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**DEPARTMENT 51 - LAW AND MOTION RULINGS**

1. If you wish to submit on the tentative ruling, please email the clerk at SMCdept51@lacourt.org (and "cc" all other parties in the same email) and notify all other parties in advance that you will not be appearing at the hearing. Include the word "SUBMISSION" in all caps in the subject line and include your name, contact information, the case number, and the party you represent in the body of the email. If you do not have access to the internet, you may call the clerk at (213) 633-0351.

If you submit on the tentative and elect not to appear at the hearing, the opposing party may nevertheless appear and argue the motion, and the Court may decide not to adopt the tentative ruling. Please note that the tentative ruling is not an invitation, nor an opportunity, to file any further documents relative to the hearing in question which are not authorized by statute or Rule of Court.

2. For any motion where no parties submit to the tentative ruling in advance, and no parties appear at the motion hearing, the Court may elect to either adopt the tentative ruling or take the motion off calendar, in its discretion.

3. DO NOT USE THE ABOVE EMAIL FOR ANY PURPOSE OTHER THAN TO SUBMIT TO A TENTATIVE RULING. The Court will not read or respond to emails sent to this address for any other purpose.

**Case Number:** 23STCV26006 **Hearing Date:** April 24, 2024 **Dept:** 51

**Tentative Ruling**

Judge Upinder S. Kalra, Department 51

*[Signature]*  
**FILED**  
Superior Court of California  
County of Los Angeles  
**APR 24 2024**  
David W. Slayton, Executive Officer/Clerk of Court  
By: C. Crow, Deputy

**HEARING DATE:** April 24, 2024

**CASE NAME:** Mary Matthias, et al., v. State of California, Department of Public Health, et al.

**CASE NO.:** 23STCV26006

**DEFENDANTS' DEMURRER WITHOUT MOTION TO STRIKE**

**MOVING PARTY:** Defendants Governor Gavin Newsom; Governor's Office of Emergency Services (OES); OES Director Nancy Ward; California Health and Human Services Agency (HHA); HHA Secretary Dr. Mark Ghaly; California Department of Public Health (CDPH); CDPH Director Dr. Tomás Aragón; California Department of Health Care Services (DHCS); DHCS Director Michelle Baass; and Attorney General Rob Bonta

**RESPONDING PARTY(S):** Plaintiffs Mary Matthias, Chris Lugatiman, Toni Johnson, and A Voice for Choice, Inc.

**REQUESTED RELIEF:** Sustain demurrer without leave to amend.

**~~TENTATIVE~~ RULING:**

Demurrer is SUSTAINED, without leave to amend.

04/25/2024

**STATEMENT OF MATERIAL FACTS AND/OR PROCEEDINGS:**

On October 24, 2023, Plaintiffs Mary Matthias, Chris Lugatiman, Toni Johnson, and A Voice for Choice, Inc. commenced this action against Defendants Governor Gavin Newsom; Governor's Office of Emergency Services (OES); OES Director Nancy Ward; California Health and Human Services Agency (HHA); HHA Secretary Dr. Mark Ghaly; California Department of Public Health (CDPH); CDPH Director Dr. Tomás Aragón; California Department of Health Care Services (DHCS); DHCS Director Michelle Baass; and Attorney General Rob Bonta for declaratory and injunctive relief for violations of California Constitution, Article I, § I (right to pursue and obtain safety) and violation of California Health and Safety Code § 111550. Plaintiffs allege that Defendants violated California Health and Safety Code § 111550 which bars distribution of drugs that have not received FDA approval and licensure by distributing the COVID-19 vaccine that is authorized for emergency use.

On January 17, 2023, Defendants filed the instant demurrer to the Complaint. Plaintiffs oppose.

**LEGAL STANDARD:**

A demurrer for sufficiency tests whether the complaint states a cause of action. *Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747. When considering demurrers, courts read the allegations liberally and in context. In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994; Weil & Brown, Civ. Pro. Before Trial (The Rutter Group 2011) ¶7:8. "A demurrer tests the pleadings alone and not the evidence or other extrinsic matters. Therefore, it lies only where the defects appear on the face of the pleading or are judicially noticed (Code Civ. Proc., §§ 430.30, 430.70). The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." *Hahn* 147 Cal.App.4th at 747.

**JUDICIAL NOTICE**

Defendants' request for judicial notice of Exhibits 1-19 is DENIED. (Evid. Code § 452(c).) As such, Plaintiffs' objections are moot.

**ANALYSIS:**

Defendants demur on the grounds that there is no private right of action for violation of California Constitution, Article I, § I or Health and Safety Code § 111550, Plaintiffs lack standing and Defendants have not violated Section 111550 as a matter of law. Plaintiffs contend that they are actually proceeding under the Federal Sherman Food, Drug and Cosmetics Laws that do authorize a private cause of action, each Plaintiff has suffered concrete harm and therefore has standing and the Court should not evaluate the strengths of the case at this stage.

Defendants' position is well taken. Health and Safety Code § 111550 does not expressly create a private right of action. As a general rule, when a statute does not explicitly provide an enforceable right, courts will only imply such a right in circumstances where the legislature actually intended to create a private right of action to enforce a statute. (See *Moradi-Shalal v. Fireman's Fund Ins.* (1988) 46 Cal.3d 287.) While Plaintiffs' opposition attacks Defendants' arguments, Plaintiffs have not affirmatively set forth the intent of the legislature such that the Court can find an implied private right of action. [1]

**Leave to amend:**

Leave to amend should be liberally granted if there is a reasonable possibility an amendment could cure the defect. (*County of Santa Clara v. Superior Court* (2022) 77 Cal.App.5th 1018,1035.) The Plaintiff has the burden of demonstrating that leave to amend should be granted, and that the defects can be cured by amendment. ("Plaintiff must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading." *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) Here, Plaintiff has not offered any

explanation on how he could cure the defect. Moreover, it does not appear to the Court that there is any way Plaintiff can remedy the defects identified herein.

Therefore, the Demurrer is SUSTAINED without leave to amend.

**CONCLUSION:**

For the foregoing reasons, the Court decides the pending motion as follows:

Demurrer is SUSTAINED without leave to amend

Moving party to give notice.

IT IS SO ORDERED.

Dated: April 24, 2024



UPINDER S. KALRA

Upinder S. Kalra

Judge of the Superior Court

[1] As such, the Court need analyze the remaining contentions.

04/25/2024