

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BESARO MOBILE HOME PARK, LLC,

No. 10-00478 CW

Petitioner,

ORDER DENYING ALJ  
ASTLE'S MOTION TO  
DISMISS AND  
STAYING FEDERAL  
PROCEEDINGS  
PENDING  
COMPLETION OF  
STATE COURT  
PROCEEDINGS  
(Docket No. 30)

v.

THE CITY OF FREMONT, THE CITY OF  
FREEMONT RENT REVIEW OFFICER MAY LEE,  
THE CITY OF FREMONT HEARING OFFICER  
RUTH J. ASTLE,

Respondents.

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Petitioner has filed a complaint entitled, "Petition for Writ of Administrative Mandamus," seeking judicial review of an administrative decision regarding Petitioner's request to increase the rents at its mobile home park, and seeking redress for constitutional violations under 42 U.S.C. § 1983. Respondent Ruth S. Astle moves to dismiss Petitioner's complaint against her because, as an Administrative Law Judge (ALJ), she enjoys judicial immunity from suit.<sup>1</sup> Petitioner opposes the motion. The matter

<sup>1</sup> Respondents City of Fremont and Rent Review Officer May Lee stipulated with Petitioner to stay the proceedings in this case pending the resolution of a similar case Petitioner filed in state court. The Court signed the stipulation, but vacated the stay the next day when it became clear that ALJ Astle opposed the stay, at least until the Court ruled on her motion to dismiss. The Court extended the deadline for Respondents City of Fremont and Officer Lee to answer the complaint until twenty days after the Court rules on ALJ Astle's motion.

1 was taken under submission on the papers. Having considered all of  
2 the papers filed by the parties, the Court DENIES Respondent  
3 Astle's motion.<sup>2</sup>

4 BACKGROUND

5 Petitioner operates a 236 space mobile home park in Fremont,  
6 California. On July 15, 2005, Petitioner sued the City of Fremont  
7 in this Court, seeking a determination that Fremont's rent control  
8 ordinance was unconstitutional both facially and as-applied. The  
9 Court found that the facial challenge was barred by the statute of  
10 limitations, and that the as-applied challenge was unripe because  
11 Petitioner had failed to exhaust its available state remedies. The  
12 Ninth Circuit affirmed.

13 In January, 2009, Petitioner applied for a "major" rent  
14 increase pursuant to Fremont's rent control ordinance, seeking a  
15 rent increase to the monthly fair market rent of \$895, to be  
16 effective March 1, 2009. Fremont appointed Respondent Astle as the  
17 hearing officer for Petitioner's request.

18 On or about November 4, 2009, Respondent Astle issued her  
19 decision, denying Petitioner's request for the rent increase.

20 On February 2, 2010, Petitioner filed this petition for  
21 administrative mandamus, naming as Respondents the City of Fremont,  
22 the City of Fremont's Rent Review Officer May Lee, and ALJ Astle,  
23 and seeking redress for constitutional violations under 42 U.S.C.

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25 <sup>2</sup> The Court denies the requests for judicial notice from  
26 Petitioner and ALJ Astle because the documents submitted have no  
27 relevance to the issue presented in this motion.

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1 § 1983. Petitioner alleges that Fremont's rent control ordinance  
2 is unconstitutional facially and as-applied, and that ALJ Astle's  
3 determination was legally and factually incorrect. Also on  
4 February 2, 2010, Petitioner filed a petition for writ of  
5 administrative mandamus in Alameda County Superior Court, seeking  
6 judicial review of ALJ Astle's determination. On June 8, 2010, ALJ  
7 Astle filed this motion to dismiss.

8 DISCUSSION

9 I. Legal Standard

10 A complaint must contain a "short and plain statement of the  
11 claim showing that the pleader is entitled to relief." Fed. R.  
12 Civ. P. 8(a).

13 II. Judicial Immunity

14 ALJ Astle argues that, as an ALJ, she enjoys complete immunity  
15 for acts undertaken pursuant to her role as a judicial officer.  
16 Petitioner responds that ALJ Astle is not immune from this suit  
17 because it seeks only injunctive relief and not damages.

18 Judges and those performing judge-like functions are  
19 absolutely free from liability for damages for any acts performed  
20 in their official capacities. Ashelman v. Pope, 793 F.2d 1072,  
21 1075 (9th Cir. 1986) (en banc). Judicial immunity does not bar  
22 claims for injunctive relief in § 1983 actions against state  
23 judges. Pulliam v. Allen, 466 U.S. 522, 541-42 (1984); Ashelman,  
24 793 F.2d at 1075. However, "in any action brought against a  
25 judicial officer for an act or omission taken in such officer's  
26 judicial capacity, injunctive relief shall not be granted unless a  
27 declaratory decree was violated or declaratory relief was

1 unavailable." 42 U.S.C. § 1983 (as amended by Pub. L. 104-317,  
2 Title III, § 309(c), 110 Stat. 3853 (Oct. 19, 1996)) (superceding  
3 Pulliam, in part).

4 Citing State of California v. Superior Court, 12 Cal. 3d 237,  
5 249 (1974), Petitioner contends that injunctive relief is available  
6 against ALJ Astle because declaratory relief is an inappropriate  
7 means to review an administrative agency decision under California  
8 law. Thus, Petitioner contends that, because 42 U.S.C. § 1983  
9 authorizes injunctive relief against state judicial officers when  
10 declaratory relief is unavailable, ALJ Astle is a proper party to  
11 this action.

12 ALJ Astle argues that State of California v. Superior Court  
13 does not hold that declaratory relief is unavailable against state  
14 judicial officers, but that declaratory relief is not an  
15 appropriate way to initiate review of an administrative agency  
16 decision. However, Petitioner here is attempting to initiate such  
17 review, and, under California law, administrative mandamus, not  
18 declaratory relief, is the proper vehicle for review of an  
19 administrative agency decision. State v. Superior Court, 12 Cal.3d  
20 at 249. Moreover, judges may be named as parties to mandamus  
21 actions. See In re Justices of the Supreme Court of Puerto Rico,  
22 695 F.2d 17, 23 (1st Cir. 1982) ("For example, judges are  
23 frequently named as Respondents when litigants seek writs of  
24 mandamus, prohibition, and the like. In such instances . . . the  
25 judge is named as a party as a matter of proper form, the writ is a  
26 traditional and well-accepted procedural device for transmitting  
27 instructions from one court to another, and there are sound

1 procedural reasons for making the judge a formal participant in an  
2 ongoing controversy over his disposition of an existing suit." ).

3       The case ALJ Astle cites, Moore v. Brewster, 96 F.3d 1240 (9th  
4 Cir. 1996), is not to the contrary. Although Moore found that  
5 federal judicial officers are immune from suit for declaratory and  
6 injunctive relief as well as for damages, it recognized, citing  
7 Pulliam, 466 U.S. at 541-42, that state judicial officers are  
8 immune only from suits for damages. Id. at 1243. ALJ Astle argues  
9 that, because Pulliam has been superceded by the 1996 amendment to  
10 § 1983, Moore should be read to bar declaratory or injunctive  
11 relief against state judges as well. This argument is not  
12 well-taken; under the plain language of the amendment, the basic  
13 holding of Pulliam that state judges may be sued for injunctive  
14 relief remains intact. Instead, Congress limited the availability  
15 of injunctive relief against state judicial officers to situations  
16 where "a declaratory decree was violated or declaratory relief was  
17 unavailable." 42 U.S.C. § 1983. Here, declaratory relief is  
18 unavailable; thus, ALJ Astle is not entitled to judicial immunity  
19 from suit for injunctive relief in these circumstances.

20       Petitioner represents that it included ALJ Astle in the suit  
21 because it wished to avoid an argument by opposing counsel that it  
22 had failed to join a necessary party to the action under Federal  
23 Rule of Civil Procedure 19(a)(1). ALJ Astle is thus named a party  
24 to this action as a formality, similar to the manner in which  
25 judges are sometimes named parties to mandamus actions. See In re  
26 Justices, 695 F.2d at 23 (judges properly named as Respondents in  
27 actions for writ of mandamus as a means of transmitting

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1 instructions from one court to another). ALJ Astle need not appear  
2 in court in conjunction with this suit, nor must she file any  
3 papers. The parties are ordered to notify her and the State  
4 Attorney General immediately if there is any change in the posture  
5 of the case that could affect her interests.

6 CONCLUSION

7 For the foregoing reasons, ALJ Astle's motion to dismiss is  
8 DENIED. As discussed in this Court's order of May 27, 2010 and at  
9 the Case Management Conference of June 8, 2010, the Court stays  
10 this action, pending final resolution of the state court  
11 proceedings, including any and all appeals. The Clerk of the Court  
12 shall administratively close the case. Nothing herein shall  
13 preclude any party from seeking to dissolve this stay or re-open  
14 this case during the pendency of the state court proceedings,  
15 pursuant to noticed motion filed with this Court. The parties  
16 shall advise the Court within sixty days of the final resolution of  
17 the state court proceedings. If upon resolution of the state  
18 proceedings, Petitioner wishes to reopen the case, it shall file a  
19 noticed motion to do so. The parties shall file a joint status  
20 report on November 1, 2010 and every 180 days thereafter.

21 IT IS SO ORDERED.

22 Dated: July 29, 2010



23 CLAUDIA WILKEN  
24 United States District Judge

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