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Dora Luna, Supervising Judge, California
8 *Department of Social Services*

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES, NORTH DISTRICT
12

13 **ROBERT COLACO,**

Petitioner,

15 v.

16 **DORA LUNA, SUPERVISING JUDGE,**
17 **STATE OF CALIFORNIA**
18 **DEPARTMENT OF SOCIAL SERVICES**
19 **811 WILSHIRE BOULEVARD, SUITE 1118**
20 **LOS ANGELES, CA 90017**

Respondent.

Case No. 19AVCP00259
Reservation ID: 277611121084

**NOTICE OF RESPONDENT DORA
LUNA'S DEMURRER TO PETITION
FOR WRIT OF MANDAMUS AND
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF; DECLARATION
OF NICOLE J. KAU**

Date: March 19, 2020
Time: 8:30 a.m.
Dept: A-15
Action Filed: October 10, 2019
Judge: The Hon. Wendy Chang

21
22 **TO ALL PARTIES:**

23 PLEASE TAKE NOTICE THAT on March 19, 2020, at 8:30 a.m. or as soon thereafter
24 as the matter may be heard in Department A-15 of the above-entitled court, located at 42011
25 Fourth Street West, Lancaster, CA 93534, respondent Dora Luna will and hereby does demur
26 to the petition for writ of mandamus and complaint filed on October 10, 2019, on the grounds
27 that it fails to state a cause of action pursuant to Code of Civil Procedure section 430.41.

28 The demurrer is based on this notice, Memorandum of Points and Authorities,

1 Declaration of Nicole J. Kau and exhibits attached thereto, upon all of the pleadings and
2 documents on file in this action, and any such argument as may be made at the hearing on the
3 motion.

4 Dated: February 3, 2020

Respectfully Submitted,

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6 XAVIER BECERRA
Attorney General of California
7 RICHARD T. WALDOW
Supervising Deputy Attorney General

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10 NICOLE J. KAU
Deputy Attorney General
11 *Attorneys for Respondent*
12 *Dora Luna, Supervising Judge, California*
13 *Department of Social Services*

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1 INTRODUCTION

2 Petitioner Robert Colaco (Petitioner) has filed a complaint/petition that seems to appeal the
3 administrative decision issued by respondent Dora Luna (Respondent), Presiding Administrative
4 Law Judge¹ of the California Department of Social Services (the Department). However, the
5 administrative decision—attached to the complaint/petition as Exhibit 3—was squarely in
6 Petitioner’s favor. Therefore, Respondent files this demurrer as against the whole
7 complaint/pleading because the pleading fails to state facts sufficient to constitute a cause of
8 action against Respondent. (Code Civ. Proc., § 430.10, subd. (e).)²

9 FACTUAL AND PROCEDURAL BACKGROUND

10 The Los Angeles County Department of Public Social Services (the County) is responsible
11 for determining an applicant’s eligibility and need for the In-Home Supportive Services (IHSS)
12 program. (Exh. 3 of Ptn, at p. 5.) On September 27, 2017, the County discontinued Petitioner’s
13 IHSS benefits, effective October 10, 2017. (Exh. 3 of Ptn, at p. 1.) Petitioner then appealed, and
14 the Department, at the State level, held an administrative hearing on July 2, 2018. (*Ibid.*) The
15 Department issued a decision squarely in Petitioner’s favor, ordering the County to rescind the
16 discontinuance of Petitioner’s IHSS benefits and aid him as otherwise eligible. (Exh. 3, at p. 7.)
17 Nevertheless, Petitioner filed a complaint/petition against the Department (leaving out the
18 County), alleging that he has founded an organization called Founder of Citizens for a Better
19 America, which will bring a \$1-billion-dollar class action suit. (Complaint/petition, pp. 3-4.)

20 DISCUSSION

21 I. RESPONDENT ATTEMPTED TO MEET AND CONFER PURSUANT TO
22 CODE OF CIVIL PROCEDURE 430.41.

23 On December 23, 2019, Respondent’s counsel sent a letter to Petitioner via e-mail
24 pursuant to section 430.41 to meet and confer regarding the defective petition. (Kau Decl., ¶ 2
25 [Exh. A].) The letter stated that Respondent intends to file a demurrer as to the whole
26 complaint/pleading because it fails to state a cause of action given that the administrative decision

27 ¹ The Complaint states Dora Luna’s title is “Supervising Judge,” but her title is Presiding
Administrative Law Judge.

28 ² All further statutory references are to the Code of Civil Procedure unless otherwise
noted.

1 below was in Petitioner's favor. The letter requested Petitioner to call Respondent's counsel by
2 January 31, 2020. On December 27, 2019, Respondent's counsel called Petitioner at 818-574-
3 8911 (the phone number on the petition) and left a voicemail. (Kau Decl., ¶ 3.) On January 3,
4 2020, Respondent's counsel mailed the same letter emailed on December 23, 2019, but with the
5 date updated. (Kau Decl., ¶ 4 [Exh. B].)

6 Petitioner has not contacted Respondent's counsel as of February 3, 2020. (Kau Decl., ¶
7 5.)

8 **II. THE DEMURRER SHOULD BE SUSTAINED WITHOUT LEAVE TO**
9 **AMEND BECAUSE RESPONDENT'S ADMINISTRATIVE DECISION WAS**
10 **WHOLLY IN PETITIONER'S FAVOR AND THERE IS NO ACTUAL**
11 **CONTROVERSY BETWEEN THE PARTIES.**

12 The sufficiency of a petition for writ of mandamus may be tested by a demurrer. (*Gong v.*
13 *City of Fremont* (1967) 250 Cal.App.2d 568, 571). In addition to the pleading itself, courts may
14 consider the exhibits attached to the pleading when reviewing the pleading's sufficiency.
(*Hoffman v. Smithwoods RV Park, LLC* (2009) 179 Cal.App.4th 390, 400.)

15 "A writ petition that reveals a lack of standing to sue is 'vulnerable to a general demurrer
16 on the ground that it fails to state a cause of action.'" (*Brown v. Crandall* (2011) 198 Cal.App.4th
17 1, 8.) Standing to sue for a writ of mandate requires that the petitioner be beneficially interested.
18 (§ 1086.) "To establish a beneficial interest, the petitioner must show he or she has some special
19 interest to be served or some particular right to be preserved or protected through issuance of the
20 writ. A petitioner has no beneficial interest if she will gain no direct benefit from the issuance of
21 a writ and suffer no direct detriment if it is denied." (*Brown*, 198 Cal.App.4th at p. 8.) "The
22 purpose of a standing requirement is to ensure that the courts will decide *only actual*
23 *controversies between parties* with a sufficient interest in the subject matter of the dispute to press
24 their case with vigor." (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 439,
25 emphasis added.)

26 "Leave to amend should be denied where the facts are not in dispute and the nature of the
27 claim is clear, but no liability exists under substantive law." (*Lawrence v. Bank of America*
28 (1985) 163 Cal.App.3d 431, 436 (*Lawrence*); *Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th

1 1350, 1371 [abuse of discretion if there was reasonable probability that complaint could have
2 been amended to cure the defect].)

3 Petitioner does not have standing and there is no actual controversy between the parties
4 because the Department's administrative decision was in Petitioner's favor. (Exh. 3 of Ptn.)
5 Issuance of a writ here to the Department will not provide Petitioner any benefit, and denying the
6 petition will cause no detriment to Petitioner. Thus, Petitioner has failed to state a cause of action
7 against Respondent.

8 To the extent Petitioner alleges any grievances *against the County*, regarding administration
9 of benefits, those claims need to be alleged directly against the County. (E.g., *Brown, supra*, 198
10 Cal.App.4th at p. 9 [writ of administrative mandamus against County for failure to provide
11 residual medical coverage].) As against the Department, the State agency that issued the
12 administrative decision below, Petitioner has no claim.

13 The Court should sustain this demurrer without leave to amend because the facts are not in
14 dispute, and there is no liability under the law. (*Lawrence, supra*, 163 Cal.App.3d at pp. 436-437
15 [affirming trial court order sustaining demurrer without leave to amend because facts not in
16 dispute, claim is clear, and no liability exists under the law].) In other words, there is no
17 reasonable probability that Petitioner can cure the defect in its case against the Department.

18 CONCLUSION

19 Because there is no actual controversy between Petitioner and Respondent, Respondent
20 requests that the Court sustain the demurrer without leave to amend.

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1 Dated: February 3, 2020

Respectfully Submitted,

2 XAVIER BECERRA
3 Attorney General of California
4 RICHARD T. WALDOW
5 Supervising Deputy Attorney General



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7 NICOLE J. KAU
8 Deputy Attorney General
9 *Attorneys for Respondent*
10 *Dora Luna, Supervising Judge, California*
11 *Department of Social Services*

12 **DECLARATION OF NICOLE J. KAU**

13 I, Nicole J. Kau, declare as follows:

14 1. I am an attorney at law, licensed to practice before all courts of the State of
15 California, and a Deputy Attorney General within the Attorney General's Office. As part of my
16 official duties in this capacity, I have been assigned to represent respondent Dora Luna, Presiding
17 Administrative Law Judge,³ California Department of Social Services in the above-captioned
18 matter. I have knowledge of the following facts based on my personal knowledge. Thus, I am
19 competent to testify to their truth if called as a witness.

20 2. On December 23, 2019, I sent a letter to petitioner Robert Colaco via e-mail
21 (FounderRC@CFABA.NET, as listed on the complaint/petition), pursuant to Code of Civil
22 Procedure section 430.41, to meet and confer regarding a demurrer. The letter stated that
23 Respondent intends to file a demurrer as to the whole complaint/pleading because it fails to state
24 a cause of action given that the administrative decision below was in petitioner's favor. The letter
25 requested that petitioner call me by January 31, 2020. Attached as Exhibit A is a true and correct
26 copy of the letter.

27 3. On December 27, 2019, I called Petitioner at 818-574-8911 (the phone number on the
28 petition) and left a voicemail, asking him to call me back.

³ The Complaint states Dora Luna's title is "Supervising Judge," but her title is Presiding Administrative Law Judge.

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4. On January 3, 2020, I mailed Petitioner the same letter emailed on December 23, 2019, but with the date updated. Attached as Exhibit B is a true and correct copy of the letter.

5. As of February 3, 2020, Petitioner has not contacted me.

I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct. Executed on February 3, 2020, at Los Angeles, California.



Nicole J. Kau
Deputy Attorney General

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Journal Technologies Court Portal

Make a Reservation

ROBERT COLACO vs DORA LUNA

Case Number: 19AVCP00259 Case Type: Civil Unlimited Category: Writ - Administrative Mandamus
Date Filed: 2019-10-10 Location: Michael Antonovich Antelope Valley Courthouse - Department A15

Reservation

Case Name: ROBERT COLACO vs DORA LUNA	Case Number: 19AVCP00259
Type: Demurrer - without Motion to Strike	Status: RESERVED
Filing Party: State of California Department of Social Services (Respondent)	Location: Michael Antonovich Antelope Valley Courthouse - Department A15
Date/Time: 03/19/2020 8:30 AM	Number of Motions: 1
Reservation ID: 277611121084	Confirmation Code: CR-UXRCKJBHMQHBV45AX

Fees

Description	Fee	Qty	Amount
Demurrer - without Motion to Strike *** Fees Exempted by Gov Code 6103.1 ***	60.00	1	0.00
TOTAL			\$0.00

Payment

Amount: \$0.00	Type: GOVT_EXEMPT
Account Number: n/a	Authorization: n/a

Print Receipt

Reserve Another Hearing

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: Colaco v. Luna (DSS)
Case No.: 19AVCP00259

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On **February 5, 2020**, I served the attached **NOTICE OF RESPONDENT DORA LUNA'S DEMURRER TO PETITION FOR WRIT OF MANDAMUS AND COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF NICOLE J. KAU** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Robert Colaco
P.O. Box 1949
Littlerock, CA 93543-5949
Tel.: (818) 574-8911
E-Mail: FounderRC@CFABA.NET

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **February 5, 2020**, at Los Angeles, California.

S. Lincoln
Declarant



Signature