



SCANNED

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 19 2015

6 Attorneys for Defendant and Respondent
TOWN OF APPLE VALLEY

BY 
JASMIN CASILLAS, DEPUTY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN BERNARDINO

12 LEANE LEE,
13 Petitioner,
14 v.
15 TOWN OF APPLE VALLEY, a Municipal
Corporation,
16 Respondent.

Case No. CIVDS 1507221
Judge: David Cohn

TOWN OF APPLE VALLEY'S NOTICE OF
DEMURRER AND DEMURRER TO
PETITION FOR WRIT OF MANDATE AND
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF

Date: July 22, 2015
Time: 8:30 a.m.
Dept: S37

Petition Filed: May 20, 2015

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ONTARIO, CALIFORNIA 91761

1 NOTICE OF DEMURRER TO PETITION

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 NOTICE IS HEREBY GIVEN that on July 22, 2015 at 8:30 a.m., or as soon thereafter as
4 the matter may be heard in Department S37 of the above-captioned court located at 247 W. Third
5 Street, San Bernardino, CA 92415, the demurrer of Defendant and Respondent TOWN OF
6 APPLE VALLEY (the "Town") to the Verified Petition for Writ of Mandate and Complaint for
7 Injunctive and Declaratory Relief, served and filed with this Notice, will be heard pursuant to
8 Code of Civil Procedure sections 430.10(e) and 430.30(a) on the grounds that it fails to state facts
9 sufficient to constitute a cause of action against the Town because Petitioner fails to demonstrate
10 a violation of the Public Records Act because all responsive non-privileged documents in the
11 Town's possession were provided in a timely manner. This Demurrer will be based upon this
12 Notice, the Demurrer, the accompanying Memorandum of Points and Authorities, upon all of the
13 records on file herein, and on such oral and documentary evidence as may be presented at the
14 hearing on the Demurrer.

15 Dated: June 19, 2015

BEST BEST & KRIEGER LLP

16
17
18 By: 

RICHARD T. EGGER
JESSICA K. LOMAKIN
Attorneys for Defendant and Respondent
TOWN OF APPLE VALLEY

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DEMURRER

Defendant and Respondent TOWN OF APPLE VALLEY, (the "Town") demurs to the Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Petition") pursuant to Code of Civil Procedure sections 430.10(e) and 430.30(a) on the following grounds:

GENERAL DEMURRER TO PETITION FOR WRIT OF MANDATE


1. The Town demurs to the Petition on the grounds that it fails to state facts sufficient to constitute a cause of action against the Town because there was no violation of the California Public Records Act as all responsive non-privileged documents in the Town's possession were provided in a timely manner. (Code of Civ. Proc. § 430.10(e); Gov't. Code § 6250, *et seq.*)

SPECIAL DEMURRER TO PETITION FOR WRIT OF MANDATE

1. The Petition fails for uncertainty because it fails to set forth causes of action which Petitioner seeks to raise against the Town. The Town and this Court can only assume or guess the basis for the Writ of Mandate Petitioner seeks. This Petition is fatally uncertain, and must fail.

Dated: June 19, 2015

BEST BEST & KRIEGER LLP

By: 

RICHARD T. EGGER
JESSICA K. LOMAKIN
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TOWN OF APPLE VALLEY

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 This action is a groundless attack by Petitioner Leane Lee (“Petitioner”) challenging the
4 Town of Apple Valley’s (the “Town”) timely and proper response to a Public Records Act
5 (“PRA”) request. The Petition for Writ of Mandate and Complaint for Injunctive and Declaratory
6 Relief (“Petition”) loosely alleges the Town failed to comply with the requirements of the PRA in
7 providing its response among other incomprehensible allegations consisting of rhetorical
8 questions and legal conclusions.

9 From what the Town is able to decipher, the Petition appears to allege a PRA violation.
10 After wading through the prejudicial comments, dense rhetoric and irrelevant commentary, the
11 Town has boiled down Petitioner’s PRA allegations into four main issues: 1) the Town delayed
12 in responding to Petitioner’s request; 2) the Town improperly asserts the attorney-client-privilege;
13 3) the Town failed to provide all responsive documents in its possession; and 4) the Town failed
14 to identify the individual responsible for denial. **Even if the Court accepts all of Petitioner’s**
15 **allegations as true, they do not constitute a claim against the Town under the Public**
16 **Records Act.**

17 The Petition may or may not include additional allegations against the Town under other
18 laws and statutes. However, through Petitioner’s stream-of-conscious and rhetorical discussion, it
19 is unclear if these additional allegations are intended to serve as separate causes of action or if
20 they are merely supportive of Petitioner’s PRA allegations. To the extent that the Town cannot
21 even identify what it has been called to court to defend, the Court should sustain the Town’s
22 Demurrer for uncertainty.

23 Accordingly, the Town requests that its Demurrer be sustained and the Petition be
24 dismissed without leave to amend.

25 II. FACTUAL BACKGROUND

26 Petitioner alleges that on April 13, 2015, Petitioner submitted a PRA request letter seeking
27 four categories of documents including: 1) Backup documentation and invoices for three Town
28 Warrant Register payments; 2) the Town’s 2008-2009 Fiscal Year Budget; 3) Contract with True

1 North Research; and 4) Contract with the 20/20 Network. (Exh. "A" to Petition.) Petitioner
2 further alleges that on April 23, 2015, 10 days later, the Town responded to Petitioner giving
3 notice of the Town's intention to extend the time for response by an additional 14 days pursuant
4 to Government Code section 6253. (Exh. "F" to Petition.) Petitioner alleges that on Thursday,
5 May 7, 2015, she contacted the Town to check the status of her request. (Petition ¶ 21.) She
6 asserts that she was advised that the Town was closed on Friday, May 8, 2015 so an appointment
7 was made for Petitioner to pick up the documents on the next business day, Monday, May 11,
8 2015. (Petition ¶ 21.)

9 Petitioner alleges the Town produced 40 pages of documents responsive to Petitioner's
10 request withholding only the Town's invoices from Best Best & Krieger LLP as privileged,
11 confidential attorney-client communications. (Exh. "G" to Petition.) The Town was unable to
12 satisfy Petitioner's request for the 20/20 Network agreement, to which the Town is not even a
13 party, because the agreement was not in the Town's possession. (Exh. "G" to Petition.) All other
14 responsive documents were timely produced to Petitioner. (Exh. "G" to Petition.)

15
16 **III. LEGAL STANDARD ON DEMURRER**

17 A party may demur to a pleading, or a writ in administrative mandamus proceedings,
18 when any ground for objection appears on its face, or from any matter which a court may take
19 judicial notice. (Code Civ. Proc. §§ 430.10 & 1109.) The sole function of a demurrer is to test the
20 legal sufficiency of the challenged pleading. (*Beauchene v. Synanon Foundation, Inc.* (1979) 88
21 Cal.App.3d 342, 344, citing *Whitcombe v. County of Yolo* (1977) 73 Cal.App.3d 698, 702.) A
22 demurrer is proper when the allegations do not state facts sufficient to constitute a cause of action.
23 (Code Civ. Proc. § 430.10(e).) A demurrer is also proper when the allegations are uncertain,
24 uncertain includes ambiguous and unintelligible. (Code Civ. Proc. § 430.10(f).)

25
26 **IV. THE PETITION SHOULD BE DISMISSED BECAUSE THERE WAS NO PUBLIC**
27 **RECORDS ACT VIOLATION**

28 The Town's demurrer should be sustained because the Petition facially demonstrates that

1 (1) the Town timely responded to Petitioner’s request; (2) the Town’s invoices for legal services
2 are exempt from disclosure; (3) the Town is only required to produce documents in its possession;
3 and (4) the Town has identified the individual responsible for denial. Therefore, assuming all
4 facts in the Petition are true, there was no violation of the PRA as a matter of law.

5 A. **Issue 1 – The Town’s Response to Petitioner’s PRA Request Was Timely**

6 Upon receipt of a PRA request for records, an agency must determine whether the request
7 seeks copies of disclosable records in the agency’s possession and notify the person making the
8 request of the agency’s determination within 10 days. (Gov’t. Code § 6253(c).) However, the
9 time limit to notify the requesting party of the agency’s determination “may be extended by
10 written notice” for up to 14 days under “unusual circumstances” such as when the request
11 requires an agency to “[...] search for, collect and appropriately examine a voluminous amount of
12 separate and district records.” (Gov’t. Code § 6253(c)(2).)

13 Petitioner appears to allege the Town’s response to her PRA request was untimely. Yet,
14 production of the responsive documents in the Town’s possession occurred as follows:

- 15 • April 13, 2015 – Petitioner submits PRA request to the Town (Petition ¶16);
- 16 • April 23, 2015 – The Town notifies Petitioner in writing of “unusual
17 circumstances” warranting an additional 14 days to make a determination (Petition
18 ¶ 20);
- 19 • May 7, 2015 – The Town notifies Petitioner of intention to make documents
20 available for pick up on the next business day, Monday, May 11, 2015 (Petition
21 ¶21.)

22 Petitioner’s alleged timeline demonstrates that the Town complied with the time
23 constraints of the PRA to the letter. The notice of extension was timely sent within 10 days and
24 the date for production was timely set within 14 days. Regardless, there is no remedy within the
25 PRA for failure to timely comply with a request for records. (*Rogers v. Superior Court* (1993)
26 19 Cal.App.469, 483.)

27 Petitioner also seems to mistake the voluminous documents exception in Government
28 Code § 6253(c)(2) to mean the documents produced must be voluminous. This is not the case.

1 Section 6253(c)(2) states that an extension is appropriate where the Town was required to search
2 for and examine voluminous documents from various sources to determine those which might be
3 responsive to the request. Petitioner further speculates that because her request contained
4 documents supporting warrant items to be paid on the current agenda, all the responsive
5 documentation should have been available for production within the initial 10 day period. In
6 addition to the warrant items, Petitioner sought financial documents from 2008/2009, a contract
7 from 2014 and documents requiring a determination of privilege. (Petition ¶15.)

8 The Town notified Petitioner of its intention to exercise the extension called for in
9 Government Code section 6253(c) within 10 days of Petitioner's request. On the 14th day, the
10 Town notified Petitioner that the documents would be available for inspection on the very next
11 business day, May 11, 2015. The Town's Demurrer to this issue must be sustained because no
12 violation of the PRA appears on the face of the Petition.

13 **B. Issue 2 – The Town's Invoices for Legal Services Are Privileged and**
14 **Therefore Exempt From Disclosure**

15 Petitioner claims the Town improperly asserted attorney-client privilege in its
16 determination not to release its invoices for legal services. **Petitioner's allegation fails as a**
17 **matter of law because legal billing or invoices are "confidential communications" within the**
18 **meaning of Evidence Code section 952 and subject to protection by attorney-client privilege.**
19 (*Los Angeles County Bd. Of Supervisors v. Superior Court* (2015) 235 Cal.App.4th 1154, 1171.)
20 In fact, the Petition even cites to the legal authority for this proposition on page 3.¹

21 The Court in *Los Angeles County Bd. Of Supervisors* reasoned that Courts may not
22 disregard the plain application of the California Public Records Act under the guise of narrow
23 construction. (*Los Angeles County Bd. Of Supervisors, supra* 235 Cal.App.4th at 1177.) A
24 narrow construction of a statutory privilege cannot reasonably be construed to be narrower than
25 the scope of the privilege itself. (*Id.*)

26 The attorney-client privilege protects "confidential communications" between client and
27

28 ¹ Petitioner fails to properly number the paragraphs set forth in pages 1 through 5.

1 attorney made in the course of an attorney-client relationship. (Evid. Code § 950 *et seq.*) The
2 term “confidential communication” is broadly defined to include information transmitted between
3 a client and his lawyer, advice given by the lawyer or a legal opinion formed and given by the
4 lawyer. (*Los Angeles County Bd. Of Supervisors, supra* 235 Cal.App.4th at 1166 citing *Benge v.*
5 *Superior Court* (1982) 131 Cal.App.3d 336, 345.)

6 The focus of the privilege inquiry is not whether the communication contains an
7 attorney’s opinion or advice but whether an attorney-client relationship exists and whether the
8 communication was confidentially transmitted. (*Los Angeles County Bd. Of Supervisors, supra*
9 235 Cal.App.4th at 1174 citing *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725,
10 732.) Only communication to “third persons,” other than those in furtherance of the client’s
11 interest, will destroy the privilege for lack of confidentiality. (Evid. Code § 952.) Petitioner
12 appears to allege a lack of confidentiality because the invoices were transmitted to “a number of
13 third parties within the employment of Respondent.” This allegation is nonsensical and fails as a
14 matter of law. Even if the invoices were transmitted individuals “within the employment of
15 Respondent,” these individuals are not third parties within the meaning of Evidence Code section
16 952 and the privilege remains intact.

17 Petitioner appears to allege that the Town’s invoices should be reviewed in camera to
18 determine the applicability of the attorney-client privilege. However, because the attorney-client
19 privilege protects a transmission irrespective of its content, there should be no need to examine
20 the content in order to rule on the privilege. (*Los Angeles County Bd. Of Supervisors, supra* 235
21 Cal.App.4th 1173 citing *Costco, supra*, 47 Cal.4th at 736-739.) The Town’s invoices and such
22 records are not subject to disclosure under the PRA and no in camera review of the invoices is
23 required for the Court to make this determination.

24 The invoices are confidential communications within the meaning of Evidence Code
25 § 952, protected by the attorney-client privilege and not subject to disclosure under the PRA. The
26 Town’s Demurrer must be sustained on this issue.

27 **C. Issue 3 – The Town Is Only Required to Produce Documents in Its Possession**

28 Petitioner alleges Town failed to produce a copy of the 20/20 Network contract in

1 response to Petitioner’s PRA request. (Petition ¶19.) However, the Town responded that it did
2 not have a copy of the 20/20 Network contract in its possession. (Exh. “G” to Petition.)
3 Government Code section 6253(c) states that an agency, upon receiving a request for public
4 records, shall determine whether the request seeks copies of disclosable public records “**in the**
5 **possession of the agency** [...].” A document is in an agency’s constructive possession if it has
6 the “right to control the records.” (*Consolidated Irrigation Dist. v. Superior Court* (2012) 205
7 Cal.App.4th 697, 710.) In other words, the Town is not required to search for and produce
8 responsive documents which may be held or controlled by third parties.

9 Indeed, the Petition fails to specifically allege the Town ever had possession of the 20/20
10 Network contract or that the 20/20 Network contract was within the Town’s right to control. **The**
11 **Petition does reveal, however, that the Town is not even a party to this contract.** (Exh. “E” to
12 Petition.) Moreover, a general demurrer does not admit contentions, deductions or conclusions of
13 law or fact alleged in the complaint, facts impossible in law, or allegations contrary to the facts of
14 which a court make take judicial notice. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) To the
15 extent that Petitioner relies upon a newspaper clipping to definitively evidence what is or is not
16 within the Town’s files, Petitioner’s allegation constitutes nothing but complete speculation. The
17 Town Clerk is in the best position to identify the documents in the Town’s possession. Therefore,
18 Petitioner’s newspaper clipping lacks foundation and is insufficient to overcome the flaws on the
19 face of the Petition which are subject to demurrer. The Town’s Demurrer on this issue must be
20 sustained.

21 **D. Issue 4 – The Town Has Identified the Individual Responsible for the Denial**

22 Petitioner alleges the Town has failed to identify the individual responsible for denying
23 production of the legal services invoices, the True North contract and the 20/20 Network contract
24 pursuant to Government Code section 6253. Yet, the Petition itself reveals that the Town’s
25 response is signed by Debra L. Thomas, Deputy Town Clerk and includes an instruction to
26 contact the Town Clerk’s office with any questions regarding the information contained within
27 the Town’s response. (Exh. “G” to Petition.) Petitioner’s allegation is directly contradicted by the
28 exhibit attached to her own Petition. To the extent that the factual allegations in the Petition

1 conflict with the content of the exhibits, the court must “rely on and accept as true the contents of
2 the exhibits and treat as surplusage the pleader’s allegations as to the legal effect of the exhibits.”
3 (*Barnett v. Fireman’s Fund Ins. Co.* (2001) 90 Cal.App. 4th 500, 505; *Weitzenkorn v. Lessor*
4 (1953) 40 Cal. 2d 778, 785.) This defect in Petitioner’s allegation appears on the face of the
5 Petition and supporting exhibits. Therefore, the Town’s Demurrer on this issue must be
6 sustained.

7 **V. PETITIONER’S DEMURRER SHOULD BE DISMISSED BECAUSE IT IS**
8 **UNCERTAIN, AMBIGUOUS AND UNINTELLIGIBLE**

9 Petitioner’s claims are far too uncertain to survive a demurrer. A demurrer for uncertainty
10 lies where the allegations of a pleading are ambiguous. (Code of Civ. Proc. § 430.10(f).) This
11 includes a complaint where the demurring defendant cannot respond to a cause of action because
12 that defendant cannot determine what claims are plead against it. (*Williams v. Beechnut Nutrition*
13 *Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.) The specific claims, together with the ultimate
14 facts to sustain them, must be set forth. (*Frederick v. North Side Water Co.* (1942) 49 Cal.App.2d
15 489, 491.) To state a cause of action against a public entity, every fact material to the existence
16 of its liability must be pleaded with particularity. (*Peter W. v. San Francisco Unified Sch. Dist.*
17 (1976) 60 Cal.App.3d 814, 819.)

18 The Petition fails to specifically allege a single cause of action against the Town. Instead,
19 the Town has pieced together what it believes to be allegations of a PRA violation scattered
20 throughout the Petition. The Petition may or may not include additional allegations against the
21 Town under other laws and statutes. Yet, the Town cannot determine if Petitioner intends these
22 allegations to constitute actual causes of action or if they are included to support Petitioner’s
23 allegations of a PRA violation. These random, paragraph-long allusions to other potential claims
24 confuse the Petition and fail to put the Town on notice of the actual allegations against it.
25 Petitioner’s stream-of-conscious discussion of these allegations certainly does not meet the
26 standard that each fact be pleaded with particularity.

27 Accordingly, the Petition is too uncertain for the Town to know what it must respond to,
28 and on that basis the Court should sustain the Town’s Demurrer for uncertainty.

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VI. CONCLUSION

For the above reasons, the Town respectfully requests that its Demurrer to the Petition be sustained without leave to amend.

Dated: June 19, 2015

BEST BEST & KRIEGER LLP

By: 

RICHARD T. EGGER
JESSICA K. LOMAKIN
Attorneys for Defendant and Respondent
TOWN OF APPLE VALLEY

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