of+santa+clara&source=bl&ots=JhbhZfGbQJ&sig=ACfU3U3f\\_dxMhnCxiXmTj8qB7lZjb74OAg&hl=en&sa=X&ved=2ahUKEwjekYGC1pCFAxW\\_MjQIHUzhABsQ6AF6BAGkEAM#v=onepage&q=H004488%20smith%20v%20county%20of%20santa%20clara&f=false](https://books.google.com/books?id=tXngGuDO8rUC&pg=PP3&lpg=PP3&dq=H004488+smith+v+county+of+santa+clara&source=bl&ots=JhbhZfGbQJ&sig=ACfU3U3f_dxMhnCxiXmTj8qB7lZjb74OAg&hl=en&sa=X&ved=2ahUKEwjekYGC1pCFAxW_MjQIHUzhABsQ6AF6BAGkEAM#v=onepage&q=H004488%20smith%20v%20county%20of%20santa%20clara&f=false)

Page 3. In MOU, the County and UAPD had agreed to a grievance procedure to resolve disputes. In Article 13 the parties to the contract set up a formal 3-step procedure for employees...

Page 4. On 6/ 24/1982, the County ... would not abide by MOU after it expired, except for wages and fringe benefits.

Page 4. On 6/30/1982, the MOU between County and UAPD expired without parties agreeing to a new contract.