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9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA,**

11 **FOR THE COUNTY OF ALAMEDA**

12 **CASE NO.: 21CV003220**

13 **Mothers Against Murder**

14 **Petitioner,**

15 **vs.**

16 **California Victim Compensation Board**

17 **Respondent.**

**PETITIONER MOTHERS AGAINST  
MURDER'S OPPOSITION TO  
RESPONDENT CALIFORNIA VICTIM  
COMPENSATION BOARD'S  
DEMURRER TO FOURTH AMENDED  
VERIFIED PETITION**

**RESERVATION ID: 216726797327**

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Judge: Hon. Frank Roesch

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**I.**

**INTRODUCTION**

Defendant California Victim Compensation Board's ("CalVCB") demurrer to the Fourth Amended Petition of Mothers Against Murder ("MAM") is entirely without merit. CalVCB's argument relies upon misstatements of the Court's previous comments (which Petitioner objects because there is no transcript of the previous proceedings submitted by CalVCB) and material misstatements of law and fact. When these misstatements are accounted for, CalVCB has no legal basis to support its demurrer to the Fourth Amended Petition for Writ of Mandate.

**II.**

**BRIEF PROCEDURAL STATEMENT OF CASE**

Petitioner, MAM, is a nonprofit California corporation with its mission of ensuring that crime victims in California are afforded their full rights under the various crime-victim statutes and laws. (Exhibit A, MAM Bylaws); (Exhibit B, Declaration of Margaret Petros, Executive Director of MAM).

On or about November 30, 2021, Petitioner MAM as Petitioner sought a traditional writ of mandate on behalf of itself and Kevin DOE, Real Party in Interest, to compel the CalVCB to provide Kevin DOE with an "in-person" hearing pursuant to Gov. Code §13959 (a), to challenge the denial by staff of Kevin DOE's application for victim compensation based on the murder of his son. (Judicial Notice).

On March 15, 2022, prior to CalVCB's response to the original Petition for Writ of Mandate, MAM filed a First Amended Petition for Writ of Mandate. The First, Second, and Third Petitions were contested primarily on the grounds whether Kevin Doe could be represented through MAM; whether Kevin Doe was limited to the remedy of administrative mandate; and whether MAM had standing to bring its writ of traditional mandate on behalf of prospective applicants to enforce the statutory duty owed by CalVCB pursuant to Gov. Code §13959 (a) to provide an in-person hearing to those applicants who challenge the denial of their victim compensation applications that were denied by staff.

1 MAM filed a Fourth Amended Petition for traditional mandate based only on its standing as  
2 a public advocacy non-profit corporation for crime-victims. Kevin Doe withdrew his  
3 involvement in these proceedings.

4 Now, before the court is CalVCB's demurrer to MAM's Fourth Amended Petition which sets  
5 forth a First Cause of Action for traditional writ of mandate to compel CalVCB to perform its  
6 mandatory duty pursuant to Cal Govt. Code §13959(a) to provide those prospective applicants  
7 for crime-victim compensation who challenge the denial of their claim by staff, with an "in-  
8 person" hearing before the Board; and, a Second Cause of Action for declaratory relief.

9 **III.**

10 **LEGAL ARGUMENT**

11 **A. CalVCB's GROUNDS FOR DEMURRER TO FOURTH AMENDED PETITION**

12 CalVCB's demurrers to the First Cause of Action of MAM's Fourth Amended Petition  
13 on the grounds that: 1) MAM does not allege facts to "showing MAM has public interest  
14 standing for its ordinary mandate cause of action." (Points and Authorities to Fourth Amended  
15 Petition, p. 9, lines1-2); 2) MAM lacks "public interest" standing because "[prospective]  
16 aggrieved victim compensation applicants have effective administrative and judicial remedies to  
17 challenge the Board's alleged denial of their requests for an 'in-person' hearing ...." (Id. at p. 10,  
18 lines 10-18); 3) the First Cause of Action of the Fourth Amended Petition fails to allege that  
19 CalVCB is "failing to perform a ministerial duty." (Id. at p.10, lines 24-25), and; 4) MAM does  
20 not allege that CalVCB "does not intend on complying with a future ministerial duty." (Id. at p.  
21 12, lines 9-15).

22 Finally, CalVCB demurrers to the Second Cause of Action of the Fourth Amended  
23 Petition for declaratory relief on the ground that MAM lacks "public interest" standing, as a  
24 matter of law and, further, that the declaratory relief cause of action is beyond the court's order  
25 granting leave to amend.

26 ///

27 ///

1 **B. MAM HAS STATED SUFFICIENT FACTS TO ESTABLISH PUBLIC INTEREST**  
2 **STANDING**

3 In footnote 1, CalVCB argues that MAM lacks “public interest” (Id., fn.). First, CalVCB  
4 urges this court to ignore the well-pled ultimate fact that MAM has “public interest” standing by  
5 virtue of its nonprofit advocacy status. “The term ‘citizen’ in this context is descriptive, not  
6 prescriptive. It reflects an understanding that an action is undertaken to further the public interest  
7 and is not limited to the plaintiff’s private concerns. Entities that are not technically ‘citizens’  
8 regularly bring citizen suits. (E.g., *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432  
9 , 439, ...; *Urban Habitat Program, et al. v. City of Pleasanton, et al.*, *supra* 164 Cal.App.4th  
10 1581.... Absent compelling policy reasons to the contrary, it would seem that corporate entities  
11 should be as free as natural persons to litigate the public interest. (citation). (*Save the Plastic Bag*  
12 *Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 168. (Cal. 2011). Next, Counsel  
13 falsely asserts, that this “Court has “previously determined that MAM has not and cannot allege,  
14 standing under the Code of Civil Procedure 1085.” (Points and Authorities to Fourth Amended  
15 Petition, p. 8, fn.1, lines 23-28).

16 Both of the arguments set forth in the footnote 1 will discussed, below.

17 **i. Paragraphs 7 and 8, When Read as a Whole with the Fourth Amended**  
18 **Verified Petition are Ultimate Facts that Establish “Public Interest”**  
19 **Standing**

20 The standard for judging the sufficiency of a pleading against demurrer is set forth in  
21 *Zakk v. Diesel* (2019) 33 Cal.App.5th 431, 446-447, as follows,

22 The court must, in every stage of an action, disregard any defect in the pleadings  
23 which does not affect the substantial rights of the parties. [citation.] Pleadings  
24 must be reasonably interpreted; they must be read as a whole and each part must  
25 be given the meaning that it derives from the context wherein it appears. ... *In*  
26 *determining whether the complaint is sufficient as against the demurrer on the*  
27 *ground that it does not state facts sufficient to constitute a cause of action, the*  
28 *rule is that if on consideration of all the facts stated it appears the plaintiff is*  
*entitled to any relief at the hands of the court against the defendants the*  
*complaint will be held good although the facts may not be clearly stated, or may*  
*be intermingled with a statement of other facts irrelevant to the cause of action*  
*shown, or although the plaintiff may demand relief to which he is not entitled*  
*under the facts alleged. In passing upon the sufficiency of a pleading, its*

1        *allegations must be liberally construed with a view to substantial justice between*  
2        *the parties.* While orderly procedure demands a reasonable enforcement of the  
3        rules of pleading, the basic principle of the code system in this state is that the  
4        administration of justice shall not be embarrassed by technicalities, strict rules of  
5        construction, or useless forms." (Emphasis added).

6        A rule of code pleading is that a complaint must allege "ultimate facts," not "evidentiary  
7        facts" or conclusions of law. *C.A. v. William S. Hart Union High School Dist.* (2012), 53 Cal.4th  
8        861, 872 (complaint need only allege facts sufficient to state a cause of action; each evidentiary  
9        fact that might eventually form part of the plaintiff's proof need not be alleged]; 4 Witkin,  
10       California Procedure (6th ed.), Pleading § 398 (allegations that defendant's conduct was  
11       "illegal," "unlawful," "unauthorized," "void," "wrongful," "without right," or "fraudulent"  
12       constitute impermissible conclusions of law). 'The elements of a cause of action constitute the  
13       essential or ultimate facts in a civil case.' *Rodrigues v. Parivar, Inc.* (2022) 83 Cal.App.5th 739  
14       750-51).

15       Moreover, the purpose of a standing requirement is to ensure that the courts will decide  
16       only actual controversies between parties with a sufficient interest in the subject matter of the  
17       dispute to press their case with vigor. *Harman v. City and County of San Francisco* (1972) 7  
18       Cal.3d 150, 159 ('The fundamental aspect of standing is that it focuses on the party seeking to  
19       get his complaint before a ... court, and not in the issues he wishes to have adjudicated.' (citing  
20       *Flast v. Cohen* (1968) 392 U.S. 83, 91-103).

21       Here, with respect to the First Cause of Action of the Fourth Amended Petition, MAM  
22       alleges the standing requirement as an ultimate fact as follows:

23       "MAM" is a California non-profit public benefit corporation operating for  
24       charitable and public benefit purposes and organized under the California non-  
25       profit corporation laws. The primary purpose of MAM is to advocate for victims  
26       of crime and their families by, *inter alia*, advocating for victims of crime and their  
27       families to ensure that the rights of crime victims and their families are fully  
28       implemented by California state and local agencies charged with assisting victims  
29       of crime and their families, such as the CalVCB." (Fourth Amended Verified  
30       Petition, ¶7)

1 Petitioner MAM has a clear, present and beneficial right as part of its  
2 stated mission as a public advocacy organization for crime victims and their  
3 families to the relief requested herein, to wit: to compel the CalVCB to provide  
4 crime victims and their families who contest the denial of compensation through a  
5 staff recommendation with an “in-person” hearing pursuant to Govt. Code §13959  
6 (a). ((Fourth Amended Verified Petition, ¶8).

7 Counsel for CalVCB attacks paragraph 8 by characterizing it as containing  
8 “contention[s]”, “deduction[s]” or “conclusion[s] of law.” (Points and Authorities in Support of  
9 Demurrer to Fourth Amended Petition, fn. 1)<sup>1</sup>. Counsel is dead-wrong because paragraph 8  
10 alleges ultimate facts, not a deductions or conclusions. The court’s only duty when reviewing a  
11 demurrer is to determine whether the complaint states a cause of action. ‘Accordingly, [the court]  
12 assume[s] that the complaint's properly pleaded material allegations are true and give the  
13 complaint a reasonable interpretation by reading it as a whole and all its parts in their context.’  
14 *Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125. Paragraphs 7 and 8 are  
15 properly pled ultimate facts supporting Plaintiff’s burden of proof to establish standing.

16 **ii. This Court has not “Previously Determined” that MAM Cannot Allege**  
17 **Standing Under Code of Civil Procedure §1085**

18 Counsel next attacks paragraph 8 of the Fourth Amended Verified Petition as “immaterial  
19 because the Court has previously determined that MAM has not alleged and cannot allege,  
20 standing under Code of Civil Procedure Section 1085. (Points and Authorities in Support of  
21 Demurrer to Fourth Amended Complaint, fn. 1). For this proposition Counsel refers to the  
22 Minute Order of April 21, 2022, which gave Petitioner leave to amend the Petition and states in  
23 relevant part: “If any of the three causes of action are brought pursuant to Code of Civil  
24 Procedure § 1085, Petitioner must [state] facts demonstrating why its claims fall within the  
25 public interest exception to the beneficial interest requirement for writ relief.” (Minutes April 21,  
26 2022). Nothing in this Minute Order states that MAM “cannot allege, standing under Code of  
27 Civil Procedure Section 1085”, as Counsel states in footnote 1.  
28



1 Accordingly, when the Petition is read as a whole, MAM has properly pled the “public  
2 interest” standing requirement of Code of Civil Procedure §1085.

3 **C. MAM IS NOT BOUND BY CALVCB’S SELF-SERVING REMEDIES FOR**  
4 **CALVCB’S PAST AND FUTURE VIOLATIONS OF CODE OF CIVIL**  
5 **PROCEDURE §1085(a)**

6 CalVCB argues that MAM can proceed with its mandamus action only if this court finds  
7 that failing to do so would result in the lack of an effective remedy for violation of an important  
8 public interest statute” (*Reynolds v. City of Calistoga* (2014) 223 Cal.App.4th 855, 874-875). (See  
9 Demurrer to Fourth Amended Petition, p. 9, lines 11-13). *Reynolds* makes no such statement, nor  
10 can such a *categorical* statement be logically implied from the language of *Reynolds*. In fact,  
11 *Reynolds* does not involve a mandamus action. The plaintiff in *Reynolds* sought to argue that he  
12 had “public right” standing as a taxpayer. The court ruled against that argument. (223  
13 Cal.App.4th at 873).

14 Reynolds next argued that he had “public interest” standing. The court pointed out that  
15 the “public interest standing exception has been consistently applied only in the context of  
16 mandamus proceedings.” (223 Cal.App.4th at 874) (emphasis added), and as the court pointed  
17 out, Reynold’s action was not a mandamus proceeding: “Reynold's claim here is for alleged  
18 breach of ‘fiduciary duty’ by local officials in expenditure of locally generated public revenue  
19 for local public purposes. Extending the [public interest] ‘exception’ as broadly as Reynolds  
20 would have us do would render the taxpayer standing requirement of section 526a meaningless.”  
(223 Cal.App.4th at 874).

21 “When the duty is sharp and the public need weighty, the courts will grant a mandamus at  
22 the behest of an applicant who shows no greater personal interest than that of a citizen who  
23 wants the law enforced. (citations) When the public need is less pointed, the courts hold the  
24 petitioner to a sharper showing of personal need.” *Reynolds*, supra, 223 Cal.App.4th at 875.  
25  
26

27  
28 <sup>1</sup> Counsel does not attack paragraph 7 of the Fourth Amended Verified Petition, which itself pleads MAM’s  
“standing” requirement.

1 Here, the duty to provide an “in-person” hearing under the criteria of Govt. Code section 1359(a)  
2 is sharp and the public need weighty.

3 Here, CalVCB puts forth a laundry list of self-serving, so-called “effective and  
4 administrative and judicial remedies” that aggrieved applicants could use to challenge CalVCB’s  
5 illegal behavior. These actions are not the “competing considerations of more urgent nature”  
6 envisioned by the courts when deciding whether effective remedies exists that would preempt  
7 mandamus. See, *Green v. Obledo* 29 Cal.3d 126, 145. CalVCB is attempting to evade its clear  
8 statutory duty and lay the blame for its evasion at the door of the very victims of crime that  
9 CalVCB is charged with serving.

10 **D. MAM HAS PROPERLY ALLEGED THAT CALVCB HAS FAILED AND WILL**  
11 **CONTINUE TO FAIL TO PERFORM ITS MINISTERIAL DUTY UNDER**  
12 **GOVT. CODE §1359(a)**

13 CalVCB attacks the First Cause of Action of the Fourth Amended Petition for failing to  
14 allege that “the Board is failing to perform a ministerial duty. (demurrer to Fourth Amended  
15 Petition p.10, lines 24-25). CalVCB further alleges MAM has failed to allege facts to show  
16 CalVCB “does not intend on complying with a future ministerial duty.) Id., p. 12, lines 13-15.

17 MAM alleges as follows:

18 MAM seeks an alternative Writ of Mandate compelling Real Party in Interest  
19 CalVCB to prospectively provide each applicant who contents a staff  
20 recommendation to deny their victim compensation claim, in whole or in part, be  
21 provided with an “in-person” hearing which complies with the requirements of  
22 Govt. Code §13959; 2CCR§615.2 (4)&(6); (616.4; 617.1; and, 617.2) fourth  
23 amended verified petition for ordinary writ of mandate, p. 1, lines 24-28).

24 MAM is a California non-profit Public Benefit Corporation and has standing to  
25 bring this matter against CalVCB pursuant to the “public interest exception” to  
26 the requirement of Cal. CCP§1086, that a petitioner to a writ of mandate  
27 proceeding be beneficially interest in the petition (Id. p. 2, lines 2-5);

28 CalVCB has consistently and unlawfully failed to perform its mandatory duty  
pursuant to Cal. Govt. Code § 13959(a) and its regulations by its refusal to  
provide “in-person” hearings to those persons whose application for victim  
compensation has been denied by staff. (Id. p. 5, lines 9-22)(emphasis added);

This practice is widespread throughout California counties. (Id. p5, line 23).

1  
2 Therefore, MAM requests that an Alternative Writ of Mandate issue compelling  
3 the CalVCB to prospectively provide an “in-person” hearing to those persons who  
4 have been denied victim compensation based on staff recommendation as  
5 mandated by Cal. Gov. Code § 13959(a) and to comply with the notice  
6 requirements as set forth in the California Code of Regulations. (Id. p. 5, lines  
7 24-27)

8  
9 MAM may not use the word “ministerial duty,” however, it uses the words “mandatory  
10 duty” the words “ministerial” and “mandatory” are used interchangeably in the writ of mandate  
11 judis prudence “a court may issue a writ of mandate to compel a public agency or officer to  
12 perform a mandatory duty. (citation)” ‘this type of writ petition seeks to enforce a mandatory and  
13 ministerial duty to act on the part of an administrative agency or its officers.’...mandatory duties  
14 are often invoked in the context of ministerial acts. ‘a ministerial act is one that a public  
15 functionary is required to perform in a prescribed manner in obedience to the mandate of legal  
16 authority.’” (*Collins v. Thurmond*, 41 Cal.App.5th 879, 914.)

17  
18 There is no such requirement in a writ of mandate petition pleading that a petitioner  
19 “allege facts that show it is clear that the board does not intend on complying with a future  
20 ministerial duty.” (Demurrer to Fourth Amended Petition, p. 12-13-15.) It is clear from a reading  
21 of the entire petition that the Board does not intend on complying with any future ministerial  
22 duty set forth in Cal. Gov Code §13959 (a).

23  
24 **E. THE SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF IS A  
25 PROPER CAUSE OF ACTION**

26  
27 The Second Cause of Action for declaratory relief is a proper cause of action for  
28 conclusion in this traditional mandate proceeding. Counsel’s statement that “[p]ublic-interest  
standing...is available only in a mandate proceeding, not in an ordinary civil action citing *People  
ex rel. Becerra v. Superior Court* , 29 Cal.App.5th 486, 503, is correct. However, counsel’s  
conclusion that MAM does not have “public interest” standing is erroneous and misses the point.  
By virtue of the petition for writ of mandate as set forth in the First Cause of Action, this is a writ  
proceeding.

1 It is not uncommon that a declaratory relief cause of action be accompanies a cause of  
2 action for mandamus relief. See, *Beach and Bluff Conservancy v. City of Solana Beach* (2018) 28  
3 Cal.App.5<sup>th</sup> 244, 259 (“In addition to tradition mandamus, an action for declaratory relief is  
4 generally an appropriate means of *facially* challenging a legislative or quasi-legislative  
5 enactment of a public entity,” citing *Apartment Assn. of Los Angeles County v. The City of Los*  
6 *Angeles* (2006) 136 Cal.App.4<sup>th</sup> 119, 128 (“Declaratory relief has been used in California to  
7 challenge the constitutionality of penal statutes and ordinances; *City of Huntington Beach v.*  
8 *Becerra* (2020) 44 Cal. App.5<sup>th</sup> 243, 252 (“City filed a petition for wit of mandamus and a  
9 complaint for declaratory relief to invalidate the unconstitutional mandates of the [CVA]... The  
10 petition and complaint had 3 causes of action: 1) writ of mandate, 2) declaratory relief, and 3)  
11 adjunctive relief.”); *Monterey Coastkeeper v. Central Coast Regional Water Quality Control*  
12 *Board* (2022) 76 Cal.App.5<sup>th</sup> 1, 9 (“Appellants filed a petition alleging two causes of action. The  
13 first cause of action...[was for] a petition for writ of administrative mandamus... The second  
14 cause of action sought a writ of traditional mandamus and declaratory relief...”)).

15 Perhaps Counsel is confusing the traditional mandamus cause of action in the instant  
16 Petition with an administrative mandamus cause of action because “[t]he law as well established  
17 that an action for declaratory relief is not appropriate to review an administrative decision...”  
18 *Beach and Bluff Conservancy*, supra 228 Cal.App.5<sup>th</sup> at 259.

19 The declaratory relief cause of action is not a “new” cause of action as asserted by Counsel-,  
20 it was the second cause of action in the first amended petition. (Judicial notice). There is no party  
21 prohibition preventing a from reintroducing a cause of action unless definitively ruled against.

22 **F. MAM CAN AMEND THE FOURTH AMENDED PETITION IF NECESSARY**

23 Petitioner MAM is of the opinion that the Fourth Amended Verified Petition, states when  
24 read as a whole, states a good Cause of Action for ordinary mandate under the public interest  
25 “exception to Cal. CCP§1086.

26 Based upon CalVCB’s insubstantial reasons for its demurrer, MAM can cure any alleged  
27 deficiencies as follows.



1 determining whether the complaint is sufficient against CalVCB's demurrer, MAM is entitled to  
2 a consideration of all facts stated as true. The Fourth Amended verified petition must be liberally  
3 construed with a view toward substantial justice between the parties. Technicalities and strict  
4 rules of construction are disfavored. Based upon this test, MAM's Fourth Amended Verified  
5 Petition is proper and CalVCB's demurrer should be denied in its entirety.

6 Respectfully submitted,

7 Dated: December 29, 2022

8 

9 \_\_\_\_\_  
10 Robert David Baker, Esq.