CIVIL LAW & MOTION

Tom Pappas et al vs State of California et al	
Case No:	1417388
Hearing Date:	Mon Feb 24, 2014 9:30

Nature of Proceedings: Demurrer/Motion Strike First Amend Comp/Case Management Conference/Motion Approval of Class Action Settlement/Status Hearing

Case: Tom Pappas, etc., et al., v. State of California, et al.,
Case No. 1417388 (Judge Sterne)

Hearing Date: February 24, 2014

Motion: (1) Demurrer of State Defendants to First Amended Complaint
(2) Motion to Strike of State Defendants to First Amended Complaint
(3) Motion of Plaintiffs for Final Approval of Class Action Settlement with Defendant County of Santa Barbara

Tentative Ruling:

(1) For the reasons set forth herein, the demurrer of defendants and respondents State of California, State Coastal Conservancy, and California Coastal Commission to the revised first amended complaint is: (i) sustained, without leave to amend, as to defendant and respondent State of California as to all causes of action; (ii) is sustained, with leave to amend, as to the sixth and twelfth causes of action; and (iii) is otherwise overruled.
(2) For the reasons set forth herein, the motion of defendants and respondents State of California, State Coastal Conservancy, and California Coastal Commission is granted, with leave to amend, to strike paragraphs 13, 14, 17, 63 through 67, 193 through 197, and 208 of the revised first amended complaint. In all other respects, the motion to strike is denied.
(3) Plaintiffs shall file and serve their second amended complaint on or before March 11, 2014.
(4) For the reasons set forth herein, the court will discuss how to proceed with the motion for final approval of class action settlement at the hearing of this motion.

Discussion:

This is a class action complaint asserting that rights to public access to beach and coastal areas that were the subject of a recorded dedication is invalid.

Before the court now are:

(1) The demurrer and motion to strike of defendants State of California, the State Coastal Conservancy and the California Coastal Commission (collectively, the State Defendants) to plaintiffs' first amended complaint (revised); and,

(2) Plaintiffs' motion for final approval of a class action settlement with the County of

Santa Barbara. There is a procedural problem with this motion as discussed below.

Background:

Demurrer and Motion to Strike

The named plaintiffs in this action—Tom Pappas, Tim Behunin, and Patrick L. Connelly—are owners of parcels of real property within the Hollister Ranch. (Revised First Amended Complaint [RFAC], ¶¶ 35, 37, 39.) (Note: On December 17, 2013, plaintiffs filed a "Notice of Errata" making a large number of corrections to the first amended complaint filed on November 26, 2013, and attaching as an exhibit the RFAC incorporating those corrections. The court deems the RFAC to be the operative pleading subject to the demurrer and motion to strike.) Plaintiff Hollister Ranch Cooperative (HRC) holds various property rights within the Hollister Ranch, including grazing rights and beach use. (RFAC, ¶ 42.) Plaintiff Hollister Ranch Owners' Association (HROA) is also an owner of real property within the Hollister Ranch, including two beach parcels (the beach parcels) the rights to which are at issue in this action. (RFAC, ¶ 32.)

The former owner of Parcel 136, discussed below, was the Young Men's Christian Association (YMCA). (RFAC, ¶¶ 3, 27.) The present owner of Parcel 136 is defendant and real party in interest Rancho Cuarta. (RFAC, ¶ 48.) Parcel 136, including the rights granted and appurtenant thereto, is at the heart of this dispute. The unnamed, putative class members in this action are all of the owners of a fee interest in property in the Hollister Ranch other than Cooperative and HROA and excluding the owner of Parcel 136. (RFAC, ¶ 84.)

The Hollister Ranch consists of approximately 14,500 acres of land which has been an operating cattle ranch for over 100 years. (RFAC, ¶ 28.) In 1970, the Hollister Ranch was subdivided into 135 parcels, each approximately 100 acres. (Ibid.) Of the 135 parcels, 132 are privately owned by the putative plaintiff class. (Ibid.)

The HROA beach parcels comprise 8.2 miles of coastline bounded by the Southern Pacific Railroad Right of Way and the Mean High Tide Line. (RFAC, ¶ 32.) Under the HROA Covenants, Conditions and Restrictions (CC&R's), the HROA beach parcels are common area and each putative class member has a non-exclusive right to use them for beach recreational use. (Ibid.)

The Hollister Ranch is served by a network of private ranch roads, including the main road (Rancho Real) which commences at the Ranch's eastern boundary and connects to the road that passes through Gaviota State Park to Highway 101. (RFAC, ¶ 33.) Rancho Real is the main east-west thoroughfare traversing the Hollister Ranch. (Ibid.) A number of ranch roads branch off of Rancho Real and extend northerly into the foothills, including Cuarta Canyon Road. (Ibid.) The owner of each parcel over which the roads pass owns the underlying fee. (RFAC, ¶ 34.) Each putative class member owns a non-exclusive easement over all of the ranch roads (Ibid.)

The exclusive use of the common area is reserved equally to all owners and guests, subject to the Hollister Ranch Rules and other limitations set forth in the CC&R's. (RFAC, ¶

29.) HRC holds a right to use the roads and the common areas under a lease and license agreement with the HROA. (Ibid.) Under the CC&R's, the Ranch roads are also common areas and each putative class member holds a non-exclusive easement to use the ranch roads for ingress and egress. (Ibid.)

Nine of the putative class members, including Behunin and Connelly, own parcels over which Rancho Real is located, which are referred to as Parcels 103, 105, 106, 107, 119, 120, 121, 122 and 123 (collectively, the beachfront parcels). (RFAC, ¶ 41.) (Note: The court appreciates that plaintiffs have attached maps to their RFAC to aid the court in identifying the easements and parcels at issue in this matter.)

(A) Coastal Permit and Offer To Dedicate

In 1980, Parcel 136 was owned by the YMCA. (RFAC, ¶ 3.) On October 24, 1980, the California Coastal Commission (Commission) granted YMCA a coastal development permit for the construction of a YMCA summer camp project on Parcel 136. (RFAC, ¶ 51.) Issuance of the permit was conditioned upon approval and recordation of an irrevocable offer to dedicate easements in favor of the People of the State of California. (RFAC, ¶¶ 51-53.)

An irrevocable offer to dedicate and covenant running with the land (the "OTD") was recorded in the real estate records of Santa Barbara County on April 28, 1982, in satisfaction of the condition for issuance of the coastal development permit. (RFAC, ¶ 53 & exhibit 4.) The OTD offered to dedicate to the People of California an easement in perpetuity for the purposes of public access and public recreational use for: (1) beach lateral access, (2) blufftop access trail, and (3) Rancho Real Road vertical access. (Ibid.) The OTD is stated to be irrevocable for a period of 21 years measured forward from ten years following the date of recordation and to be binding upon the owner, assigns or successors in interest to the property. (RFAC, exhibit 4.)

"The People of the State of California may accept this offer through the County of Santa Barbara, or through a public agency or a private association acceptable to the Executive Director of the Commission or its successor in interest." (RFAC, exhibit 4, p. 7.) "Acceptance of the offer is subject to a covenant which runs with the land, providing that the first offeree to accept the easement may not abandon it but must instead offer the easement to other public agencies or private associations acceptable to the Executive Director of the Commission for the duration of the term of the original offer to dedicate. The grant of easement once made shall run with the land and shall be binding on the owners, their heirs, and assigns." (Ibid.)

On April 26, 2013, the State Coastal Conservancy (Conservancy) recorded a certificate of acceptance (Certificate) accepting the offer set forth in the OTD by the State of California by and through the Conservancy. (RFAC, ¶ 81 & exhibit 5.) Plaintiffs did not consent to the recording of the Certificate. (RFAC, ¶ 82.)

(B) Plaintiffs' Claims

On May 31, 2013, plaintiffs filed their complaint asserting eight causes of action: (1) quiet

title; (2) declaratory and injunctive relief (that the Certificate did not give defendants any right to use plaintiffs' properties); (3) petition for writ of mandate (to set aside the Certificate); (4) temporary physical taking of property without compensation; (5) declaratory relief (as to scope of rights to use if defendants have any rights of use); (6) declaratory relief (that the continued claim by defendants constitutes a physical taking); (7) petition for writ of mandate (to require State Defendants to elect to either keep the Certificate in place or to set aside the Certificate); and (8) physical taking of property without compensation.

The State Defendants demurred to plaintiffs' original complaint. On October 28, 2013, the court sustained the demurrer with leave to amend.

On November 26, 2013, plaintiffs filed their first amended complaint and on December 17, 2013, their notice of errata containing the RFAC.

The RFAC asserts 13 causes of action: (1) quiet title (no property interest in owners' properties created by acceptance of offer of dedication); (2) cancellation (offer and Certificate as void); (3) quiet title (bona fide purchasers acquired title free and clear of interest of defendants); (4) quiet title (no interest in property not mentioned in offer and acceptance of dedication); (5) declaratory and injunctive relief (that defendants have no interest in owners' properties); (6) petition for writ of mandate (to set aside acceptance); (7) temporary physical taking; (8) quiet title (uncertainty of acceptance); (9) declaratory relief (as to scope of interests created by acceptance); (10) declaratory relief (physical taking); (11) declaratory relief (regulatory taking); (12) petition for writ of mandate (to force election of actions); (13) unconstitutional taking.

The first through fifth and eighth causes of action are brought against all State Defendants. The sixth through thirteenth, excluding the eighth, causes of action are brought against the Commission and Conservancy only.

The State Defendants demur to each of the causes of action of the RFAC. The State Defendants argue that plaintiffs cannot collaterally attack the Commission's permit decision in 1980, that the claims are otherwise time barred, that the acceptance was validly made, that the State of California is not a proper party, and that the RFAC is uncertain. The State Defendants also move to strike the allegations of the RFAC attacking the Commission's permit decision.

Plaintiffs oppose the demurrer and motion to strike arguing that the RFAC is adequately alleged and state the respective causes of action.

Motion for Final Approval of Class Action Settlement

Plaintiffs move for final approval of their class action settlement with the County of Santa Barbara. There is a procedural problem, however, that prevents this motion from going forward.

The court's order of November 15, 2013, granting preliminary approval of the conditional settlement between plaintiffs and defendant County of Santa Barbara provides:

“For purposes of settlement, the Court further designates named Plaintiffs Tom Pappas, Tim Behunin, Trustee of the Behunin Family Trust and Patrick L. Connelly as Class Representatives, and the law firm of Brownstein Hyatt Farber Schreck, LLP as Class Counsel.” (Order, Nov. 15, 2013, ¶ 1.)

The notice to potential class members included a copy of the court’s November 15, 2013, order.

On December 6, 2013, Steven Amerikaner and Brownstein Hyatt Farber Schreck, LLP, were substituted out as counsel for the named plaintiffs and Robert L. Brace and Hollister & Brace were substituted in. Amerikaner and Brownstein Hyatt Farber Schreck, LLP, remain as counsel for plaintiffs The Hollister Ranch Cooperative (HRC) and the Hollister Ranch Owners’ Association (HROA). HRC and HROA are not members of the settlement class.

“The notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members. [Citations.] The notice must be structured to enable class members rationally to decide whether to intervene or object, ‘opt out,’ or accept the settlement.” (Trotsky v. Los Angeles Fed. Sav. & Loan Assn. (1975) 48 Cal.App.3d 134, 151-152.) The order identifies and appoints specific counsel to act on behalf of the entire class for purposes of settlement. Members of the class may rely upon the experience and capabilities of the appointed counsel to act in their best interests in determining whether to intervene or object, opt out, or accept the settlement.

The court’s prior order appointed Steven Amerikaner and Brownstein Hyatt Farber Schreck, LLP, as class counsel. Steven Amerikaner and Brownstein Hyatt Farber Schreck, LLP, have now effectively withdrawn as counsel for the class representatives and hence for the settlement class. The court cannot grant final approval of the settlement based upon new counsel for the settlement class where the court has not appointed new counsel, has no evidence presented regarding new counsel’s appropriateness for appointment as class counsel, no notice has been provided to the settlement class of the new counsel, and the notice that has been given incorrectly identifies class counsel. At the same time, the court cannot grant final approval of the settlement based upon the appointment of prior counsel for the settlement class as that counsel no longer represents the class representatives.

As a result, the motion for final approval cannot go forward as it has now been presented. The court will discuss with counsel at the hearing of this motion how counsel intends to proceed with this settlement.

Analysis:

Demurrer

“We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed. [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.]” (Evans v. City of Berkeley (2006) 38 Cal.4th 1, 6, internal quotation marks omitted.)

(A) Effect of No Challenge to OTD

State Defendants argue in their demurrer that all of plaintiffs' claims are barred by any applicable statute of limitations because these claims are essentially challenges to the Commission's actions in 1980 granting the coastal development permit to YMCA. The court generally addressed this issue in ruling upon the prior demurrer.

"The Coastal Act ([Pub. Resources Code,] § 30801) requires that such a challenge be made by filing a writ petition for administrative mandamus within 60 days 'after the decision or action has become final.' [Citations.]" (Sierra Club v. Department of Parks & Recreation (2012) 202 Cal.App.4th 735, 741, fn. omitted.)

"Once the 60-day statute of limitations has run, the permit issued must be deemed good as against the world." (Ojavan Investors, Inc. v. California Coastal Com. (1994) 26 Cal.App.4th 516, 525.) Plaintiffs do not allege that a challenge was made within the 60-day period. Thus, plaintiffs may not in this action assert that the Commission exceeded its authority in requiring the OTD as a condition for the issuance of the permit. (Serra Canyon Co. v. California Coastal Com. (2004) 120 Cal.App.4th 663, 670.)

In opposition to the demurrer, plaintiffs do not contest that the Commission had jurisdiction over the YMCA and its property (Opposition, at p. 7), but argue that the Commission did not have jurisdiction over the persons or property of the plaintiffs. As discussed below, plaintiffs generally raise this as a broader argument based upon their distinguishing the OTD, its acceptance and the underlying property rights of the parties.

(B) Property Rights

Plaintiffs repeatedly argue that their claim is not based upon a challenge to the Commission's 1980 permit decision but is instead based upon the underlying rights which the YMCA conveyed.

"A dedication is a voluntary transfer of an interest in land and resembles both a grant and a gift. It is therefore governed by the fundamental principles which control such transactions." (Carstens v. Cal. Coastal Com. (1986) 182 Cal.App.3d 277, 285.) The grantee of a deed cannot legally claim more than the deed purports to convey. (Emeric v. Alvarado (1891) 90 Cal. 444, 459.) Thus, a property owner can dedicate to the public no greater interest in real property than he or she possesses. (See Niles v. Los Angeles (1899) 125 Cal. 572, 575 [dedication at time when prior owner did not have ownership rights to dedicate not considered as affecting rights of subsequent owner]; Mulch v. Nagle (1921) 51 Cal.App. 559, 567 [dedication of property cannot be based upon dedication by person who has no interest in the property].)

As alleged, the issuance of the permit by the Commission to the YMCA was conditioned upon the YMCA's offer to dedicate access rights. (RFAC, ¶¶ 51-53.) YMCA complied with this permit condition by the OTD. (RFAC, ¶ 52.) Plaintiffs argue that, even if the Commission validly required YMCA to dedicate access rights and the YMCA purported to do so by the OTD, the OTD did not have the legal effect of such a dedication because

YMCA did not have access rights to dedicate. (E.g., RFAC, ¶¶ 102-105.)

Such a claim is not a claim that improperly challenges the validity of the Commission's decision. To the extent alleged in the RFAC, the Commission's decision was limited to conditioning issuance of the development permit upon YMCA's OTD. The RFAC does not allege (and the findings of the Commission do not clearly show) that the Commission did or could determine that YMCA actually had the legal right and ability to dedicate the access rights set forth in the OTD. (RFAC, exhibit 4.) For purposes of this demurrer, therefore, plaintiffs' challenge to the validity of the OTD and Certificate based upon the non-existence of the underlying rights does not collaterally challenge the validity of the Commission's decision in issuing the permit.

(C) Quiet Title Claims

Plaintiffs' first, third and fourth causes of action are to quiet title.

The first cause of action is directly based upon plaintiffs' argument that the OTD and Certificate confer no property rights in plaintiffs' properties because YMCA had no property rights it could legally convey. (RFAC, ¶¶ 99-105.) For the reasons discussed above, this claim is not a collateral attack upon the Commission's decision to issue the development permit in 1980 and is not barred by the 60-day statute of limitation for challenging Commission decisions.

The State Defendants argue that even if the 60-day statute of limitations does not apply, other statutes of limitations apply to bar the action. "[T]he statute of limitations for an action to quiet title does not begin to run until someone presses an adverse claim against the person holding the property." (Crestmar Owners Assn. v. Stapakis (2007) 157 Cal.App.4th 1223, 1228.) The State Defendants argue that claims adverse to the plaintiffs' property were pressed no later than when the OTD was recorded.

"A general demurrer based on the statute of limitations is only permissible where the dates alleged in the complaint show that the action is barred by the statute of limitations. [Citation.] The running of the statute must appear 'clearly and affirmatively' from the dates alleged. It is not sufficient that the complaint might be barred. [Citation.] If the dates establishing the running of the statute of limitations do not clearly appear in the complaint, there is no ground for general demurrer. The proper remedy 'is to ascertain the factual basis of the contention through discovery and, if necessary, file a motion for summary judgment ….' [Citation.]" (Roman v. County of Los Angeles (2000) 85 Cal.App.4th 316, 324-325.)

"[N]o statute of limitations runs against a plaintiff seeking to quiet title while he is in possession of the property. [Citations.] In many instances one in possession would not know of dormant adverse claims of persons not in possession. [Citation.] Moreover, even if, as here, the party in possession knows of such a potential claimant, there is no reason to put him to the expense and inconvenience of litigation until such a claim is pressed against him." (Muktarian v. Barmby (1965) 63 Cal.2d 558, 560-561, fn. omitted.) However, the "'possession' required to toll the statute of limitations must be 'exclusive and undisputed.'" (Ankoanda v. Walker-Smith (1996) 44 Cal.App.4th 610, 616.)

The circumstances alleged here are unique. The OTD is, by its terms, not a dedication, but an irrevocable offer to dedicate. The dedication is not effective, and no interest is conveyed, until the dedication is accepted. (See RFAC, exhibit 4, p. 7; Serra Canyon Co. v. California Coastal Com., supra, 120 Cal.App.4th at p. 671 [acceptance of OTD is the exercise of an existing option]; Re-Open Rambla, Inc. v. Board of Supervisors (1995) 39 Cal.App.4th 1499, 1506 [common law offer to dedicate must be accepted by the public].) The existence of an open but unaccepted OTD therefore does not imply that the governmental entity capable of accepting the dedication asserts any present possessory interest in the property. The governmental authority could choose not to accept the dedication, as the County of Santa Barbara has apparently done here. The reasoning of Muktarian thus applies here: until the governmental entity asserts its acceptance of the dedication, the governmental entity does not assert an adverse claim as against the plaintiffs' present possessory interests in the property which until that time are alleged as exclusive and undisputed vis-à-vis the State Defendants.

Consequently, the statute of limitations for an action based upon the claims derived from the acceptance of the OTD would begin no earlier than the acceptance of the OTD in April 2013. This action was filed within any potential statute of limitation based upon that accrual date. The face of the complaint does not disclose that the statute of limitations is a bar to this cause of action. Accordingly, the State Defendants' demurrer to the first cause of action on the grounds of the statute of limitations will be overruled.

Plaintiffs' third and fourth causes of action for quiet title relate to subsequent bona fide purchasers and claims by the State Defendants for rights in property exceeding the scope of the OTD and Certificate. These claims are also based upon claims arising no earlier than the acceptance of the OTD, and, for the same reason as discussed above, the statute of limitations does not appear on the face of the complaint as a bar to these causes of action. The demurrer to these causes of action on the grounds of the statute of limitations will be overruled.

(D) Cancellation and Declaratory Relief Claims

Plaintiffs' second cause of action is for cancellation of the OTD and Certificate as void. This cause of action is essentially the same as the claim to quiet title. (See McCully v. McArthur (1921) 187 Cal. 194, 205.) Plaintiffs' fifth, ninth, tenth and eleventh causes of action are for declaratory relief. These causes of action are also derivative of plaintiffs' claims to quiet title based upon the acceptance of the OTD. As a result, the same analysis above applies with respect to the statute of limitations. (See Maguire v. Hibernia S. & L. Soc. (1944) 23 Cal.2d 719, 734.) State Defendants demurrers to these causes of action will be overruled on the grounds of the statute of limitations.

(E) Petitions for Writ of Mandate

Plaintiffs' sixth and twelfth causes of action are petitions for writ of mandate. The sixth cause of action seeks to set aside the Certificate. The Certificate accepts the OTD. Since 2003, the Conservancy has been under a legal duty to accept outstanding offers to dedicate a public accessway that has not been accepted by another public agency within 90 days of

its expiration date. (Pub. Res. Code, § 31402.2.) No authority has been presented by which the Conservancy or the Commission is required to hold a hearing or provide notice to accept an offer to dedicate as required by section 31402.2. As a result, plaintiffs' sixth cause of action challenging the acceptance of the OTD is simply a challenge to the decision to require the OTD itself. This challenge is an improper collateral attack on the Commission's permit decision and is barred by the 60-day statute of limitations. (See Serra Canyon Co. v. California Coastal Com., supra, 120 Cal.App.4th at p. 670.) State Defendants' demurrer to this cause of action will be sustained.

The twelfth cause of action is derivative of the sixth cause of action and addresses the same issue with respect to challenging the Certificate as an improper collateral attack on the Commission's permit decision. (RFAC, ¶¶ 278, 286.) For the same reason, State Defendants' demurrer to this cause of action will be sustained.

(F) Takings Claims

Plaintiffs' seventh cause of action for temporary taking is expressly contingent upon their success as to other causes of action and seeks damages only from the time of the recordation of the Certificate. Apart from the argument that all of plaintiffs' claims are improper collateral attacks on the Commission's permit decision, State Defendants do not provide any separate argument that this cause of action is barred by a statute of limitations. State Defendants' demurrer to this cause of action will be overruled on the ground of the statute of limitations.

Plaintiffs' thirteenth cause of action for unconstitutional taking is based upon a complex set of contingencies that depend upon the outcome of various other causes of action. State Defendants' demurrer on the ground of the statute of limitations is again based only upon the argument that all of plaintiffs' claims are barred as improper collateral attacks on the Commission's permit decision. Because it is unclear at this stage what rulings would necessarily be entailed by the contingencies required for this cause of action to be asserted and because all of plaintiffs' claims are not barred on the face of the complaint by that argument, State Defendants' demurrer on that ground will be overruled.

(G) State of California

In the prior demurrer, the court determined that the State of California, separate and apart from the Commission and the Conservancy, was not a proper party.

"Each agency or department of the state is established as a separate entity, under various state laws or constitutional provisions." (People ex rel. Lockyer v. Superior Court (2004) 122 Cal.App.4th 1060, 1078.) State Defendants argue that the Commission and the Conservancy are the only state agencies with an interest in this action. Plaintiffs argue, as in the previous demurrer, that unless the State of California is individually joined as a party to the action, the judgment would not be binding or conclusive on it. (Code Civ. Proc., § 764.070, subd. (a).)

The allegations of the complaint do not state any action or claim based upon the actions of the State of California except as the State of California acts through the Commission and

the Conservancy as its agencies. While plaintiffs are correct that failing to name the State of California individually would make judgment not binding on the State in general, the judgment would be binding upon the Commission and the Conservancy. There is nothing in plaintiffs' complaint which would make a judgment binding upon the State of California as a separate entity either necessary or appropriate. (See State of California v. Superior Court (1974) 12 Cal.3d 237, 255.)

Plaintiffs have had the opportunity to amend but have failed to point to any amendment that changes this analysis. State Defendants demurrer on this ground will be sustained.

(H) Uncertainty

The State Defendants also demur on the ground of uncertainty. "A special demurrer on the ground that an answer is (a) ambiguous, (b) unintelligible, or (c) uncertain is insufficient unless the demurrer points out specifically wherein the pleading is ambiguous, uncertain or unintelligible." (Coons v. Thompson (1946) 75 Cal.App.2d 687, 690.) The State Defendants have not pointed out specifically where and how the pleadings are uncertain. The special demurrer for uncertainty will be overruled.

(I) Leave to Amend

The court will sustain the demurrer of the State Defendants as to the sixth and twelfth causes of action as to all defendants and as to all causes of action as to the State of California.

With respect to the sixth and twelfth causes of action, plaintiffs will be given leave to amend to state their best case if plaintiffs choose to amend these causes of action.

With respect to the causes of action asserted against the State of California, plaintiffs have now had the opportunity to amend to address the same pleading defect and have not meaningfully addressed this issue. Plaintiffs here provide no new argument as to how an amendment could be made to avoid this defect. Accordingly, this demurrer will be sustained without leave to amend.

Motion to Strike

"The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading." (Code Civ. Proc., § 436.) "The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." (Code Civ. Proc., § 437, subd. (a).)

"[I]n some cases a portion of a cause of action will be substantively defective on the face of the complaint. Although a defendant may not demur to that portion, in such cases, the defendant should not have to suffer discovery and navigate the often dense thicket of proceedings in summary adjudication. …[W]hen a substantive defect is clear from the face of a complaint, such as a violation of the applicable statute of limitations or a purported claim of right which is legally invalid, a defendant may attack that portion of the cause of

action by filing a motion to strike." (PH II, Inc. v. Superior Court (1995) 33 Cal.App.4th 1680, 1682-1683.)

The purpose of a motion to strike "is to rid the pleading of its objectionable averments only." (Continental Building & Loan Association v. Boggess (1904) 145 Cal. 30, 34.) Thus, "[w]hile a motion to strike is addressed to the sound discretion of the trial court [citations], a matter which is essential to a cause of action should not be stricken [citation] and it is error to do so [citations]." (Clements v. T. R. Bechtel Co. (1954) 43 Cal.2d 227, 242.) "Irrelevant and redundant matter inserted in a pleading may be stricken by the court. [Citation.] But a motion to strike cannot be made to serve the purpose of a special demurrer. Where a motion to strike is so broad as to include relevant matters, the motion should be denied in its entirety." (Hill v. Wrather (1958) 158 Cal.App.2d 818, 823.)

The State Defendants' grounds for this motion to strike is that if the court finds that plaintiffs may state a claim based upon something other than the Commission's 1980 decision, then the allegations challenging the Commission's decision are irrelevant and improper. Plaintiffs respond to this argument by arguing, as they did in demurrer, that plaintiffs' claims are based upon the lack of property rights rather than upon a challenge to the Commission's decision.

As discussed above, the court generally agrees with the State Defendants that claims based in any part upon the propriety of the permit process or the Commission's authority to impose conditions in issuing the permit in 1980 are barred by the statute of limitations and are now beyond dispute. Translating that proposition into a ruling on a motion to strike, however, is difficult given the limitations of a motion to strike. Many of the allegations relating to activity in 1980 and 1982 which the State Defendants seek to strike are not irrelevant to understanding plaintiffs' claims even though plaintiffs' claims may not challenge the Commission's 1980 decision by those allegations. On the other hand, some of these allegations appear to challenge the Commission's authority as it relates to the issuance of the permit and the imposition of the conditions upon the YMCA for the issuance of the permit (for example, the allegations relating to the in-lieu fee). Distinguishing the relevant, but not actionable allegations, from the irrelevant allegations is not absolutely clear. In addition, the motion to strike some allegations, such as those appearing in the sixth cause of action, is mooted by the sustaining of the demurrer.

After a review of the paragraphs the State Defendants identify in their notice of motion, the court will grant the motion to strike as to paragraphs 13, 14, 17, 63 through 67, 193 through 197, and 208. To the extent plaintiffs wish to amend to show the relevance of these types of allegations to the claims plaintiffs are entitled to make, plaintiffs will be given leave to amend.