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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

AHMAD AMMAR,

Plaintiff and Appellant,

v.

HEE BAE CHO, et al.,

Defendants and Respondents.

B291661

(Los Angeles County  
Super. Ct. No. BS170421)

APPEAL from an order of the Superior Court of Los Angeles County, Amy D. Hogue, Judge. Affirmed.

Ahmad Ammar, in pro. per., for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Blithe S. Bock, Assistant City Attorney, and Paul L. Winnemore, Deputy City Attorney, for Defendants and Respondents Hee Bae Cho and the City of Los Angeles Police Department.

Nelson & Fulton, Henry Patrick Nelson and Rina M. Mathevosian, for Defendant and Respondent Los Angeles County District Attorney's Office.

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Ahmad Ammar appeals from an order sustaining a demurrer to his second amended petition for writ of mandate without leave to amend. Ammar contends the Los Angeles Police Department (LAPD) and one of its officers, Detective Hee Bae Cho, ignored evidence his roommates harassed and assaulted him, and that LAPD and the Los Angeles District Attorney's Office (LADA) improperly refused to pursue charges against the roommates. Ammar further contends an unnamed LAPD officer discriminated against him when responding to a call Ammar made to 911. Ammar sought an order of mandamus compelling LAPD and Detective Cho to provide him with documents related to the criminal investigation of his roommates' conduct, and to investigate his discrimination claim.

The trial court determined LAPD and Detective Cho owed no ministerial duty to Ammar that could be enforced by mandamus. We agree, and affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In reciting the facts, we accept as true all well-pleaded facts in the operative pleading, which is Ammar's second amended petition for writ of mandate. (*Lockton v. O'Rourke* (2010) 184 Cal.App.4th 1051, 1056.) Ammar co-rented a two-bedroom apartment with a married Latino couple. Ammar alleges that, "[b]etween 2013 and 2015," the unnamed couple conspired to evict Ammar from the apartment through unlawful means, including setting a fire under his window, battering him on three separate occasions, engaging in various acts of "harassment and assault," and committing "[m]ultiple malicious persecutions (and perjury) at [the] Los Angeles Superior Court with a goal to use the court system to harass and intimidate" him.

Ammar filed police reports with LAPD for two of the alleged batteries. On June 13, 2016, Ammar emailed LAPD

Detective John Lamberti and “asked for a follow up.” Detective Lamberti responded the following day that “both cases [were] closed,” as his supervisor rejected one and the city attorney rejected the other.

Ammar met with Detective Lamberti at the Olympic police station several days later and “tried but failed to convince” Lamberti to “process all claimed incidents under one investigation to avoid fragmentation or loss of the significant relation among them,” and to “use the totality of the circumstances doctrine to uncover the relation and the [p]robable [c]ause among all incidents.” Other LAPD officers at the Olympic station reportedly told Ammar that the police do not investigate claims of the type he was asserting.

Ammar subsequently learned he could submit a “‘[v]ictim [c]riminal [c]omplaint’ ” to LADA concerning the issues with his roommates, which he attempted to do on April 30, 2017. Ammar asked LADA to consider his victim criminal complaint under Penal Code sections 118 and 182.<sup>1</sup> LADA responded that it did not conduct independent investigations, and advised Ammar to report the alleged crime to the police.

Having already made police reports, Ammar returned to LAPD and asked to speak to the commanding officer. When his request was refused, Ammar emailed LAPD headquarters and expressed concern that the Olympic station was refusing to investigate his claims for alleged criminal conspiracy and perjury. LAPD headquarters advised Ammar it could not assist him and recommended he speak to a detective at the Olympic station. Starting on June 29, 2017, and for “multiple weeks”

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<sup>1</sup> Penal Code sections 118 and 182 define, respectively, criminal perjury and conspiracy.

thereafter, Ammar attempted to contact Detective Cho, a supervising detective at the Olympic station. When Ammar received no response from Detective Cho, he emailed LAPD and LADA on July 26, 2017, but received no reply.

Ammar filed a petition for writ of mandate on August 8, 2017 and a first amended petition for writ of mandate on August 29, 2017. The first amended petition sought to compel Detective Cho, LAPD and LADA to accept Ammar's victim complaint and to expedite the investigation and processing of charges against Ammar's roommates.

The clerk's case summary indicates, and the parties agree, that Ammar dismissed his claims against LADA without prejudice on December 13, 2017.

LAPD and Detective Cho demurred to the first amended petition. On March 2, 2018, the trial court sustained the demurrer with leave to amend, finding Ammar failed to allege a duty on the part of LAPD and Detective Cho enforceable by mandamus.<sup>2</sup>

On March 26, 2018, Ammar filed an unverified "2nd Amended Petition for Writ of Mandate," expanding his allegations to include claims that an unnamed Latino LAPD officer who responded to Ammar's 911 call on November 23, 2014, mocked Ammar and appeared to be protecting "the Latin couple from being reported to immigration authority" by not arresting

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<sup>2</sup> While the docket reflects numerous filings made in support of and in opposition to this demurrer, Ammar did not include any of the motion papers or the court's order in the record on appeal. The record contains only a notice of ruling and pages 1, 3 and 5 of a "[Tentative] Order Sustaining Respondent's Demurrer With Leave to Amend."

them.<sup>3</sup> The remaining allegations in the second amended petition relate to Ammar’s various attempts to get LAPD, Detective Cho, and LADA to “investigate claims” against the roommates for perjury and conspiracy. Ammar alleged Detective Cho promised to review an “updated victim complaint,” but that LAPD failed to provide him with information “about the status and conclusions of conducted investigation.” Ammar further alleged LAPD and Detective Cho’s “conclusions that there is no probable cause [to arrest Ammar’s roommates] conflict[ed] with the beyond any doubt evidences,” and “treated his . . . complaint as less favorable[] and less worthy” based on Ammar’s “faith and national origin.”

LAPD and Detective Cho demurred to the second amended petition on the grounds it failed to identify any ministerial duty owed to Ammar to provide information related to their investigative findings, to follow through on their promises to investigate Ammar’s complaint against his roommates, or to initiate an investigation regarding the police officer’s alleged discrimination against Ammar on November 23, 2014.

On June 13, 2018, two days before the hearing on the demurrer, Ammar attempted to reinstate his claims against

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<sup>3</sup> Petitions for writ of mandate must be verified. (Cal. Rules of Court, rule 8.486(a)(4); Code Civ. Proc., § 1086; *Krueger v. Superior Court* (1979) 89 Cal.App.3d 934, 939 [failure to verify petition for prerogative writ constitutes fatal defect].) Ammar attempted to verify the second amended petition as part of his opposition to the demurrer to that petition. While Ammar’s failure to properly verify his amended petition constitutes an independent ground to affirm the trial court’s dismissal, we address his claims on the merits (as did the trial court) in light of Ammar’s attempt to verify his petition.

LADA by filing what he styled as “a request to withdraw the partial dismissal” asserting he “obtained new information[] related to the [v]ictim [c]omplaint that . . . supports [Ammar’s] claims against LADA.”

On June 15, 2018, the trial court sustained the demurrer of LAPD and Detective Cho without leave to amend in a six-page written order.

Ammar timely appealed from the order sustaining the demurrer without leave to amend.<sup>4</sup>

### **DISCUSSION**

#### **A. Ammar Has Forfeited Any Challenge to His Dismissal of LADA**

Ammar argues we should discard his voluntary dismissal of the LADA as the trial court “erred by staying silent” on his request to set aside that dismissal. We decline to do so. To the extent Ammar believed the trial court overlooked his request to set aside the dismissal of LADA, he was required to raise that argument in the first instance with the trial court, and then to separately identify any adverse decision in his notice of appeal (which instead lists only the order sustaining the demurrer of LAPD and Detective Cho as the subject of Ammar’s appeal). (*Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 212, 239 [notice of appeal must identify the particular order(s) being appealed].) Ammar may not raise issues regarding his

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<sup>4</sup> “[A]n order of dismissal is to be treated as a judgment for the purposes of taking an appeal when it finally disposes of the particular action and prevents further proceedings as effectually as would any formal judgment.’ [Citations.]” (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 699.)

dismissal of LADA for the first time on appeal. (*Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 670.)

If we could address the argument, we would find it meritless. Ammar dismissed LADA before the demurrer to the second amended petition. Rather than seeking relief pursuant to Code of Civil Procedure section 473, subdivision (b), he instead filed a procedurally improper pleading two days before the hearing on the demurrer seeking to add LADA back into the case. Given Ammar's failure to comply with the procedural requirements to set aside a dismissal allegedly resulting from mistake, inadvertence, or excusable neglect, the trial court did not err in refusing to grant relief.

**B. The Trial Court Did Not Err in Sustaining the Demurrer of LAPD and Detective Cho Without Leave to Amend**

**1. Standard of Review**

We review Ammar's challenge to the order sustaining the demurrer of LAPD and Detective Cho without leave to amend de novo, determining independently whether the second amended petition states a cause of action as a matter of law. (*City of Morgan Hill v. Bay Area Air Quality Management Dist.* (2004) 118 Cal.App.4th 861, 869.) We give the petition a reasonable interpretation, reading it as a whole and viewing its parts in context. We interpret the petition's allegations liberally, with a view toward substantial justice between the parties. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 43, fn. 7.) If the facts alleged by the petitioner state a cause of action under any possible legal theory, we will order the demurrer overruled. (*City of Morgan Hill, supra*, at p. 870.) When a demurrer is sustained without leave to amend, we look to see "whether there is a reasonable possibility that the defect can be cured by

amendment.” (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.) “The burden of proving such reasonable possibility is squarely on the [petitioner].” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

**2. *LAPD and Detective Cho Owed No Ministerial Duty to Ammar that May Be Enforced by Mandamus***

“A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station . . .” (Code Civ. Proc., § 1085, subd. (a).) Ammar contends LAPD and Detective Cho owed him, but failed to satisfy: (1) a duty to provide him information about the investigation of his victim complaint against his roommates; and (2) a duty not to discriminate against him.<sup>5</sup>

**(a) *Alleged Duty to Provide Information***

Ammar argues that, by virtue of the California Public Records Act (CPRA; Gov. Code, § 6250 et seq.), and LAPD’s “own published and non[-]ambiguous policy,” LAPD owed him a duty to produce all information related to its investigation of his victim complaint. LAPD correctly responds that it had no duty to provide documents or other information regarding its investigation to Ammar and, in fact, was statutorily exempt from any such obligation under the CPRA.

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<sup>5</sup> Ammar concedes the claim in his second amended petition that LAPD and Detective Cho owed a duty to investigate his claims against his roommates lacks merit, and states he “no longer asks for an order on this promise.”



While “[l]egislative policy favors disclosure” and the CPRA “‘was enacted for the purpose of increasing freedom of information by giving members of the public access to information in the possession of public agencies,’ ” “‘[t]he right of access to public records under the CPRA is not absolute.’ ” (*County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301, 1319-1320.) The CPRA generally exempts from disclosure “[r]ecords of complaints to, or investigations conducted by, . . . any state or local police agency . . . .” (Gov. Code, § 6254, subd. (f).) Neither LAPD nor its officers (including Detective Cho) were obligated to disclose any portion of its “investigative files that reflects the analysis or conclusions of the investigating officer.” (*Ibid.*)

Ammar argues LAPD waived the exemption for investigative records when Detective Cho allegedly “expressly and explicitly promised [Ammar] to provide requested information about those investigative records.” Ammar cites no authority for this proposition, noting only that the CPRA does not prohibit LAPD from voluntarily disclosing records otherwise protected by the statute. (*Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250, 1262 [the CPRA’s exemptions “allow nondisclosure but do not prohibit disclosure”].)

The exemption provided by subdivision (f) of Government Code section 6254 can be waived “if a state or local agency discloses a public record that is otherwise exempt from” the CPRA. (Gov. Code, § 6254.5.) But nothing in the statutory scheme provides for a waiver by a *promise* to disclose, and we decline to read language into a statute that is otherwise clear on its face. (*Mikkelsen v. Hansen* (2019) 31 Cal.App.5th 170, 181.) Absent a unilateral disclosure by LAPD, which did not happen

here, the exemption to the CPRA was not waived and LAPD and Detective Cho owed no ministerial duty to Ammar to produce records of its investigation.

(b) *Allegations of Discrimination*

Ammar next asserts that an unnamed officer who responded to his 911 call in November 2014 discriminated against him “as Arab and Muslim” by making prejudicial remarks and mocking Ammar and treating his victim complaint “as less favorable[] and less worthy” because “of his faith and national origin.” Although not clearly pled, in an abundance of caution we examine two possible interpretations of this assertion: first, that LAPD discriminated against Ammar in violation of his civil rights; and second, that LAPD’s investigatory conclusions were tainted by bias.

(1) *Alleged Discrimination by the LAPD*

“To obtain writ relief under Code of Civil Procedure section 1085, the petitioner must show there is *no other plain, speedy, and adequate remedy*; the respondent has a clear, present, and ministerial duty to act in a particular way; and the petitioner has a clear, present and beneficial right to performance of that duty.’” (*McMahon v. City of Los Angeles* (2009) 172 Cal.App.4th 1324, 1331.) “It is a general rule that the extraordinary remedy of mandate is not available when other remedies at law are adequate.’ [Citation.]” (*Agosto v. Board of Trustees of Grossmont-Cuyamaca Community College Dist.* (2010) 189 Cal.App.4th 330, 336.) The burden is on the petitioner to show that he does not have such a remedy. (*Flores v. Department of Corrections & Rehabilitation* (2014) 224 Cal.App.4th 199, 205.)

To the extent Ammar sought relief for racial and/or religious discrimination against him by members of LAPD, we

concur with the trial court that a petition for writ of mandate is not the proper vehicle to seek such relief. Ammar's remedy in those circumstances was to file a lawsuit alleging violation of his civil rights under the appropriate statutory scheme, such as section 1983 of title 42 of the United States Code. Since Ammar failed to satisfy his burden to prove the absence of another adequate remedy for LAPD's alleged discrimination, he was not entitled to relief by way of extraordinary writ.

(2) *Alleged Discriminatory Effect on Investigation*

Ammar's other contention appears to be that LAPD's investigation of his roommates' alleged conduct was tainted by discrimination and bias. Specifically, Ammar alleged the police officer who responded to his 911 call was Latino and favored Ammar's roommates (who allegedly were also Latino) by improperly determining that Ammar's complaint lacked probable cause.

LAPD responds that it had no ministerial duty to make an arrest, or to take some other less drastic protective action, in response to Ammar's complaint. We agree. "A ministerial duty is an obligation to perform a specific act in a manner prescribed by law whenever a given state of facts exists, without regard to any personal judgment as to the propriety of the act. [Citation.]' [Citation.]" (*Center for Biological Diversity v. Department of Forestry & Fire Protection* (2014) 232 Cal.App.4th 931, 952.) "While mandate lies to compel a public agency to comply with a ministerial duty, it usually does not lie to compel a public agency to exercise its discretion in a particular manner. [Citation.]" (*Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1186.)

Our decision comports with determinations by other courts that certain areas of police work are clearly discretionary. (See, e.g., *Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 519 & fn. 13 [decision whether to pursue a fleeing vehicle]; *Watts v. County of Sacramento* (1982) 136 Cal.App.3d 232, 234-235 [decision whether to use official authority to resolve a dispute]; *McCarthy v. Frost* (1973) 33 Cal.App.3d 872, 875 [decision whether to investigate a vehicle accident]; *Michenfelder v. City of Torrance* (1972) 28 Cal.App.3d 202, 206 [failure to make an arrest or to take protective action less drastic than arrest].)

Here, Ammar alleged that he called 911 when he was “assaulted and attacked” by his roommates. At least one of the officers spoke with the roommates, determining thereafter that no arrest was required. The record does not reveal what the responding officers discussed with Ammar’s roommates, nor does it identify other proof presented to LAPD in support of Ammar’s claims, if any. It was within the discretion of the responding officers whether to make an arrest or otherwise pursue charges against Ammar’s roommates based on the evidence gathered at the scene. We will not, nor can we, substitute our judgment for that of LAPD, particularly on a record as sparse as the present one.

### **3. Conclusion**

Having failed to establish that he seeks to enforce a ministerial duty on the part of LAPD or Detective Cho, Ammar was not entitled to mandamus relief. Ammar does not request leave to amend, and in any event given the nature of his claims, the record does not indicate he could cure their deficiencies through further amendment. Further leave to amend was therefore appropriately denied.

### **DISPOSITION**

The order sustaining the demurrer of LAPD and Detective Cho to Ammar's second amended petition without leave to amend is affirmed. Respondents are to recover their costs on appeal.

NOT TO BE PUBLISHED

WEINGART, J.\*

We concur:

ROTHSCHILD, P. J.

CHANEY, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.