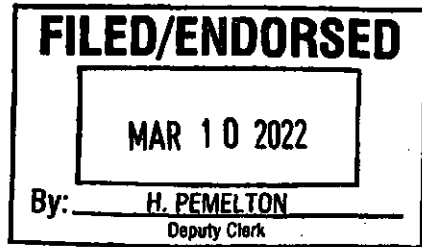


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CRAIG B. SMEDLEY
ESTATE ADVISORY GROUP
23900 Hayes Avenue
Murrieta, CA 92562
(951) 600-7633

In Propria Persona



**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

**DIGNITY HEALTH DBA MERCY
HOSPITAL OF FOLSOM,**

Plaintiffs,

vs.

**YVONNE BRENNAN, CRAIG B.
SMEDLEY, and DOES 1 through 10,**

Defendants.

Case No.: 34-2021-00303333-CU-PO-GDS

**DEFENDANT CRAIG SMEDLEY'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN REPLY TO
PLAINTIFF'S OPPOSITION TO
DEMURRER TO PLAINTIFFS'
COMPLAINT**

**DATE: March 23, 2022
TIME: 1:30 p.m.
PLACE: Dept. 53**

BY FAX

Defendant CRAIG B. SMEDLEY hereby submits the following Memorandum of Points and Authorities in Reply to Plaintiff's Opposition to the demurrer.

///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff's opposition argues that the complaint properly alleges all of the elements of a health care blockade. This is false.

II.

PLAINTIFF FAILED TO PLEAD WITH PARTICULARITY

Plaintiff's complaint against Craig B. Smedley is a statutory cause of action. Therefore, it must be pled with particularity. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.) Plaintiff's Opposition argues that the Complaint only needs to plead ultimate facts, pursuant to Code of Civil Procedure § 425.10 and *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550. However, Plaintiff's Complaint fails to set forth ultimate facts regarding Smedley's alleged liability. Instead it states sweeping conclusions, like:

Acting in his capacity as "patient care advocate" for Ms. Brennan, Mr. Smedley unreasonably refused to cooperate with MHF's discharge planning team in all attempts to find suitable placement for Ms. Brennan. See Exhibit 1 to RJN. Page 3. Paragraph 9.

This is a conclusion, that Mr. Brennan and Mr. Smedley refused to cooperate. What was said? What was done? The Complaint gives us no facts regarding the same. Since this is a statutory cause of action, it must plead with particularity the facts supporting the claims. Absent is any factual allegation as to why Mr. Smedley was required to cooperate with the alleged team. The Complaint utterly fails in this regard. As a result it is subject to demurrer.

III.

PLAINTIFF'S COMPLAINT FAILS TO SET FORTH SUFFICIENT FACTS TO CONSTITUTE A CAUSE OF ACTION UNDER CIVIL CODE § 3427.1, ET SEQ.

As set forth in the demurrer, Civil Code § 3427.1 states:

It is unlawful, and constitutes the tort of commercial blockade for a person, alone or in concert with others, to intentionally prevent an individual from entering or exiting a health care facility by physically obstructing the individual's passage or by disrupting the normal functioning of a health care facility.

1 Plaintiff's Opposition concedes there was no physical prevention of anything on the part
2 of Mr. Smedley. But Plaintiff argues that by giving advice or not agreeing with hospital
3 employees he is still participating in a blockade. This is incorrect.

4 In support of its position, Plaintiff's Opposition cites to California Bill Analysis, Senate
5 Committee, 1993-1994 Regular Session, Assembly Bill 600, CA B. An., A.B. 600 Sen.,
6 8/24/1993. That document does not support Plaintiff's argument. It states:

7 This bill provides that it is unlawful for a person, alone or in concert with
8 others, to intentionally prevent an individual from entering or exiting a health
9 care facility (hcf) by physically detaining the individual or physically
obstructing the individual's passage or by disrupting the normal functioning of
a health care facility.

10 Obviously there was nothing physical alleged by Mr. Smedley. Plaintiff argues however, that
11 the Complaint alleges that "Ms. Brennan and Mr. Smedley acted in concert with each other
12 within the meaning of Civil Code§ 3427.1, and in doing so, intentionally disrupted the normal
13 functioning of MHF. See Exhibit 1 to RJN, Page 3, Paragraph 9." Plaintiff relies alone upon
14 the "disrupting the normal functioning" as its theory. The Bill's analysis that defines disruption
15 defeats Plaintiff's argument.

16 Disruption normal functioning of health care facility

17 This bill makes a demonstrator or protester liable for disrupting the normal
18 functioning of a health care facility. This bill defines "disrupting the normal
19 functioning of health care facility" as intentionally rendering or attempting to
render a health care facility temporarily or permanently unavailable or
unusable by a licensed health practitioner, the facility's staff, or patients.

20 The author's office has explained that her intent is to stop, curtail the
21 following types of conduct: (1) excessive number of phone calls which tie-up
22 phone lines and prevent phone usage by (hcf); (2) the use of stink bombs
23 which require the evacuation of both patients and personnel until bomb effects
24 dissipate; (3) short circuiting lights at (hcf) and (4) false calls of fire requiring
the presence of firefighters and subsequent investigation. All of these
activities disrupt the normal functioning of the facilities and have an effect on
patients and personnel of the (hcf).

25 Although the language requires intent, one could argue that there are many
26 types of protest with the specific intent to disrupt the normal running of a
27 business.

28 This language is of particular concern where protesters may call for the
boycotting of a health care facility with the precise intent of disrupting the
normal functioning of a business operation. This form of commercial boycott
has been used successfully by African American communities to protest
retailers and other entities who have engaged in discriminatory practices. In

1 addition, labor groups occasionally set out to disrupt the normal functioning of
2 a business as a way of protest. Although the bill makes an exception for any
3 constitutionally protected activity or activities protected by the labor laws, it is
4 does not specify the type of "unprotected" intentional conduct it wants to
prevent. Thus, this may cause the filing of frivolous law suits and create a
chilling effect on First Amendment Rights.

5 None of the things set forth in the Bills analysis under the definition of disruption have been
6 alleged in the Complaint. Mr. Smedley did not protest, throw a stink bomb, short circuit lights,
7 or call the hospital incessantly.

8 The Complaint instead alleges Messrs. Brennan and Smedley refused to agree or
9 cooperate with the stated desires of Plaintiff. That is not a disruption of the hospital's normal
10 function. Patients and family members disagree with their medical provider's prescriptions all
11 of the time. They have a right to do so as the recommendations will affect their bodies and their
12 health. "Disrupting the normal functioning of a health care facility" refers to intentionally
13 rendering or attempting to render the facility temporarily or permanently unavailable or
14 unusable by licensed health practitioners, the facility's staff, or its patients. (Civil Code
15 3427(c).) That is not what is alleged in the Complaint.

16 Disagreeing with a plan to discharge a patient is not and should not ever be deemed a
17 commercial blockade. It would work a violation of Mr. Smedley's right to free speech and his
18 duty to his clients to give sound financial advice for the Court to enforce Civil Code § 3427.1 in
19 this manner. Further, Civil Code § 3427.4 prohibits the same when it states: "This title shall not
20 be construed to impair any constitutionally protected activity or any activities protected by the
21 labor laws of this state or the United States of America."

22 Plaintiff's Opposition argues that Civil That Civil Code § 3427.4 does not apply to Mr.
23 Smedley because he was not an employee of Plaintiff. Nowhere in section 3427.4 does it limit
24 the sections applicability only to the constitutional rights of employees. And, Plaintiff's
25 Opposition does not cite to any. "Liberality of interpretation cannot accomplish an end outside
26 the terms of the statute, however desirable such a result might be." (*People v. Franz* (2001) 88
27 Cal.App.4th 1426, 1442.) In other words, this Court cannot do as Plaintiff suggests and interpret
28 section 3427.4 as only applying to employees. Mr. Smedley has a constitutional right to speak

1 his mind and associate with those he wishes. Plaintiff cannot bludgeon Mr. Smedley with a
2 lawsuit for simply disagreeing with Plaintiff's tactics for dumping patients at a facility they
3 cannot afford, which will get them kicked out in a hot minute.

4 Plaintiff's Opposition seeks to put additional requirements for section 3427.4 to be
5 applicable to Mr. Smedley by analogizing the requirements for a special motion to strike.
6 Those arguments are inapposite here. Section 3427.4 has no such strings attached. For these
7 reasons, Plaintiff's Complaint against Defendant Craig B. Smedley is fatally flawed and the
8 instant demurrer to Plaintiff's Complaint should be sustained.

9 IV.

10 **PLAINTIFF'S COMPLAINT IS UNCERTAIN**

11 The complaint is uncertain under Code of Civil Procedure section 430.10 subsection (f)
12 because the complaint violates California Rule of Court, Rule 2.112. That rule requires that
13 each cause of action be separately stated and that it state the party it is directed" when there are
14 multiple defendants. The complaint fails to designate any causes of action and fails to identify
15 any particular defendants to whom any cause of action applies. "[F]ailure to comply with rule
16 2.112 presumably renders a complaint subject to a motion to strike (Code of Civ. Proc., § 436),
17 or a special demurrer for uncertainty." (*Grappo v. McMills* (2017) 11 Cal.App.5th 996, 1014.)
18 For this reason, the instant demurrer should be sustained for being uncertain.

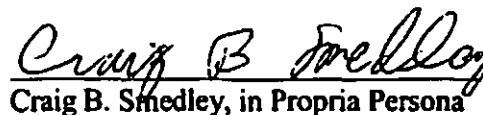
19 V.

20 **CONCLUSION**

21 For the reasons set forth herein, this Court should sustain the instant demurrer.

22 Dated: March 10, 2022

23 By:


Craig B. Smedley, in Propria Persona

24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
DIGNITY HEALTH v. YVONNE BRENNAN, ET AL.
Case No. 34-2021-00303333-CU-PO-GDS

I, the undersigned, declare as follows:

I am employed in the County of Riverside, State of California. I am over the age of 18 years, and not a party to the within action. I am not a party to this litigation.

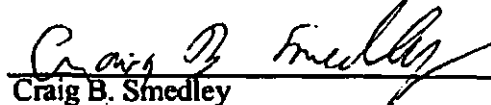
On March 10, 2022, I served the foregoing document(s): **DEFENDANT CRAIG SMEDLEY'S MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO PLAINTIFF'S OPPOSITION TO DEMURRER TO PLAINTIFFS' COMPLAINT** on the following party(ies) in this action addressed as follows:

DENNIS P. MCPHERSON, ESQ.
UBALDI & MCPHERSON LLP
455 UNIVERSITY AVE., SUITE 360
SACRAMENTO, CA 95825

[XX] *(BY ELECTRONIC E-MAIL)* Per CCP Section 1010.6. The said document listed was delivered by electronic e-mail to each addressee listed above at the e-mail addresses listed. The said document was sent from e-mail address cbsmed@verizon.net

Executed on March 10, 2022, in Murrieta, California.

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


Craig B. Smedley