

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 07/16/2021

TIME: 09:00:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Andrea Taylor

REPORTER/ERM: Lauren Ramseyer CSR# 14004

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2021-00010648-CU-MC-CTL** CASE INIT.DATE: 03/10/2021

CASE TITLE: **Jones vs Gore [E-FILE]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Demurrer / Motion to Strike

MOVING PARTY: William D Gore

CAUSAL DOCUMENT/DATE FILED: Demurrer, 06/02/2021

APPEARANCES

Branden Sigua, specially appearing for counsel Brody A McBride, present for Plaintiff(s).

Jonathan Markovitz, counsel, present for Plaintiff(s).

Joshua M Heinlein, counsel, present for Defendant(s).

The Court hears oral argument and confirms as modified the tentative ruling as follows:

The general Demurrer (ROA # 13) of Defendant WILLIAM D. GORE, in his official capacity as Sheriff of San Diego County ("Defendant") to the First Amended Petition for Writs of Mandate and Habeas Corpus and Complaint for Injunctive and Declaratory Relief ("FAC" - ROA # 10) of Plaintiffs TERRY LEROY JONES and GABRIEL CAMPOS on behalf of themselves and all others similarly situated ("Plaintiffs"), is **OVERRULED**.

Defendant is ordered to file and serve an Answer within twenty (20) days of this hearing. This ruling is premised on the analysis set forth below.

Defendants' Request (ROA # 15) for judicial notice is **GRANTED IN PART** and **DENIED IN PART**. The Court takes judicial notice of nos. 1 - 4, 18 and 30 and the dates only on which nos. 6 - 17 and 19 - 29 were published on the County's website; otherwise, the Request is **DENIED**.

1st COA: Violation of Cal. Const. Art. I, § 7 (Due Process) / 2nd COA: Violation of Cal. Const. Art. I, § 17 (Cruel and Unusual Punishment)

The elements of a pretrial detainee's medical care claim under the due process clause of the Fourteenth Amendment are: (a) Defendant made an intentional decision with respect to the conditions under which Plaintiff was confined; (b) those conditions put Plaintiff at substantial risk of suffering serious harm; (c) Defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved; and (d) by not

taking such measures, Defendant caused Plaintiff's injuries. Gordon v. County of Orange (9th Cir. 2018) 888 F. 3d 1118, 1125. Defendant's conduct must be objectively unreasonable, a test that will necessarily turn on the facts and circumstances of each particular case. Id. In this case, whether Defendant has implemented effective measures to mitigate the spread of COVID-19 in the jails and is providing adequate medical care to inmates are disputed fact questions that cannot be addressed or resolved via this Demurrer. Judicial notice of facts sufficient to resolve these issues is improper.

3rd COA: Violation of Government Code 8658

This cause of action alleges a failure to exercise "mandatory authority under Government Code Section 8658." This code section provides: "In any case in which an emergency endangering the lives of inmates of a state, county, or city penal or correctional institution has occurred or is imminent, the person in charge of the institution may remove the inmates from the institution. He shall, if possible, remove them to a safe and convenient place and there confine them as long as may be necessary to avoid the danger, or, if that is not possible, may release them. Such person shall not be held liable, civilly or criminally, for acts performed pursuant to this section."

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person." Code Civ. Proc. 1085(a). "The propriety of the remedy of mandamus, in the event that an abuse of discretion is proved, is clear. While mandamus will not lie to compel the exercise of discretion in a particular manner, it will lie to correct an abuse of discretion, and where the petitioner is clearly entitled to a certain action, may be used to compel such action." Landsborough v. Kelly (1934) 1 Cal. 2d 739, 744. A failure to exercise discretion may constitute an abuse of discretion. People v. Sandoval (2007) 41 Cal. 4th 825, 847, 848 [62 Cal. Rptr. 3d 588, 605. Mandamus may issue to compel an official both to exercise discretion (if he or she is required by law to do so), and to exercise it under a proper interpretation of the applicable law. Common Cause v. Board of Supervisors (1989) 49 Cal. 3d 432, 442. Mandamus will lie to correct an abuse of discretion by an official acting in an administrative capacity. Id.

Given the authority cited above, this Court can compel the removal or release of inmates pursuant to section 8658 if the failure to remove or release constitutes an abuse of discretion. As alleged, Defendant's failure to act during the COVID-19 pandemic violates the constitutional rights of inmates. Thus, as alleged, this failure is an abuse of discretion such that a writ of mandamus could issue and defendant's argument lacks merit.

4th COA: Violation of Government Code § 11135

This cause of action alleges Defendant's care and custody of disabled inmates constitutes a violation of Government Code section 11135. As stated within paragraph 193 of the amended petition: "Section 11135 prohibits entities that receive state financial assistance from unlawfully denying benefits to or discriminating against any person on the basis of age, physical or mental disability, or medical condition." Defendant argues the elements of this claim have not been alleged, and also that judicially noticed facts exist refuting this claim. As discussed above, judicial notice of facts sufficient to resolve this claim is improper.

Regarding the elements alleged, section 11135 prohibits denial of full and equal access to benefits of a

state-funded program and prohibits discrimination under any state-operated program. Villafana v. County of San Diego (2020) 57 Cal. App. 5th 1012, 1017. A public entity must make reasonable modifications in policies, practices or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the services, program or activity. Fry v. Saenz (2002) 98 Cal. App. 4th 256, 268 (quoting 28 C. F. R. 35.130(b)(7)). An otherwise qualified disabled individual must be provided with meaningful access to the benefit that the grantee offers. Id.

In addition, under disparate impact law, Plaintiff establishes a prima facie case if Defendant's facially neutral practice causes a disproportionate adverse impact on a protected class. Villafana v. County of San Diego, supra at 1017. Plaintiff must plead facts that establish a facially neutral policy or practice that causes a disproportionate harm to persons in a protected class. Id. To make out a prima facie case of disparate impact, Plaintiff must employ an appropriate comparative measure. Id. at 1018.

In this case, the FAC sufficiently alleges Defendant's failure to provide reasonable accommodations to incarcerated individuals, with disabilities, makes them vulnerable to harm from COVID-19 related illness in violation of their rights under section 11135. The FAC sufficiently alleges Defendant's policies cause disabled inmates to suffer harsher impacts than non-disabled inmates. As alleged, these policies place disabled inmates at greater risk for illness or death, as compared to the general incarcerated population. These allegations are sufficient and the demurrer is overruled. See FAC at ¶¶ 14, 15 - 20, 151, 153 - 156, 159, 165, 196 and 197.

Notice of the Court's ruling is waived.

(Clerk's note: Tentative ruling is confirmed as modified. Court takes Judicial Notice of exhibit 20.)