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Superior Court of California,
County of San Francisco
09/29/2025
Clerk of the Court
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Deputy Clerk

Attorneys for Defendants
CITY AND COUNTY OF SAN FRANCISCO;
BOARD OF POLICE COMMISSIONERS FOR
THE CITY AND COUNTY OF SAN FRANCISCO;
WILLIAM SCOTT, CHIEF OF POLICE FOR
THE SAN FRANCISCO POLICE DEPARTMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

SAN FRANCISCO POLICE OFFICERS'
ASSOCIATION,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO; BOARD OF POLICE
COMMISSIONERS FOR THE CITY AND
COUNTY OF SAN FRANCISCO; WILLIAM
SCOTT, CHIEF OF POLICE for THE SAN
FRANCISCO POLICE DEPARTMENT;
DOES 1 through 20, inclusive,

Defendants.

Case No. CGC-24-619424

**NOTICE OF ENTRY OF ORDER
SUSTAINING DEMURRER TO THE FIRST
AMENDED COMPLAINT WITHOUT LEAVE
TO AMEND**

Date Action Filed: October 31, 2024 [Original]
June 10, 2025 [FAC]

Trial Date: None set.

Attached Documents: Exhibit A

***[Exempt From Filing Fees
Government Code §6103]***

1 On September 29, 2025, the Honorable Joseph M. Quinn executed the Order Sustaining the
2 Demurrer to the First Amended Complaint Without Leave to Amend.

3 Attached hereto as **Exhibit A** is a true and correct copy of that Order.

4
5 Dated: September 29, 2025

6 DAVID CHIU
7 City Attorney
8 TARA M. STEELEY
9 Deputy City Attorney

10 By: s/Tara M. Steeley
TARA M. STEELEY

11 Attorneys for Defendants
12 CITY AND COUNTY OF SAN FRANCISCO;
13 BOARD OF POLICE COMMISSIONERS FOR
14 THE CITY AND COUNTY OF SAN FRANCISCO;
15 WILLIAM SCOTT, CHIEF OF POLICE FOR
16 THE SAN FRANCISCO POLICE DEPARTMENT
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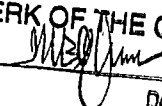
EXHIBIT A

TO

**NOTICE OF ENTRY OF ORDER SUSTAINING DEMURRER TO THE
FIRST AMENDED COMPLAINT WITHOUT LEAVE TO AMEND**

FILED
San Francisco County Superior Court

SEP 25 2025

CLERK OF THE COURT
BY: 
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

SAN FRANCISCO POLICE OFFICERS'
ASSOCIATION,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
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SCOTT, CHIEF OF POLICE for THE SAN
FRANCISCO POLICE DEPARTMENT;
DOES 1 through 20, inclusive,

Defendants.

Case No. CGC-24-619424

**ORDER SUSTAINING DEMURRER TO THE
FIRST AMENDED COMPLAINT WITHOUT
LEAVE TO AMEND**

Hearing Date: September 17, 2025
Time: 9:00 a.m.
Place: Dept. 302

Date Action Filed: October 31, 2024
Trial Date: None set.

1 Defendants City and County of San Francisco; Board of Police Commissioners for the City and
2 County of San Francisco; and William Scott, Chief of Police for the San Francisco Police
3 Department's Demurrer to the First Amended Complaint came on for hearing on September 17, 2025,
4 at 9:00 a.m., in Department 302 of the San Francisco County Superior Court, the Honorable Joseph M.
5 Quinn presiding. Plaintiff San Francisco Police Officers Association was represented by Richard A.
6 Levine and Rains, Lucia Stern St. Phalle & Silver, PC. Defendants were represented by Tara Steele
7 and the San Francisco City Attorney's office.

8 Upon consideration of the documents and materials filed in support of and in opposition to the
9 demurrer, the representations of counsel, and the record as a whole, the court sustains Defendants'
10 demurrer without leave to amend.

11 In early 2023, the San Francisco Police Commission approved a set of regulations that became
12 DGO 9.07, "Restricting the Use of Pretext Stops." (See FAC, Exh. D.) DGO 9.07.04(A), "Limiting
13 Stops for Low-Level Offenses," provides, "Except as provided in 9.07.04(B), a [police officer] shall
14 not stop or detain the operator of a motor vehicle solely based on one or more of the following nine (9)
15 categories of violations: [1.] A vehicle that has a rear license plate with the plate number [not] clearly
16 visible. (Cal. Veh. Code §§ 5200(a), 5201(a)). Note: Members may stop vehicles for these violations
17 in all other circumstances, including where a vehicle has no license plates or only has a front license
18 plate and no rear license plate. [2.] A vehicle that fails to display registration tags or is driving with
19 expired registration of less than one (1) year. (Cal. Veh. Code §§ 4000(a)(1), 5204(a)). Note: Members
20 may stop vehicles for either of these violations if the vehicle's registration has been expired for one (1)
21 year or more. [3.] A vehicle that fails to illuminate the rear license plate. (Cal. Veh. Code § 24601).
22 [4.] A vehicle that is driving without functioning or illuminated rear taillights. (Cal. Veh. Code §
23 24600). Note: Members may stop vehicles for this violation if the vehicle has no functioning or
24 illuminated rear taillights during darkness. [5.] A vehicle that is driving without functioning or
25 illuminated rear brake lights. (Cal. Veh. Code § 4603). Note: Members may stop vehicles for this
26 violation if none of the vehicle's brake lights are functioning or illuminated. [6.] A vehicle that has
27 objects affixed to windows or hanging from the rearview mirror, unless the object obstructs the

1 driver's vision such that it creates a condition that substantially increases the likelihood of a crash.
2 (Cal. Veh. Code § 26708(a)(1)-(2)). Examples: A hanging air freshener or prayer beads from the rear-
3 view mirror will not generally create a condition that substantially increases the likelihood of a crash.
4 Conversely, affixing an electronic GPS device to the windshield that creates a vision-obstructing glare
5 while driving at night (see Cal. Veh. Code § 6708(b)(12)) may create a condition that substantially
6 increases the likelihood of a crash. [7.] A vehicle that fails to activate a turn signal continuously for
7 100 feet before turning. (Cal. Veh. Code § 22108). Note: Members may stop vehicles for unsafe turns
8 or lane changes. (E.g. Cal. Veh. Code § 22107). [8.] A vehicle that has a person sleeping in the vehicle.
9 (S.F. Trans. Code § 97). Note: Members may make a stop for this code violation when another City
10 agency (including HSOC, MTA, or Public Health) requests that the Department do so. [9.] Any stop of
11 a pedestrian for an infraction in violation of the California Vehicle Code or San Francisco
12 Transportation Code unless there is an immediate danger that the pedestrian will crash with a moving
13 vehicle, scooter, bicycle, or other device moving exclusively by human power.” An officer may,
14 however, “tak[e] any of the following actions so long as it does not result in an investigative detention
15 ... : (a) issuing a citation to a parked car, (b) warning an individual that their conduct is in violation of
16 the law, (c) requesting that an individual conform their conduct to the law, or (d) mailing a citation as
17 permitted by state and local law.”

18 DGO 9.07.04(B), “Exceptions,” provides that an officer “may stop, detain, or issue a citation to
19 a person or an operator of a motor vehicle for any violation enumerated in section 9.07.04(A) above if:
20 [1.] the member lawfully stopped or detained the person or operator of the motor vehicle for any
21 infraction or criminal offense not specifically enumerated in section 9.07.04(A); or [2.] the operator is
22 driving a commercial vehicle; or [3.] a person or motor vehicle matching the description of a suspect
23 or suspect vehicle involved in a felony offense where the risk of death or life-threatening injuries is
24 imminent if the suspect is not immediately apprehended, including murder, attempted murder,
25 manslaughter, armed robbery, kidnapping, forcible sex offense, a felony committed against a child; or
26 [4.] the member is investigating a traffic crash as outlined in Cal. Veh. Code § 40600(a).”

DGO 9.07.05, "Limiting Searches & Questions," sets out related restrictions. An officer may ask "investigatory questions regarding criminal activity" during a traffic stop for a violation punishable as an infraction under either the California Vehicle Code or San Francisco Transportation Code "if reasonable suspicion or probable cause for a criminal offense arises during the traffic stop." (DGO 9.07.05(A).) During such traffic stops, an officer may "ask for permission to conduct a consent search of a person or vehicle" "if reasonable suspicion or probable cause for a criminal offense arises during the stop." (DGO 9.07.05(B).) "The above limits on searches and questioning set forth in section 9.07.05(A)-(B) shall not apply to stops made pursuant to section 9.07.04(B)(2) - (B)(4)." (DGO 9.07.05(B).)

DGO 9.07.06, "Data Collection, Reporting & Supervisory Review," provides that DGO 9.07 does not impose any reporting duties on officers, except that officers "who request consent to search an individual or asks an investigatory question unrelated to the purpose of the stop under section 9.07.05(A)-(B) shall document the following in an incident report and/or chronological report of investigation: (a) the reason for the stop, and (b) the circumstances justifying a request to conduct a consent search and/or asking any investigatory questions;" if no report is otherwise required, the officer must memorialize the information on the CAD or their body-worn camera. (DGO 9.07.06(A).) Officers must generally enter all stop data into the Stop Data Collection System (SDCS) prior to the end of their shift. (DGO 9.07.06(B).) "Superior officers are responsible for reviewing traffic stop data for members under their direct supervision (PIP Group) on a quarterly basis." (DGO 9.07.06(C).) On a quarterly basis, the Department must transmit to the Commission and to the Department of Police Accountability all raw SDCS data (other than personal identifying information) containing the information that the Department must collect pursuant to Cal. Gov't Code § 12525.5, Cal. Code Regs. tit. 11, § 999.226, and any other related laws governing stop data collection. The Department shall also make this raw data publicly available on its website in a machine-readable format." (DGO 9.07.06(D).)

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1 DGO 9.07.01, "Purpose," identifies the interests informing DGO 9.07:

2 The San Francisco Police Department's traffic enforcement efforts shall focus on
3 ensuring the safety of our sidewalks and roadways. To that end, the goal of this
4 General Order is to curtail the practice of stopping vehicles for low-level traffic
5 offenses as a pretext to investigate hunches that do not amount to reasonable
6 suspicion that a crime occurred. Pretext stops are disproportionately carried out
7 against people of color and return negligible public safety benefits. The fiscal,
8 human, and societal costs they impose on our City are unjustified in light of more
9 effective public safety tools at the Department's disposal.

6 Reducing the number of stops made for low-level offenses will allow the
7 Department to redirect resources and time to more effective public safety
8 strategies, including prioritizing traffic safety to reduce injuries and fatalities,
9 while also helping to fulfill its obligation to accord every person equal treatment
10 under the law.

9 Following the Commission's approval of DGO 9.07, Plaintiff San Francisco Police Officers'
10 Association (SFPOA") filed an unfair practice charge against the City and County of San Francisco
11 ("CCSF") with the Public Employee Relations Board ("PERB"), alleging CCSF failed to satisfy its
12 impasse obligations before enacting DGO 9.07 and DGO 9.07 was unlawful because it was preempted
13 by state law under Vehicle Code section 21. (See Defs' RJN, Ex. A, att. At pp. 3-4.) PERB issued a
14 complaint.

15 In October 2024 and before the PERB proceedings concluded, Plaintiff filed this action.
16 Plaintiff pleads it is the recognized employee bargaining unit for many SFPD officers. (FAC, ¶¶ 1, 9-
17 12, 18-25.) It contends that DGO 9.07 in full is preempted by Vehicle Code section 21. (FAC, ¶ 33-
18 38.) It seeks a declaration "establishing that Defendants' Department General Order 9.07 conflicts
19 with California Vehicle Code section 21 that preempts the field of motor vehicle traffic and equipment
20 regulation and thus prohibits the Defendants from enacting ordinances or resolution on covered
21 matters under the California Vehicle Code." (FAC at p. 15.) Further, it seeks an injunction "restraining
22 and enjoining Defendants from enforcing Department General Order 9.07 pending a declaratory
23 adjudication and/or upon declaratory judgment in favor of Plaintiff." (FAC at pp. 15-16.) Plaintiff
24 seeks attorney's fees, costs and further relief as the court deems just and proper. (FAC at pp. 15-16.)

25 Vehicle Code section 21, subdivision (a) provides: "Except as otherwise expressly provided,
26 the provisions of this code are applicable and uniform throughout the state and in all counties and
27 municipalities therein, and a local authority shall not enact or enforce any ordinance or resolution on
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1 the matters covered by this code, including ordinances or resolutions that establish regulations or
2 procedures for, or assess a fine, penalty, assessment, or fee for a violation of, matters covered by this
3 code, unless expressly authorized by this code.”

4 Prior to Plaintiff’s filing of the initial complaint, Plaintiff and Defendants agreed they would
5 abate the PERB proceedings and Defendants would not raise in court the issue of Plaintiff’s non-
6 exhaustion of the PERB remedy. The parties also agreed Defendants would not challenge Plaintiff’s
7 standing.

8 Defendant demurred to the initial complaint. The Bar Association of San Francisco and the San
9 Francisco Public Defender sought and obtained leave to file amici curiae briefs, and the court gave the
10 parties leave to file briefs in response. Those briefs, among other things, argued Plaintiff lacked
11 standing and its claims were unexhausted. In advance of the initial hearing on the demurrer, the court
12 issued a tentative ruling expressing doubt that Plaintiff had adequately alleged standing, exhaustion or
13 an actual controversy that could support declaratory relief. Following the hearing, the court granted the
14 parties leave to brief those issues. The parties filed supplemental briefs, and the court heard another
15 round of argument. Ultimately, the court found Plaintiff had not adequately alleged standing,
16 exhaustion and an actual controversy, and the court sustained the demurrer with leave to amend.

17 Plaintiff filed a first amended complaint and Defendants, again, demurred, this time raising
18 standing, exhaustion, actual controversy and the merits of Plaintiff’s facial preemption challenge to
19 DGO 9.07.

20 Defendants demur under Code of Civil Procedure section 430.10(e). The question is, taking the
21 facts properly pleaded and properly noticed as true, does the challenged cause of action necessarily fail
22 to state a cause for relief? (See Code Civ. Proc., Section 430.10(e); *Blank v. Kirwan* (1985) 39 Cal.3d
23 311, 318.) In assessing whether the complaint states a cause of action, the court accepts all properly
24 pleaded material facts, but not contentions, deductions, or conclusions of fact or law. (*Minton v.*
25 *Dignity Health* (2019), 39 Cal.App.5th 1155, 1161.) “[I]f, on consideration of all facts stated, it
26 appears that plaintiff is entitled to any relief against defendant, the complaint will be held good,
27 though facts may not be clearly stated, or may be intermingled with a statement of other facts

1 irrelevant to cause of action shown, or though plaintiff may demand relief to which he is not entitled
2 under facts alleged.” (*Augustine v. Trucco* (1954) 124 Cal.App.2d 229, 236, quoting *Matteson v.*
3 *Wagoner* (1905) 147 Cal. 739, 742.)

4 **Standing**

5 The court finds Plaintiff has alleged facts sufficient to demonstrate it has associational
6 standing.

7 “Under the doctrine of associational standing, an association that does not have standing in its
8 own right may nevertheless have standing to bring a lawsuit on behalf of its members. ... [¶] ...
9 Associational standing exists when: ‘(a) [the association’s] members would otherwise have standing to
10 sue in their own right; (b) the interests [the association] seeks to protect are germane to the
11 organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the
12 participation of individual members in the lawsuit.’” (*Amalgamated Transit Union, Local 1756, AFL-*
13 *CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003–1004.)

14 Here, the complaint sufficiently alleges associational standing. Plaintiff has alleged that by way
15 of Department General Orders 2.01 and 2.07, its members are reasonably exposed to identifiable
16 consequences such as fine, suspension, or termination, if they act inconsistent with DGO 9.07. (FAC,
17 ¶¶ 27-29.) Its members, thus, would have standing to sue in their own right. Plaintiff has alleged its
18 purpose is to protect employees of the San Francisco Police Department throughout their employment,
19 and this action clearly aligns with that purpose. (See FAC, ¶¶ 31-32.) Finally, the scope of the
20 complaint is narrow and only seeks injunctive and declaratory relief in the form of a judicial
21 declaration that DGO 9.07 conflicts with California Vehicle Code section 21 and an injunction
22 preventing the enforcement of DGO 9.07 until the pending action is resolved. (See FAC, ¶¶ 37-38, 42-
23 43.) This action does not necessarily require individual members of the association to participate in the
24 lawsuit since Plaintiff presents a facial challenge based on an issue of law not requiring specific facts
25 for adjudication.

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1 **Actual Controversy**

2 Plaintiff has alleged facts sufficient to demonstrate a justiciable actual controversy presently
3 exists.

4 Plaintiff alleges a claim for declaratory relief under Code of Civil Procedure section 1060, and
5 another for injunctive relief. The focus of the FAC is the declaratory relief claim. “Any person . . .
6 who desires a declaration of his or her rights or duties with respect to another, . . . may, in cases of
7 actual controversy relating to the legal rights and duties of the respective parties, bring an original
8 action or cross-complaint in the superior court . . .” (Code Civ. Proc., Section 1060.) “‘The ‘actual
9 controversy’ requirement concerns the existence of present controversy relating to the legal rights and
10 duties of the respective parties pursuant to contract [citation], statute or order.’” (Sweetwater Union
11 High School Dist. v. Julian Union Elementary School Dist. (2019) 36 Cal.App.5th 970, 984 [original
12 italics].) “Where the allegations of the complaint reveal the controversy to be conjectural, anticipated
13 to occur in the future, or an attempt to obtain an advisory opinion from the court, the fundamental
14 basis of declaratory relief is lacking.” (Brownfield v. Daniel Freeman Marina Hospital (1989) 208
15 Cal.App.3d 405, 410; Wilson & Wilson v. City Council of Redwood City (2011) 191 Cal.App.4th
16 1559, 1582 [same].) Additionally, “[c]ourts will not entertain a declaratory relief action ‘the sole
17 object of which is to settle rights of third persons who are not parties.’” (Connerly v. Schwarzenegger
18 (2007) 146 Cal.App.4th 739, 748.) The idea clearly is to spare courts from having to resolve parties’
19 disagreements about their respective rights where the disagreement has not yet resulted in real-world
20 consequences for the parties.

21 As already determined, Plaintiff has associational standing in part because its members would
22 have standing to bring the challenge to DGO 9.07. The FAC contains allegations that show Plaintiff’s
23 members are bound to comply with DGO 9.07 and face real consequences if they are found to have
24 violated DGO 9.07. Members need not be charged with a violation to allege an actual controversy
25 supporting a facial challenge to the regulation, especially where, as here, the consequences could be as
26 dire as termination. As the General Orders are written, the duty to comply and the risk of substantial
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1 consequences for non-compliance are real, and they're enough to demonstrate a present, actual
2 controversy under section 1060.

3 As discussed below, it is true PERB may yet resolve Plaintiff's administrative claim such that
4 the viability of DGO 9.07, at least in its current form, is no longer in question. In other words, Plaintiff
5 has an alternative remedy at law, i.e., the PERB proceedings, and PERB has already issued a
6 complaint on Plaintiff's claim. These circumstances are relevant, but here they do not necessarily
7 control. It remains the case Plaintiff has alleged a present, actual controversy.

8 9 Exhaustion

10 The court finds Plaintiff still has not alleged facts showing its claims are exhausted. Thus, the
11 claims are not proper for adjudication by this court at this time. The demurrer is sustained on these
12 grounds.

13 Plaintiff, the recognized employee bargaining unit for many SFPD officers, has filed an unfair
14 practice claim against CCSF seeking to invalidate DGO 9.07. (See FAC, ¶¶ 22-23 and Exh. E.)
15 Plaintiff argues in its claim to PERB that DGO 9.07 is preempted under Vehicle Code section 21. (See
16 FAC, ¶ 22; Defs' RJN Exh. A, att. A at pp. 1-3.) PERB has issued a complaint but has not yet resolved
17 the claims raised. (FAC, ¶¶ 23-26.) The PERB complaint must be resolved before this case can move
18 forward. (See Gov. Code, section 3509 ["A complaint alleging any violation of [the MMBA] ... shall
19 be processed as an unfair practice charge by [PERB]. The initial determination as to whether the
20 charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the
21 purposes of this chapter, shall be a matter within the exclusive jurisdiction of [PERB]."]; *Coachella*
22 *Valley Mosquito & Vector Control Dist. v. California Public Empl. Relations Bd.* (2005) 35 Cal.4th
23 1072, 1080-1081.)

24 As it did in its opposition to Defendants' demurrer to the initial complaint, Plaintiff contends
25 that the PERB proceedings and this action are not sufficiently related to justify an exhaustion
26 requirement. While it is true the legal bases for the two actions are different and the specific relief
27 sought differs, it is also true that the PERB proceedings and this action both focus on the viability of

1 DGO 9.07. Further, PERB may grant relief that obviates the need for this court to act. For example, if
2 PERB finds CCSF failed to satisfy its impasse obligations, DGO 9.07 may be affected or, at least, the
3 parties may return to discussions that could affect the scope or reach of DGO 9.07. This court, like
4 every state court, is highly congested and cannot adjudicate every dispute any party may want to bring
5 before it. Where a meaningful administrative process that may resolve the dispute is available and, in
6 fact, under way, courts must be able to defer to that process until it comes to a close. That is the case
7 here and under these circumstances the court finds Plaintiff's claims unexhausted.

8 To be clear, the court does not find Plaintiff was obligated to open a PERB proceeding seeking
9 to invalidate DGO 9.07 before initiating a civil action—the most common exhaustion scenario. The
10 court finds only where, as here, a party pursues an unfair practice claim at PERB that may result in
11 invalidation or modification of the regulation, that same party cannot pursue against the employer a
12 civil action seeking to invalidate or modify the same regulation until the PERB action has been
13 brought to a conclusion.

14 Instructive is *Personnel Commission of the Barstow Unified School District v. Barstow*
15 *Unified School District* (1996) 43 Cal.App.4th 871 (“Personnel Commission”). There, the plaintiff
16 brought a civil action against the school district contending the district's decision to lay off
17 transportation workers and contract out for bus services was invalid because it violated Education
18 Code limitations on contracting out. CSEA, a collective bargaining representative, intervened as a
19 plaintiff. CSEA had already filed an unfair practice claim against the district seeking to invalidate the
20 contracting-out resolution. The Court of Appeal found the lead plaintiff lacked standing and, therefore,
21 the case could proceed only if CSEA presented a justiciable claim. The appellate court found it did not
22 because its claim was unexhausted.

23 Where a party pursues an unfair practice claim at PERB that may result in invalidation or
24 modification of the employer's action, that same party cannot pursue against the employer a civil
25 action seeking to invalidate or modify the same employer action until the PERB action has been
26 brought to a conclusion. Put another way, in such circumstances, the civil claim is unexhausted. The
27 Court of Appeal found it immaterial that CSEA's PERB action alleged an unfair practice, and its civil
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1 action alleged a statutory violation—a statutory violation beyond PERB’s jurisdiction. To determine
2 whether a claim is exhausted, a court should look to the underlying conduct complained of, which in
3 Personnel Commission was the act of contracting out transportation services; “exhaustion is required
4 even if PERB lacks jurisdiction over some of the issues involved [in the civil action].” (Ibid.) The
5 court noted that it was aware of no case in which a party was able to proceed in superior court on a
6 claim that an employer’s action violated a statute, while simultaneously maintaining a PERB unfair
7 practices claim, nor was the court of aware of any case in which a party was permitted to avoid
8 exhaustion by omitting from its superior court complaint the unfair practices allegations asserted
9 before PERB when both actions challenged the same underlying conduct. (Id. at p. 890.) The
10 reasoning behind the rule is congested courts should be spared from deciding cases where an
11 available—and, in fact, in play—administrative process could provide “functionally equivalent” relief:
12 If PERB could furnish relief equivalent to that which could be provided judicially, then the PERB
13 process must be exhausted. (Personnel Commission, 43 Cal.App.4th at p. 890.)

14 Similarly, here, Plaintiff initiated a PERB proceeding to invalidate DGO 9.07 and that
15 proceeding has not come to a close. Plaintiff cannot now pursue a civil action focused on invalidating
16 DGO 9.07. The fact that the PERB action is based on alleged labor law violations and the civil action
17 is based on an alleged statutory violation is immaterial for purposes of exhaustion analysis because in
18 both actions Plaintiff is challenging the lawfulness of DGO 9.07. PERB may invalidate DGO 9.07,
19 which would make this action unnecessary. Thus, this action cannot proceed until the PERB action is
20 closed.

21 The fact the PERB proceeding may be in abeyance is not controlling. The PERB proceeding
22 remains open and Plaintiff may yet obtain relief that may be obviate the need for this court to act or
23 meaningfully narrow the issues for this court’s resolution.

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A city generally may enact and enforce, within its limits, those ordinances and regulations that do not conflict with state law. (Cal. Const., art. XI, § 7.) “A conflict exists if the local legislation ‘duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.’” (Sherwin-Williams Co. v. City of Los Angeles (1993) 4 Cal.4th 893, 897.) Here, Plaintiff contends Vehicle Code section 21 expressly preempts General Order 9.07 because it limits officers’ ability to enforce Vehicle Code violations. (See FAC, para. 35.)

The relevant provision of state law, again, is Vehicle Code section 21. Section 21 is quoted in full above. Suffice it here to say section 21 prohibits local laws that “establish regulations or procedures for, or assess a fine, penalty, assessment, or fee for a violation of, matters covered by this code.” The key text here is “regulations for ... matters covered by [the Vehicle Code].” DGO 9.07 is a local police regulation that sets out circumstances in which officers cannot detain citizens, question them or search them or their vehicles. Plaintiffs have not identified a single Vehicle Code section that discusses, let alone “covers,” circumstances in which officers can or cannot detain, question or search citizens or their vehicles. Put another way, nothing before the court shows that driver detention or driver or vehicle searches are “matters covered by” the Vehicle Code. Thus, the court cannot find DGO 9.07 is preempted by state law under section 21.

Properly understood, section 21 preempts local laws regulating traffic control, including vehicle roadworthiness. (*Rumford v. City of Berkeley* (1982) 31 Cal.3d 545, 550 [explaining that the state has occupied the “field of traffic control” in the State].) DGO 9.07 is not reasonably construed as a traffic control measure. It is plainly a police regulation governing the police-citizen relationship. While DGO 9.07 applies when officers are performing their duties, including traffic duties, DGO 9.07 is, in fact, a police regulation about citizen detentions and searches, a topic not “covered by” the Vehicle Code.

1 Nor has Plaintiff shown that DGO 9.07 conflicts with the intent of section 21. The purpose of
2 Vehicle Code Section 21 is to ensure uniformity of traffic and road rules throughout the state. (Veh.
3 Code, § 21, subd. (a); see also *County of Ventura v. City of Moorpark* (2018) 24 Cal.App.5th 377,
4 387–388.) DGO 9.07 in no way disrupts the statewide uniformity of those rules. The state rules
5 regarding visibility of rear license plates, registration tags, taillights, brake lights, affixing objects to
6 windows, signaling turns and sleeping in vehicles remain in place and uniform across the state. They
7 remain in force in San Francisco. Even under DGO 9.07, the uniform state rules remain in force in San
8 Francisco. SFPD officers can enforce them in most circumstances, such as when more serious
9 violations are present or when enforcement does not involve a citizen detention, questioning or search.
10 And they enforceable in San Francisco by agencies other than the San Francisco Police Department
11 without regard to DGO 9.07. DGO 9.07, for its part, restricts only the circumstances when an SFPD
12 officer can detain or question a citizen or search her vehicle. Again, these are issues not touched—let
13 alone “covered” in any meaningful way—by the Vehicle Code. DGO 9.07 may affect—indeed,
14 limit—the circumstances under which an SFPD officer may enforce certain low level Vehicle Code
15 equipment and driving regulations, but a local regulation affecting enforcement of Vehicle Code rules
16 by a single agency does not upset the uniformity of traffic rules throughout the state.

17 If every regulation affecting enforcement were preempted, then Vehicle Code section 21 would
18 have a sweeping reach invalidating every police regulation implicating officer performance of traffic
19 duties, including body cam requirements, use of force rules, hot pursuit rules and many more. This
20 court does not understand Vehicle Code section 21 to have such reach.

21 Imagine that a municipality passes a regulation governing high-speed chases, barring pursuit
22 based on Vehicle Code violations. Such regulations are common and are not generally understood to
23 be preempted. Similarly, imagine a city passes a resolution to reduce its local motorcycle officer corps
24 from 10 to 2, whether because of financial constraints or changed priorities. Such a reduction would
25 surely effect enforcement of Vehicle Code violations. But it strains credulity to suggest the resolution
26 is preempted under section 21. Vehicle Code section 21 does not generally interfere with municipal
27 enforcement rules, and it does not bar DGO 9.07, which is one such municipal enforcement rule.

1 As in the initial complaint, Plaintiff alleges that DGO 9.07 puts officers in an untenable bind or
2 “conflict between complying with their responsibilities as sworn law enforcement officers to enforce
3 California Vehicle Code provisions, while also required to comply with DGO 9.07 . . .” (FAC, ¶ 31.)
4 Police officers do not have a “responsibility” to detain every citizen who, in daylight, is driving
5 without operating taillights or who is resting in their vehicle. Instead, enforcement is a matter of
6 discretion. (Town of Castle Rock, Colorado v. Gonzales (2005) 545 U.S. 748, 761 [explaining the
7 “deep-rooted nature of law-enforcement discretion” even when the statutory language appears to
8 include mandatory language requiring enforcement]). Plaintiff’s principal complaint in fact appears to
9 be DGO 9.07 improperly strips officers of this discretion in certain circumstances. This case, indeed, is
10 about officers’ discretion, not mandatory duties. The Vehicle Code does not address when an officer
11 must be required to, able to or prohibited from detaining citizens, questioning citizens or searching
12 their vehicles.

13 To be sure, officers must be able to exercise their discretion in many circumstances.
14 Municipalities, too, must be able to balance different interests, including finances, civil rights,
15 community welfare, and public safety, and establish reasonable regulations that, in some
16 circumstances, limit officer discretion. (See, e.g., People v. McKay (2002) 27 Cal.4th 601, 619
17 [describing the decision’s “salutary effect of encouraging state and local governments as well as
18 individual police departments to seize the opportunity . . . to craft careful and detailed regulations
19 governing the ability of officers to arrest for minor offenses”].) Policies that limit officer discretion are
20 often essential to fair and lawful police operations. (People v. Torres (2010) 188 Cal.App.4th 775,
21 787-90 [finding impound pre-textual in part because officer did not present “any standardized policy
22 to impound all vehicles of unlicensed drivers”]; People v. Benites (1992) 9 Cal.App.4th 309, 327
23 [finding impoundment constitutional because, even though Department did not have written policy on
24 impoundments, it was “clear that the department does not leave the impoundment decision to the
25 officers’ unfettered discretion”].) Common police regulations include rules requiring that body worn
26 cameras are operating during particular encounters and hot pursuit rules prescribing when officers may
27 or may not engage in high-speed chases. Such rules affect traffic enforcement and officer discretion,
28

1 but no court has ever indicated they run afoul of section 21. DGO 9.07 is just such a regulation, and its
2 subject—when an officer may detain a citizen or search a citizen or his property—is not a matter
3 covered by the Vehicle Code and the regulation is not preempted under section 21.

4 It does not take much imagination to understand full enforcement of the Vehicle Code against
5 all drivers who might be violating its provisions at any given moment is impossible and, in many
6 circumstances, imprudent. The question before the court is whether the legislature, by section 21,
7 intended to strip municipalities of all discretion to engage on issues of enforcement, even those that
8 limit officer discretion about who they can detain and search and when. Section 21 does not reference
9 enforcement, and Plaintiff has failed to identify a single case—and the court is aware of none—finding
10 a municipal enforcement regulation like DGO 9.07 preempted by section 21. Every indication is the
11 legislature by section 21 did not intend to strip municipalities of the ability to engage on enforcement
12 issues, especially when it comes to the circumstances under which a citizen may be detained,
13 questioned and searched. The proper balance of municipal authority and officer discretion is, of
14 course, a weighty and complex question, but this is not the question before the court. The question
15 before the court is the reach of Section 21, and the court finds Section 21's reach does not extend to
16 local police regulations such as DGO 9.07.

17 If this were a close case (which it is not), the presumption against preemption would weigh
18 against Plaintiff's claim. When local government regulates in an area over which it traditionally has
19 exercised control, courts will presume, absent a clear indication of preemptive intent from the
20 Legislature, that such regulation is not preempted by state statute. (See *Big Creek Lumber Co. v.*
21 *County of Santa Cruz* (2006) 38 Cal.4th 1139.) Municipalities across the state maintain different
22 police regulations based on the balancing of unique local needs, public safety, finances, community
23 well-being, and many other concerns and interests. Many of these regulations limit police discretion in

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1 the performance of their duties. DGO 9.07 is one such regulation. It is presumed not to be preempted,
2 and Plaintiff's allegations and arguments do not overcome the presumption.

3 Defendants raise the issue of CCSF's home rule authority. Article XI, Section 5(a) of the
4 California Constitution states:

5 It shall be competent in any city charter to provide that the city governed thereunder may
6 make and enforce all ordinances and regulations in respect to municipal affairs, subject
7 only to restrictions and limitations provided in their several charters and in respect to
8 other matters they shall be subject to general laws. City charters adopted pursuant to this
9 Constitution shall supersede any existing charter, and with respect to municipal affairs
10 shall supersede all laws inconsistent therewith.

11 Article XI, Section 5(a) renders charter cities "supreme and beyond the reach of legislative enactment"
12 with respect to municipal affairs. (California Federal Savings and Loan Ass'n v. City of Los Angeles
13 (1991) 54 Cal.3d 1, 12.)

14 CCSF is a charter city with home rule powers to regulate municipal affairs. And the city
15 charter confers upon the Police Commission authority to "prescribe and enforce any reasonable rules
16 and regulations that it deems necessary to provide for the efficiency of the Department, provided that
17 the civil service and ethics provisions of this Charter shall control in the event of any conflict with
18 rules adopted under this section." (S.F. Charter § 4.109; see Brown v. City of Berkeley (1976) 57
19 Cal.App.3d 223, 236.)

20 This home rule power is limited, however. It reserves to charter cities the right to adopt and
21 enforce ordinances that conflict with general state laws, provided the subject of the regulation is a
22 "municipal affair" rather than one of "statewide concern." (See Johnson v. Bradley (1992) 4 Cal.4th
23 389, 399.) When adjudicating a claim that a charter city's law or regulation is preempted the court
24 must examine the following: (1) whether the matter implicates a "municipal affair"; (2) whether state
25 and local law genuinely conflict; (3) if state and local law actually conflict, whether the subject of the
26 statute qualifies as one of statewide concern; and (4) if the statute presents a matter of state concern,
27 whether the statute is "reasonably related to its resolution" and narrowly tailored to avoid unnecessary
28 interference in municipal governance. (See State Bldg. & Construction Trades Council of Cal. AFL-
CJO v. City of Vista (2012) 54 Cal.4th 547, 555-556.) "[I]f there is a doubt as to whether or not [a]

1 regulation is a municipal affair, that doubt must be resolved in favor of the legislative authority of the
2 state.” (Ex Parte Daniels (1920) 183 Cal. 636, 639.)

3 Here, the court has found Vehicle Code section 21 and DGO 9.07 do not conflict. Thus, the
4 court need not—and does not decide whether the dispute involves a municipal affair, whether section
5 21 addresses a subject of statewide concern and, if so, whether section 21 is sufficiently narrowly
6 tailored to avoid unnecessary interference in municipal governance. The court notes, however, if
7 section 21 would nullify any local law affecting enforcement of traffic control rules, then whether
8 section 21 is appropriately tailored so as to not unnecessarily interfere with local governance is a real
9 question. This may be one reason why no published authority has ever construed section 21 so
10 broadly.

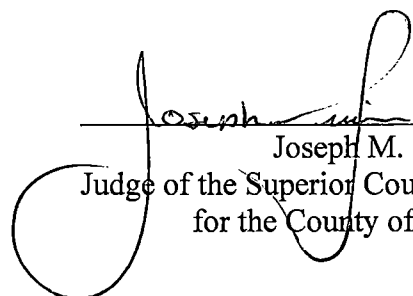
11 By DGO 9.07, CCSF seeks to limit pretextual stops where a police officer detains a citizen for
12 questioning or search (or both) based on a hunch not amounting to reasonable suspicion or probable
13 cause that the citizen is involved in criminal activity by using a low-level traffic offense as a pretext to
14 detain, question and search citizens and their property. Such detentions disparately impact and harm
15 people of color and return negligible public safety benefits (findings made by the Police Commission
16 that are not challenged here) and, by the regulation, CCSF seeks to correct a justice imbalance and
17 direct taxpayer resources to other public safety endeavors. By this action, SFPOA seeks to ensure local
18 police officers have the tools available to address serious criminal activity, including lawful pretextual
19 stops that may uncover evidence of serious criminal misconduct and further public safety. (See, e.g.,
20 People v. Esparza (2023) 95 Cal.App.5th 1084, 1088 [officers stopped vehicle with citable window-
21 tinting violation with motivation to investigate gang activity].) The question presented here, though, is
22 a narrow one: whether Vehicle Code section 21, which seeks to ensure uniformity of traffic and
23 vehicle laws, preempts and invalidates DGO 9.07. The court finds that the legislature has left room for
24 municipalities to establish police regulations, even where those regulations implicate traffic
25 enforcement, based on local concerns, local circumstances and local priorities. Thus, DGO 9.07 is not
26 preempted by section 21 and Plaintiff’s claim otherwise necessarily fails to state a cause of action
27 upon which relief can be granted.

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2 **Leave to Amend**

3 Leave to amend is liberally granted. The court has previously granted leave to amend, and
4 Plaintiff was unable to allege facts sufficient to establish its claims were exhausted. As to the merits,
5 the preemption claim is a facial challenge to DGO 9.07 that turns on the text of the General Order, the
6 text and intent of Vehicle Code section 21 and California law. Nothing before the court suggests
7 Plaintiff could cure the legal defect in their claims by amendment. Thus, the court sustains the
8 demurrer to the First Amended Complaint without leave to amend.

9 IT IS SO ORDERED.

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11 DATE: Sept. 25, 2015

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14 Joseph M. Quinn
15 Judge of the Superior Court of the State of California
16 for the County of San Francisco
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I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on September 25, 2025 I served the foregoing ORDER SUSTAINING DEMURRER TO THE FIRST AMENDED COMPLAINT WITHOUT LEAVE TO AMEND on each counsel of record or party appearing in propria persona by causing a copy thereof to be enclosed in a postage paid sealed envelope and deposited in the United States Postal Service mail box located at 400 McAllister Street, San Francisco CA 94102-4514 pursuant to standard court practice.

Date: September 25, 2025 By: MARIA BENIGNA GOODMAN

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PROOF OF SERVICE

I, Pamela Cheeseborough, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

On September 29, 2025, I served the following document(s):

NOTICE OF ENTRY OF ORDER SUSTAINING DEMURRER TO THE FIRST AMENDED COMPLAINT WITHOUT LEAVE TO AMEND

on the following persons at the locations specified:

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Tracy Watson (Paralegal)
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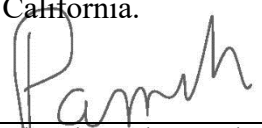
in the manner indicated below:

☒ **BY ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the person(s) at the electronic service address(es) listed above. Such document(s) were transmitted *via* electronic mail from the electronic address: pamelacheeseborough@sfcityatty.org ☐ in portable document format ("PDF") Adobe Acrobat or ☐ in Word document format. OR

☒ **BY ELECTRONIC-SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be served electronically through **File & ServeXpress** in portable document format ("PDF") Adobe Acrobat.

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

Executed September 29, 2025, at San Francisco, California.



Pamela Cheeseborough