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EXEMPT FROM FILING FEES PURSUANT TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

FIBER FIRST LOS ANGELES; MOTHERS OF EAST LA; UNION BINACIONAL DE ORGANIZACIONES DE TRABAJADORES MEXICANOS EXBRACEROS 1942-1964; BOYLE HEIGHTS COMMUNITY PARTNERS; UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA; CALIFORNIA FIRES & FIREFIGHTERS; MALIBU FOR SAFE TECH; EMF SAFETY NETWORK; CALIFORNIANS FOR SAFE TECHNOLOGY; 5G FREE CALIFORNIA; and CHILDREN'S HEALTH DEFENSE,

Plaintiffs and Petitioners,

v.

Case No. 23STCP00750
Judge: Hon. James C. Chalfant, Dept. 85

Filed Under California Environmental Quality Act ("CEQA")

REPLY IN SUPPORT OF DEFENDANTS' AND RESPONDENTS' MOTION FOR JUDGMENT ON THE PLEADINGS

Date: February 13, 2024
Time: 9:30 a.m.
Dept.: 85

Action Filed: March 7, 2023
Trial Date: Not Set

COUNTY OF LOS ANGELES; COUNTY OF LOS ANGELES BOARD OF SUPERVISORS; COUNTY OF LOS ANGELES REGIONAL PLANNING COMMISSION; COUNTY OF LOS ANGELES DEPARTMENT OF REGIONAL PLANNING; COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS; and DOES 1-10, inclusive,

Defendants, Respondents and Real Parties in Interest.

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I. INTRODUCTION

"Invalidating legislation is serious business." (*Persky v. Bushey* (2018) 21 Cal.App.5th 810, 818.) Thus, when considering a facial challenge to an ordinance, the Court must start with the presumption that the ordinance is valid, and then determine whether the allegations in the petition are sufficient to overcome this presumption. To do so, the allegations must show a "total and fatal conflict" with the Constitution or state law. (*See*, *e.g.*, *Faulkner v. Cal. Toll Bridge Authority* (1953) 40 Cal.2d 317, 330 ["plaintiffs' pleading must be examined in the light of the presumptions stated"]; *Pieri v. City & Cnty. of San Francisco* (2006) 137 Cal.App.4th 886, 894 ["we can only invalidate the [] ordinance if it presents a 'total and fatal conflict' with state law"]; *Gerawan Farming, Inc. v. Agric. Labor Relations Bd.* (2017) 3 Cal.5th 1118, 1138 [a challenger must show that "the statute inevitably pose[s] a present total and fatal conflict with applicable constitutional prohibitions"].)[1]

The County's MJOP asserts that the Petitioners' allegations are insufficient to overcome the presumption of validity. In their Opposition, Petitioners do not argue that they satisfy this pleading burden. Instead, they argue that the MJOP is "improper" because it (1) "rests on a flawed premise that the challenged approvals are quasi-legislative and hence require a higher burden of proof under CCP section 1085"; and (2) "improperly raises a question of fact, including for preemption and ripeness defenses, which cannot be properly decided on an MJOP without the administrative record." (Opp., p. 8:12-25.)[2] Both arguments fail.

First, the County's premise that Section 1085 applies here is not "flawed"—it is the law. Adopting an ordinance is a legislative act reviewed under Section 1085, not Section 1094.5. (*See Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 258.) Further, "[a]lthough both standards require a reasonable basis for the decision [citation], they should not be conflated….The arbitrary and capricious standard of review employed under [] section 1085 is more deferential to agency decision making than the substantial evidence standard [applied under 1094.5]." (*American Coatings Association, Inc. v. South Coast Air Quality District* (2012) 54 Cal.4th 446, 461.) Under Section 1094.5

[1] California courts "have sometimes applied a more lenient standard, asking whether the statute is unconstitutional 'in the generality or great majority of cases.'" (*Gerawan Farming*, 3 Cal.5th at 1138.)

[2] Petitioners also argue that the MJOP improperly "challenges the ***veracity*** of Petitioners' pleadings..." (*Id.*, p. 8:12-14). This appears to be the same as the argument that the MJOP "raises a question of fact."

the Court may need to examine the administrative record, but a Section 1085 facial challenge to legislation will fail at the pleading stage if the allegations do not overcome the presumption of validity. (*See Justesen's F. S., Inc. v. City of Tulare* (1941) 43 Cal.App.2d 616, 621 [affirming order sustaining demurrer: "Resolving every possible presumption in favor of the validity of the ordinance, appellant has not sustained its burden of alleging and showing that the city council acted in an arbitrary manner"].)

Second, Petitioners are wrong that the MJOP "raises a question of fact." (Opp., p. 8:20.) The County's argument is that ***even assuming*** Petitioners' allegations are true, they do not state a valid claim. For example, even if it is true that "[t]he operation of multiple wireless facilities in the same location over time ***may cause*** substantial adverse environmental impact" and "***can*** often [] sicken local residents," (*id.*, p. 11:20-27), this falls far short of satisfying Petitioners' pleading burden on a facial due process challenge, namely, that the Ordinance is unconstitutional in all or most circumstances. (*See Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 679.)[3] Furthermore, the "disputes" that Petitioners argue are "factual" are actually legal disputes. For example, Petitioners claim that whether the Ordinance "labels" processes "ministerial" is a factual dispute. (Opp., p. 16:26-28.) But the "interpretation of an ordinance presents a question of law." (*Woodland Park Management, LLC v. City of East Palo Alto Rent Stabilization Bd*. (2010) 181 Cal.App.4th 915, 919.) Petitioners also argue that "preemption and ripeness" "raise a question of fact." (Opp., p.8:20-21). Not so, particularly where, as here, the allegations are assumed true. (See *Garcia v. Superior Court of L. A. Cnty.* (2022) 80 Cal.App.5th 63, 66 ["[F]ederal preemption presents a pure question of law."]; *Felkay v. City of Santa Barbara* (2021) 62 Cal.App.5th 30, 39 ["[r]ipeness is a question of law"].) For these reasons, and those below, the MJOP should be granted..

II. ARGUMENT

A. The Due Process Claim Fails On The Pleadings

In analyzing facial constitutional challenges, California courts apply a "*Salerno-type*" standard, which requires the challenger to show that the ordinance is unconstitutional in all (or at minimum, most) circumstances. (*Sanchez*, 145 Cal.App.4th at 679 ["Outside [free speech and abortion rights], California courts apply a *Salerno-type* approach to facial constitutional challenges in general."]; citing *United States*

[3] Also, as discussed in the MJOP, speculative allegations do not overcome the presumption of validity. (See *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.)

v. Salerno (1987) 481 U.S. 739.) Here, Petitioners do ***not*** argue that they have pled facts to satisfy *Salerno*. Instead, they argue that they do not need to plead such facts because *Salerno* "does not involve an MJOP or pleading challenge" and only requires a plaintiff to "establish" (i.e., not "plead") that the Ordinance is invalid in all circumstances. (Opp., p.12:25-29.) This is nonsense. It does not matter that *Salerno* was not decided on an MJOP—what matters is that it sets forth a key element of a facial constitutional challenge. "[T]o avoid dismissal [at the pleading stage], plaintiffs [a]re required to plead facts supporting the elements of their claims. This is equally true of as applied and facial constitutional challenges." (*Rubin v. Padilla* (2015) 233 Cal.App.4th 1128, 1155.)

Moreover, facial challenges on constitutional grounds are routinely dismissed at the pleading stage for failure to satisfy the *Salerno* standard. (*See*, *e.g.*, *Browne v. Cnty. of Tehama* (2013) 213 Cal.App.4th 704, 711 [affirming order sustaining demurrer where "Petitioners raise a facial challenge to the Ordinance and have failed to plead that its provisions [are invalid] in all or most circumstances."]; *Coffman Specialties, Inc. v. Dep't of Transportation* (2009) 176 Cal.App.4th 1135, 1154 [demurrer properly sustained to procedural due process challenge because "[t]he possibility that…some future situation [may] unreasonably delay the process does not show that the statutes 'inevitably pose[] a present total and fatal conflict with applicable constitutional prohibitions,' nor [that it] violates due process in 'the generality or great majority of cases"].)

For similar reasons, Petitioner's effort to distinguish the facts of various due process cases is unavailing. (See Opp., pp. 12-15.) The relevance of those cases is that they set forth the ***legal*** standard that Petitioners' must satisfy here—that the Ordinance is invalid in "all or most circumstances." Petitioners offer no authority that this standard does not apply here. Moreover, Petitioners essentially concede that the allegations in the Petition do not meet *Salerno*. At best, the Petition provides "examples" of imagined circumstances in which the Ordinance "may" be applied unconstitutionally to "some" people. (See Opp., p. 14:21-31.) This is also why Petitioners' due process claim is not ripe. Courts routinely dismiss due process facial challenges at the pleading stage on this ground. (See, e.g., *Smith v. City and County of San Francisco* (1990) 225 Cal.App.3d 38, 54 [affirming dismissal on demurrer because "appellants fail to state ripe claims for denial of due process "]; *Stonehouse Homes LLC v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 534 [same].)

B. The "Unlawful Categorical Ministerial Designation" Claim Fails On The Pleadings

The basis for this claim was indecipherable in the Petition; the Opposition does nothing to clarify it. Petitioners argue that their Petition "specif[ies] at least two provisions where the County designated an Eligible Facilities Request ("EFR") and a macro facility permit as eligible for Ministerial Site Plan Review" and "Petitioners challenged that designation as inconsistent with CEQA's definition of ministerial, as well as CEQA's prohibition of pre-commitment." (Opp., p. 16:8-10; 16:27-30.) To the extent that Petitioners are alleging that the County improperly exempted the Ordinance from environmental review under CEQA, that contention is duplicative of the Petitioners' CEQA claims (causes of action 1 and 2). To the extent that Petitioners seek to argue that the entire Ordinance should be deemed invalid because there may be some instances in which it may be applied in violation of CEQA, that is not a proper basis under Section 1085 to invalidate a legislative act as it does not show a "total and fatal conflict" with the Constitution or state law. (*See, e.g., Faulkner*, 40 Cal.2d at 330; *Pieri*, 137 Cal.App.4th at 894). This is particularly true given that, as the County has explained, federal law ***requires*** the County to process EFRs (which the Ordinance defines in accordance with federal law) ministerially. (See 47 U.S.C. § 1455(a)(1).) Finally, as noted above, Petitioners also claim that there is "a dispute of facts" as to whether the Ordinance "labels" certain processes ministerial. (Opp., p. 16:26-30.) But this alleged "dispute" requires an interpretation of the Ordinance, which "presents a question of law"—not fact. (*Woodland Park Management,* 181 Cal.App.4th at 919.)

C. The General Plan Inconsistency Claim Fails On The Pleadings

As to this claim, Petitioners do ***not*** argue that there is a factual dispute. Instead, Petitioners argue that: (1) the County "basically tries to evade" the requirements set forth in Government Code section 65860 by "focus[ing] only on one policy regarding wireless facilities which the County claims is the only relevant one" (Opp., p. 17:5-9); and (2) the County's "preemption challenge" fails because the Telecommunications Act of 1996 (47 U.S.C. § 332(c)(7)) ("TCA") expressly authorizes the County to "make zoning regulations." (*Id*., at 17:20-24.) These arguments have no merit.

First, the County does not "try to evade" Government Code section 65860. The County identified several telecommunications-specific policies that are directly advanced by the Ordinance, but did not

argue that this is the only reason the Ordinance is consistent with the General Plan.[4] Rather, the County referenced these policies to show consistency with its telecommunications-specific goals and to highlight material distinctions between these policies and those identified in the Petition. Petitioners miss the larger point—they do not properly allege a legally sufficient general plan inconsistency claim because they fail to identify a conflict with a "***fundamental, mandatory, and clear***" policy. (*Endangered Habitats League, Inc. v. Cnty. of Orange* (2005) 131 Cal.App.4th 777, 782, emphasis added.) Instead, Petitioners identify only general open space and natural and cultural resource policies, which do not mention telecommunications and do not impose obligations incompatible with the Ordinance.[5] Furthermore, none of Petitioners' allegations support their inconsistency claim. Petitioners contend that the Ordinance is inconsistent with the general open space and natural and cultural resource policies because it allows for the issuance of permits for wireless facilities having certain heights, does not limit "the amount or number of facilities that can be built within the same location," wireless facilities "pose[ ] a fire hazard," and permits may be issued "with no third-party oversight."[6] (*See*, *e.g.,* Pet., at ¶¶ 190-193.) Petitioners fail to explain how such allegations show any inconsistency with those policies. For example, Petitioners fail to explain why a "wireless facility [that] can be built up to 75 feet in height in [an] ***industrial***…zone" (*id.*, ¶ 135; emphasis added) is incompatible with policies discouraging development in riparian habitats or promoting protection of natural and cultural resources.

Second, Petitioners' contentions are plainly deficient in light of federal law. Petitioners note that the County has authority to "make zoning regulations." (Opp., p. 17:24.) But Petitioners ignore that federal law expressly limits this authority, as do the rules on EFRS. (47 U.S.C., § 332(c)(7)(A) [acknowledging the authority of local governments "[e]xcept as provided in this paragraph"]; *T-Mobile*

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[4] Petitioners argue that general plan policies must be "internally consistent." (Opp., p. 17:15-18.) But Petitioners do not allege internal inconsistency in their Petition; thus, the County does not address this argument further. Similarly, Petitioners' reference to *Families Unafraid to Uphold Rural El Dorado Cnty. v. Bd. of Supervisors* (1998) 62 Cal.App.4th 1332, 1338, 1441-42 is misplaced. *Families* affirms that inconsistency must be based on a conflict with a "fundamental, mandatory, and specific land use policy" and a finding of consistency it "carries a strong presumption of regularity." (*Ibid*.)

[5] As a few examples, the policies identified by Petitioners state that the County should "[d]iscourage development" in certain riparian habitats (Pet., ¶ 191), "[p]rotect and conserve the County's natural and cultural resources" (*Id*., at ¶ 190), and "support an inter-jurisdictional collaborative system that protects and enhances historic, cultural, and paleontological resources" (*Id*., at ¶ 195.)

[6] This is incorrect as a matter of law; permit approvals may be challenged in court via writ of mandate. (See, e.g., *McLain Western #1 v. County of San Diego* (1983) 146 Cal.App.3d 772, 775.)

S., LLC v. City of Roswell (2015) 574 U.S. 293, 300 ["The Act generally preserves 'the traditional authority of state and local governments to regulate the location, construction, and modification' of wireless communications facilities like cell phone towers, but imposes 'specific limitations' on that authority.]; see also 47 U.S.C. § 1455(a); 47 CFR § 1.6001-1.6100.) Among other limitations, local governments (a) may not "regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations"; (b) "shall not prohibit or have the effect of prohibiting the provision of personal wireless services"; and (c) must support application denials with "substantial evidence." (47 U.S.C., § 332(c)(7)(B)(i)(II), (iii), (iv).) Thus, if the County were to enact the ordinance that Petitioners want, i.e., that limits the number of wireless facilities that may be approved in an area, imposes height restrictions different than federal law, and denies siting applications on the basis that wireless facilities are (purportedly) generally fire hazards or "sicken local residents," (see Opp., p. 11:20-27), it would be preempted by the federal law. As a matter of law, Petitioners fail to allege the requisite incompatibility, and more importantly, facts to adequately allege that "no reasonable" legislative body could have issued a consistency determination as they are required to do. (*Naraghi Lakes Neighborhood Pres. Assn. v. City of Modesto* (2016) 1 Cal.App.5th 9, 17–18.)

D. <u>The Unlawful Delegation Claim Fails On The Pleadings</u>

Petitioners argue that the Ordinance unlawfully delegates legislative authority to administrative personnel because (1) the determination of whether the Ordinance "contains all the required development standards" "is a question of fact that cannot be decided on an MJOP or on the face of the Ordinance" (Opp., p. 19:16-17), and (2) the Ordinance "left out critical details in development standards, such as the distance of wireless facilities from private or public place." (*Id*., at 19: 21-22) These arguments fail.

First, the contention that an unlawful delegation claim may not be resolved at the pleading challenge is (again) wrong. (See, e.g., *Sims v. Kernan* (2018) 30 Cal.App.5th 105, 115 ["the trial court properly sustained the demurrer [where] plaintiffs have not alleged an improper delegation of authority" claim].) Indeed, the Court need only review the Ordinance to determine whether it is a "total abdication of [legislative] power," which is a question of law. (See *Carson Mobilehome Park Owners' Assn. v. City of Carson* (1983) 35 Cal.3d 184, 190.) Petitioners acknowledge this standard but suggest that it does not

apply here. (Opp., p. 18:23-25) Yet, they present no authority to support that proposition. (See *id.*)

Second, the contention that the Ordinance unlawfully delegates legislative authority because "critical details in development standards, such as the distance of wireless facilities from private or public places" fails as a matter of law. (*Id.*, at 19:21-22.) While "charged with the formulation of policy," a legislative body "may delegate some quasi-legislative or rulemaking authority." (*Sims*, 30 Cal.App.5th at 110.) "For the most part, delegation of quasi-legislative authority…is not considered an unconstitutional abdication of legislative power." (*Id*.) Further the "standards for administrative application of a statute need not be expressly set forth; they may be implied by the statutory purpose." (*Id*., at 114.) At most, Petitioners contend that ***some*** "critical details" are "left out" of the Ordinance. (Opp., p. 19:21-22.) But delegation of ***some*** authority is not a ***total*** abdication of authority.

Additionally, the plain text of the Ordinance, which contains pages of detailed design and development standards and specific permitting procedures, belies Petitioners' claim. (E.g., RJN Exh. 1, Municipal Code, §§ 16.25.040, 16.25.050, 16.25.060, 16.25.070, 22.140.760(D)(1)-(2) and (4) and (E)-(H).) These reflect the Board of Supervisors' policy decisions. Petitioners' citation to *Carson* proves the point; there, the court held there was no unlawful delegation despite the fact that the policy direction given to the review board in that case provided far less legislative guidance. (*Id*., at 18:21-22.)

E. <u>The Unlawful Colocation Claim Fails On The Pleadings</u>

Petitioners' "unlawful colocation" claim is based on the argument that the Ordinance's ministerial review process for SCFs and EFRs violates Gov. Code 65850.6. Petitioners' arguments are based on an oversimplification of the relevant terms of art, and a misreading of state and federal law.

First, Petitioners contend that absent "semantic differences," all colocations under state or federal law are essentially the same. (See*, e.g.,* Opp., p. 20:3-5.) This ignores significant differences in the three types of colocation, which are defined differently in the relevant laws. Each definition involves placement of a wireless facility on a ***specified*** universe of structures in ***specified*** circumstances—and different rules apply to each. Of the three definitions relevant here, the federal definition in 47 C.F.R. § 1.6002(g)(1)-(2) is the broadest; it involves placement of any wireless facility on the widest universe of structures, namely, any pre-existing structure "whether or not [the structure] has an existing antenna facility" on it. (*See* 47 C.F.R. §§ 1.6002(g)(1-2); 1.6002(m); 1.6003(c)(1)(i).)

The definition relevant for EFRs is narrower; it involves placement of facilities only on an "existing" "tower" or "base station," meaning one that (a) has wireless antennas and facilities already on it, and (b) has been constructed after review/approval under any applicable zoning or siting process (*see* 47 C.F.R. § 1.6100(b)(1), (2), (4), (5) and (9))—***and then only if*** such placement also does not "substantially change" the physical dimensions of the structure according to detailed criteria. (*See* 47 C.F.R. § 1.6100(b)(3),(7).) Finally, the narrowest definition is in state law, which involves placement on a "wireless telecommunications colocation facility," meaning a structure that was (a) purpose-built for wireless, (b) has wireless already on it, and (c) was designed to include future colocation facilities, and was approved under a review process specified in that statute—***and then only if*** such placement meets the criteria set forth in the statute. (*See* Gov. Code 65850.6.)

Petitioners improperly conflate these distinct definitions, characterizing the County's insistence that these definitions matter as "semantic games." (Opp., p. 19:33-p. 20:9.) Moreover, after proposing that the Court ignore these differences, Petitioners invite the Court to rewrite Section 65850.6 to ***prohibit*** ministerial review of every type of collocation ***except*** on a "wireless telecommunications colocation facility" as defined by state law.[7] (See *id*., p. 20:22-30.) This both turns the statute on its head and greatly expands its scope. Section 65850.6 ***does not bar*** the County from employing a ministerial review process for any collocations on any type of structure; to the contrary, by its plain language, it ***mandates*** ministerial review. (See Gov. Code 65850.6(a) ["A colocation facility ***shall be a permitted use*** not subject to a [] discretionary permit if it satisfies the [enumerated] requirements]; emphasis added.) This means that Section 65850.6 actually ***bars*** the County from employing a **discretionary review** process for a specific type of collocation on a specific type of structure (*i.e.*, a "colocation facility" on a "wireless telecommunications colocation facility" as defined in the statute. In short, that Gov. Code 65850.6 law ***requires*** ministerial review of one type of collocation defined in state law does not mean that it ***prohibits*** ministerial review of all other types of collocations defined in federal law, as Petitioners claim. (*Fisher v City of Berkeley* (1984) 37 Cal. 3d 644, 707, aff'd (1986) 475 U.S. 260 ["the absence of a statutory restraint is the very occasion for municipal initiative"].) Obviously, by

[7] Petitioners engage in various rewriting attempts. The broadest example is in their Opening Memo of P&A 19:6-8 where they claim Section 65850.6(a) "***allows*** a new collocation facility as a permitted use not subject to discretionary permit ***only if***…." (*emphasis added*; footnote omitted).

subjecting a broader set of applications to ministerial review than Section 65850.6 requires, the Ordinance does not violate the statute.

Furthermore, that certain EFRs and SCFs can involve collocation as defined in federal law does not, as Petitioners contend, mean that the procedures set forth in Section 65850.6 apply to these colocations. Nor does the fact that certain EFRs and SCFs do not involve colocation at all mean the County's MJOP is a "partial challenge." (Opp., p. 20:12-13, 31-37, 21:1-13.) To start, definitions matter. Petitioners mix up which federal definition of colocation applies to SCFs[8] and miss that the Ordinance employs both federal definitions.[9] Further, because the definitions of EFRs and SCFs include deployments that do not involve colocation at all means the Petitioners' challenge to the County's ministerial review process for these facilities is at best partial, hypothetical, and illogical (i.e., that some subset of EFR and SCF applications might also qualify as an application for a "colocation facility" under state law—which itself would require ministerial review). And because the County has opted to allow ministerial review of a broader range of facilities than the "colocation facility" in Section 65850.6, that ensures compliance with the state statute's ministerial review requirement where there is such overlap, not its violation.

Second, as to Petitioner's misreading of the law, regarding EFRs, the County is not arguing that federal law preempts the Ordinance; it is Petitioners who "miss the point" and misconstrue federal law. Contrary to Petitioner's claim, the Ordinance does not set "conditions" that the County "should require from an operator *before* it can decide *whether* to approve or deny an EFR." (Opp., p. 20:14-30; emphasis in the original.) The Ordinance incorporates the only criteria the County may lawfully apply to evaluate EFR applications, those set forth in 47 C.F.R. § 1.6100. An application that meets those EFR criteria must be approved, [n]otwithstanding …*any other provision of law*…" (47 U.S.C. § 1455(a)(1); emphasis added); see also 47 C.F.R. § 1.6100(c).) Petitioners omit this express preemption language from their brief, but it cannot be ignored. (Opp., p. 20:17.) Despite this express preemption, Petitioners

[8] Petitioners correctly point out an error in the MJOP's description of scope of non-EFR "collocation". Page 14, line 23 should read: "But a SCF "collocation" under federal law <u>on an existing structure without wireless</u> cannot be a "collocation facility" under state law." (*See* Opp., p. 21:1-3.)

[9] They cite to the "collocation" definition in the Ordinance which tracks the broadest collocation definition in federal regulations, apparently unaware that the definition of "Eligible Facilities Request" states that for EFR purposes, the federal definition of collocation applicable to EFRs applies.

also claim that the County can avoid preemption by requiring the applicant to gather and prepare certain information related to Gov. Code 65850.6(a)-(b) prior to applying for an EFR, and the applicant's failure to comply would simply render the application incomplete (Opp., p. 20:26-30.) Petitioners fail to recognize federal EFR rules also preempt application requirements that are not reasonably related to determining whether the request meets the EFR criteria [the County "may require the applicant to provide documentation [] only to the extent reasonably related to determining whether the request meets [the EFR criteria]… and may not require an applicant to submit any other documentation" (47 C.F.R. § 1.6100(c)(1)), and Petitioners offer no hint as to the possible relevance of the desired information to the EFR criteria which must be applied. Petitioners' bald statement that there is a factual dispute over federal preemption should be disregarded. (Opp., p. 21:14-17). They identify no factual disputes related to the issues involved in federal preemption, and there are none. Petitioners' reliance on *Cellphone Termination Fee Cases* (2011) 193 Cal. App.4th 298 is inapposite. Just like *Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077 (re demurrer), the facts in this MJOP are undisputed.

F. The Declaratory Relief Claims Fail On The Pleadings

Petitioners do not dispute that their declaratory relief claims are duplicative of their writ claims. Nor can they. The Petition does not even plead a separate declaratory relief claim; it simply tacks the purported declaratory onto each cause of action. (*See Ball v. FleetBoston Financial Corp.* (2008) 164 Cal.App.4th 794, 800 (wholly derivative declaratory claims should be dismissed on the same grounds). Also, declaratory relief claims are routinely dismissed at the pleading challenges. (See *id*.; see also *Osseous Techs. of Am., Inc. v. DiscoveryOrtho Partners LLC* (2010) 191 Cal.App. 4th 357, 360.)

III. CONCLUSION

For all these reasons, the County respectfully requests that the MJOP be granted.

Dated: February 5, 2024

BEST BEST & KRIEGER LLP

By: _____

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PROOF OF SERVICE

At the time of service I was over 18 years of age and not a party to this action. My business address is 300 S. Grand Ave., Floor 25, Los Angeles, CA 90071. On February 5, 2024, I served the following document(s):

REPLY IN SUPPORT OF DEFENDANTS' AND RESPONDENTS' MOTION FOR JUDGMENT ON THE PLEADINGS

☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

☐ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below (specify one):

☐ Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☐ Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Riverside, California.

☐ **By personal service.** At ____ a.m./p.m., I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an Individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service. A Declaration of Messenger is attached.

☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☒ **By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons .at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 5, 2024, at Los Angeles, California.

Houda Matar