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9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SANTA CLARA
11 UNLIMITED JURISDICTION
12

13 SERVICES, IMMIGRANT RIGHTS &
14 EDUCATION NETWORK; COUNCIL ON
15 AMERICAN-ISLAMIC RELATIONS,
CALIFORNIA,

16 Plaintiffs,

17 v.

18 CITY OF SAN JOSE, et al.,

19 Defendants.
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Case Number: 25CV480254

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS' DEMURRER TO
COMPLAINT**

[Exempt from Filing Fees per Gov. Code
section 6103]

Date: August 6, 2026

Time: 9:00 AM

Dept. 10

Judge Hon. Jeffrey El-Hajj

1 **I. INTRODUCTION**

2 Like many California agencies, the San José Police Department (“SJPD”) utilizes
3 Automated License Plate Reader (“ALPR”) technology within the City of San José (“City”) as a
4 means of improving public safety. The ALPR system allows SJPD to scan in real time for matches
5 to license plates on a “hot list”, offering an important tool for solving and deterring crime, as well as
6 locating at-risk missing persons.

7 Plaintiffs object to SJPD’s collection of this information, as well as to SJPD’s retrospective
8 search of the database, asserting a protected privacy interest in the information collected by the
9 ALPR system. However, because the ALPR system collects only images of vehicles from public
10 streets, there is no privacy interest in the information collected. A protected privacy interest is an
11 essential element of Plaintiffs’ causes of action under the California Constitution, and a violation of
12 the law is an essential element of Plaintiffs’ Taxpayer Action. Because Plaintiffs’ have not and
13 cannot allege a protected privacy interest on the facts asserted, they have failed to state a claim for
14 relief and Defendants request that the Court sustain their demurrer and dismiss the complaint.

15 **II. ALLEGED FACTS**

16 The City has operated ALPR technology since 2006. Complaint ¶ 23. The City and SJPD
17 currently utilize an ALPR network consisting of 474 Flock Safety (“Flock”) ALPR cameras
18 mounted “on light posts or stationary objects near roadways” across the City. *Id.* ¶¶ 14, 24. Flock’s
19 ALPR technology utilizes high speed cameras to capture still images of vehicles passing within
20 view of the cameras and converts the information into a searchable database, which can scan in real
21 time for matches to license plates on a hot list (stolen vehicles, fugitives, etc.). *Id.* ¶¶ 14-16, 20.
22 While SJPD utilized ALPR cameras atop police cruisers previously, the City first installed fixed
23 ALPR cameras for usage by SJPD in 2022. *Id.* Some intersections in San José contain multiple
24 ALPR cameras. *Id.* ¶ 54. SJPD stores ALPR information in the database for one year, allowing
25 personnel to run searches of this information for vehicles based on license plate or other
26 characteristics. *Id.* ¶¶ 21, 31. SJPD officers’ use of the system is constrained by the City’s Data
27 Usage Protocol for ALPR technology. *Id.* ¶ 56, fn. 4.

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1 Based on those alleged facts, Plaintiffs purport to assert three causes of action—two for
2 declarations that Defendants violate the California Constitution, and one to prevent illegal
3 expenditure of public funds.

4 III. ARGUMENT

5 Taking the material facts alleged by Plaintiffs to be true, as a matter of law Plaintiffs have
6 not and cannot state any cause of action against Defendants.

7 A. Legal Standard

8 A demurrer lies when a cause of action fails to state “facts sufficient to constitute a cause of action”
9 or is uncertain. Code Civ. P. § 430.10(e). “A general demurrer tests the legal sufficiency of a complaint by
10 claiming it fails to state a cause of action based on defects appearing on its face or from matters subject to
11 judicial notice.” *Alamo Recycling, LLC v. Anheuser Busch InBev Worldwide, Inc.*, 239 Cal. App. 4th 983,
12 994 (2015) (citing *Blank v. Kirwan*, 39 Cal.3d 311, 318 (1985); *County of Fresno v. Shelton*, 66 Cal.App.4th
13 996, 1008-1009 (1998)). In determining the legal sufficiency of the complaint, a court must assume the
14 truth of all properly pleaded material facts. *Id.* at 995 (citing *Blank v. Kirwan*, 39 Cal.3d at 318). A court
15 “will not, however, assume the truth of contentions, deductions, or conclusions of fact or law, and may
16 disregard allegations that are contrary to the law or to a fact which may be judicially noticed.” *Black v. Dep’t*
17 *of Mental Health*, 83 Cal. App. 4th 739, 745 (2000).

18 B. Plaintiffs Fail to State a Claim For Violation of the Constitutional Right to Privacy.

19 To succeed on a claim for violation of the right to privacy under Article I, Section 1 of the
20 California Constitution, a plaintiff must prove “(1) a legally protected privacy interest; (2) a
21 reasonable expectation of privacy in the circumstances; and (3) conduct by the defendant
22 constituting a serious invasion of privacy.” *Hill v. Nat’l Collegiate Athletic Assn.*, 7 Cal. 4th 1, 39-
23 40, (1994). The determination is a mixed question of law and fact:

24 Whether a legally recognized privacy interest is present in a given case is a question
25 of law to be decided by the court. [citation] Whether plaintiff has a reasonable
26 expectation of privacy in the circumstances and whether defendant’s conduct
27 constitutes a serious invasion of privacy are mixed questions of law and fact. If the
28 undisputed material facts show no reasonable expectation of privacy or an
insubstantial impact on privacy interest, the question of invasion may be adjudicated
as a matter of law.

1 A defendant may prevail in a state constitutional privacy case by negating any of the
2 three elements just discussed or by pleading and proving, as an affirmative defense,
3 that the invasion of privacy is justified because it substantively furthers one or more
4 countervailing interests. Plaintiff, in turn, may rebut a defendant's assertion of
5 countervailing interests by showing there are feasible and effective alternatives to
6 defendant's conduct which have a lesser impact on privacy interests. Of course, a
7 defendant may also plead and prove other available defenses, e.g., consent, unclean
8 hands, etc., that may be appropriate in view of the nature of the claim and the relief
9 requested.

The existence of a sufficient countervailing interest or an alternative course of
conduct present threshold questions of law for the court. The relative strength of
countervailing interests and the feasibility of alternatives present mixed questions of
law and fact. Again, in cases where material facts are undisputed, adjudication as a
matter of law may be appropriate.

10 *Id.* at 40. The court in *Hill* stated that “[t]he ‘privacy’ protected by the Privacy Initiative is no
11 broader in the area of search and seizure than the ‘privacy’ protected by the Fourth Amendment[.]”

12 *Id.* at p. 30, fn. 9.

13 **i. Plaintiffs Do Not Allege a Legally Protected Privacy Interest**

14 There is no legally protected privacy interest in a photograph of a license plate or the
15 exterior of a vehicle taken on a public street. Plaintiffs therefore fail to establish any legally
16 protected privacy interest. *Hill* explained that such “interests are generally of two classes: (1)
17 interests in precluding the dissemination or misuse of sensitive and confidential information
18 (‘informational privacy’); and (2) interests in making intimate personal decisions or conducting
19 personal activities without observation, intrusion, or interference (‘autonomy privacy’).” *Hill*,
20 *supra*, 7 Cal.4th at p. 35. ALPR systems do not collect sensitive and confidential information, and
21 the City’s Data Usage Protocol for ALPR technology ensures that the information is not
22 disseminated or misused. Nor have Plaintiffs plausibly pleaded that ALPR cameras intrude upon
23 intimate personal decisions or personal activities because at most, the cameras are capturing the
24 activities of vehicles, not persons. Driving a vehicle on a public street is not a personal activity.
25 “Since the movements of the vehicle and its final destination ha[ve] been ‘voluntarily conveyed to
26 anyone who wanted to look,’ [a driver] could not assert a privacy interest in the information
27 obtained.” *Carpenter v. United States*, 585 U.S. 296, 306, (2018) (quoting *U.S. v. Knotts*, 460 U.S.
28 276, 281 (1983)).

1 Further, although a license plate number may be linked or otherwise associated with an
2 identifiable person, this potential can only be realized through a distinct, separate step (e.g.,
3 Department of Motor Vehicles data system). Even with this step, the owner of a vehicle may be
4 identified, but the location of a person has not been revealed. Additional information would be
5 necessary to conclude that the driver of a vehicle at any particular time is the same as the registered
6 owner. Plaintiffs have not alleged that they are registered owners of any vehicles, but assuming,
7 *arguendo*, that they are, Plaintiffs are organizations, not individuals. Thus, a vehicle registered to
8 one of the Plaintiffs in this matter is a perfect example of a license plate that can reveal no
9 identifiable person’s activities at all—personal or public.

10 **ii. There is No Reasonable Expectation of Privacy Under the Circumstances**

11 Because the cameras are located on public streets in areas visible to anyone who wants to
12 look, and capture license plates that are required to be visible under the law, Plaintiffs cannot
13 establish a reasonable expectation of privacy under the circumstances. “A ‘reasonable’ expectation
14 of privacy is an objective entitlement founded on broadly based and widely accepted community
15 norms.” *Hill, supra*, 7 Cal.4th at p. 37. “[C]ustoms, practices, and physical settings surrounding
16 particular activities may create or inhibit reasonable expectations of privacy.” *Id.* at p. 36. “A
17 plaintiff’s expectation of privacy in a specific context must be objectively reasonable under the
18 circumstances, especially in light of the competing social interests involved.” *Id.* at pp. 26–27.

19 To establish a reasonable expectation of privacy, the plaintiff “must have conducted himself
20 or herself in a manner consistent with an actual expectation of privacy, i.e., he or she must not have
21 manifested by his or her conduct a voluntary consent to the invasive actions of defendant. If
22 voluntary consent is present, a defendant’s conduct will rarely be deemed ‘highly offensive to a
23 reasonable person’[.]” *Hill, supra*, 7 Cal.4th at p. 26. An individual’s choice and available
24 alternatives may impact judicial assessment of consent.

25 If, for example, a plaintiff claiming a violation of the state constitutional right to
26 privacy was able to choose freely among competing public or private entities in
27 obtaining access to some opportunity, commodity, or service, his or her privacy
28 interest may weigh less in the balance. In contrast, if a public or private entity
controls access to a vitally necessary item, it may have a correspondingly greater
impact on the privacy rights of those with whom it deals.

1 *Hill, supra*, 7 Cal.4th at p. 39.

2 A person who drives a vehicle on a public street in California has manifested by his or her
3 conduct a voluntary consent to the observation of their vehicle and its license plate. In fact,
4 California law requires that license plates are “mounted in a position so as to be clearly visible”.
5 Cal. Veh. Code § 5201. The information ALPR cameras capture is all information voluntarily
6 conveyed to anyone in a public space who cares to look.

7 While Plaintiffs allege that it is “difficult” to travel in San José without driving, the Court
8 must take judicial notice of facts and propositions of generalized knowledge that are so universally
9 known that they cannot reasonably be the subject of dispute. Evid. Code § 451(f). A person wishing
10 to travel in San José has a multitude of options beyond using a vehicle with a license plate
11 registered to them, including, for example, carpooling, borrowing a vehicle, Waymo, Uber, Lyft,
12 taxi, Zipcar, Caltrain, VTA buses and light rail, an urban bicycle trail network, pedicabs, e-scooters,
13 e-bikes, or renting a car. With so many options available, any person who has a particular interest in
14 concealing their movements on a public street from voluntarily being conveyed to anyone who
15 wanted to look could choose an alternative form of transportation.

16 Additionally, here, in San José, known as the Capital of Silicon Valley, residents are aware
17 that their vehicles, their license plates, their comings and goings, and even their driving habits are
18 constantly being captured by the technology that drives our economy, including, for example, the
19 dashcams on vehicles, Tesla’s Sentry Mode, Google’s Street View vehicles, Ring cameras, outdoor
20 Nest cameras, the surveillance cameras in retail parking lots, the ALPRs in parking garages at local
21 malls, and the ubiquitous surveillance of cell phone cameras that have transformed every person
22 into a videographer and documentarian of the mundanities of daily existence. Anyone who has been
23 on social media or watched a local news broadcast knows that there is no reasonable expectation of
24 privacy while traveling on the public streets of this City.

25 **iii. Defendants’ Conduct Does Not Constitute a Serious Invasion Of Privacy**

26 Defendants’ conduct does not constitute a serious invasion of privacy because there is no
27 protected privacy interest as explained above. The information collected by ALPR cameras is not
28 private, confidential or personal in nature. Additionally, contrary to Plaintiff’s conclusory

1 allegations, the City’s 474 ALPR cameras do not reveal “the whole of [a person’s] physical
2 movements.” *Carpenter v. United States*, 585 U.S. 296, 310 (2018). As a preliminary matter, unlike
3 a GPS tracking device on a cell phone or vehicle, the City’s ALPR cameras cannot capture any
4 information about what a person or a vehicle does outside of the City of San José or where they go
5 when their person or vehicle leaves public City streets. Additionally, the 474 ALPR cameras
6 operated by the SJPD provide an extremely limited picture of any vehicle’s movements on City
7 streets.

8 The City of San José operates approximately 1,900 miles of streets within its borders, over
9 900 traffic signalized intersections, and 5,000 stop-signed intersections. *See* City of San José,
10 Enterprise GIS, Streets, <https://data.sanjoseca.gov/dataset/>, and Street Intersections, <https://data.sanjoseca.gov/dataset/street-intersections>. Even if the City’s 474 ALPR cameras were each at a
11 different traffic signalized intersection, the information captured would only cover little more than
12 half of the traffic lights in the City. However, as Plaintiffs acknowledge, the City has placed
13 multiple ALPR cameras at a single intersection. Complaint ¶ 54. The information collected from
14 474 ALPR cameras is too limited to reveal the whole of a person’s physical movements (or those of
15 a vehicle) within the City of San José. Thus, even if there were some privacy interest implicated in
16 the movements of a vehicle on public city streets, the City’s ALPR cameras do not capture enough
17 data points to seriously invade that interest. The City’s ALPR system does not achieve the type of
18 “near perfect surveillance” of which *Carpenter* was concerned. Plaintiffs offer nothing more than
19 contentions and deductions to allege that they do. As one Ninth Circuit judge put it: “It would be
20 folly to hold that searches of ALPR databases require a warrant without identifying even one case
21 where the ‘whole of [one’s] physical movements’ was implicated in an ALPR database search.”
22 *United States v. Yang*, 958 F.3d 851, 864 (9th Cir. 2020) (Bea, J., concurring).

24 **C. Plaintiffs Fail to State a Cause of Action for Violation of Cal. Const. Art. 1 § 13.**

25 In determining whether an illegal search has occurred under article I, section 13 of the
26 California Constitution, the test is whether a person has exhibited a reasonable expectation of
27 privacy, and if so, whether that expectation has been violated by unreasonable governmental
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1 intrusion. As already outlined above, because there is no reasonable expectation of privacy in the
2 information collected by the ALPR cameras, Plaintiffs have not alleged an illegal search.

3 A “search” occurs when an expectation of privacy that society is prepared to consider
4 reasonable is infringed. *United States v. Jacobsen*, 466 U.S. 109, 113 (1984); *People v. Salih*, 173
5 Cal. App. 3d 1009, 1015-16, 219 (1985). It is generally held that the mere looking at that which is
6 open to view is not a “search.” *People v. Sheridan*, 236 Cal. App. 2d 667, 669 (1965). For instance,
7 when something is plainly visible from a vantage point where law officers have a right to be, there
8 can be no search in the constitutional sense. *People v. Lovelace*, 116 Cal. App. 3d 541, 548, (1981);
9 *see also Katz v. United States*, 389 U.S. 347, 351 (1967) (“What a person knowingly exposes to the
10 public ... is not a subject of Fourth Amendment protection.”).

11 The test of validity of the surveillance is determined by whether that which is perceived or
12 heard is that which is conducted with a reasonable expectation of privacy—not upon the means used
13 to view it or hear it. *People v. Henderson*, 220 Cal. App. 3d 1632, 1645 (1990); *People v. Arno*, 90
14 Cal. App. 3d 505, 511, (1979). The fact that the SJPD ALPR database collects and saves images of
15 vehicles driven on public roads, allowing officers to retrospectively search that information does not
16 change the nature of the information collected. The technology merely allows police officers to
17 view images of information that a person knowingly exposed to the public, something any police
18 officer can do without a warrant.

19 In *People v. Cartwright*, 99 Cal. App. 5th 98 (2024), the court held that the police did not
20 conduct a search when they accessed footage from a city’s streetlight cameras because the
21 defendant had no objectively reasonable expectation of privacy when he used the public streets and
22 sidewalk in the city’s downtown in a manner readily observable to passersby. The court in
23 *Cartwright* rejected the Cartwright’s argument that *Carpenter* established that he had a reasonable
24 expectation of privacy. As the court explained:

25 Recordings from cameras, such as the ones that captured Cartwright’s movements in
26 the downtown urban environment in the middle of a weekday, do not rise to the same
27 “unique nature of cell phone location records.” [citation] Indeed, “[a] person
28 traveling ... on public thoroughfares has no reasonable expectation of privacy in his
movements from one place to another.” [citation] Indeed, [. . .] “[p]eople understand
that they may be filmed by security cameras on city streets.” [citation]

1 *People v. Cartwright*, 99 Cal. App. 5th at 103. Because Plaintiffs have not alleged facts that
2 SJPD has conducted a “search”, this cause of action fails.

3 **D. Plaintiffs Fail to State a Cause of Action Under CCP § 526a.**

4 Code of Civil Procedure section 526a allows a taxpayer to bring “[a]n action to obtain a
5 judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate,
6 funds, or other property of a [local agency].” The essence of a taxpayer action is an illegal or
7 wasteful expenditure of public funds or damage to public property. *Fiske v. Gillespie*, 200 Cal. App.
8 3d 1243 (1988).

9 A taxpayer waste cause of action will not lie where the challenged governmental action is
10 legal. *Lucas v. Santa Maria Public Airport Dist.*, 39 Cal.App.4th 1017, 1027 (1995). As such,
11 Plaintiffs only have taxpayer standing if they have sufficiently alleged constitutional violations in
12 the Complaint. Because SJPD’s ALPR program does not violate the Constitution, Plaintiffs have
13 failed to state a cause of action.

14 Additionally, as it relates specifically to Plaintiffs’ allegations regarding allowing external
15 agencies to conduct warrantless retrospective searches of the ALPR system, the Complaint does not
16 allege an expenditure of public funds in this regard. The taxpayer action must involve
17 an actual or threatened expenditure of public funds. General allegations, innuendo, and legal
18 conclusions are not sufficient; rather, the plaintiffs must cite specific facts and reasons for a belief
19 that some illegal expenditure or injury to the public fisc is occurring or will occur. *Connerly v.*
20 *Schwarzenegger*, 146 Cal. App. 4th 739, 749, (2007).

21 **E. Amendment is Futile.**

22 The court may sustain this demurrer dismissing the Complaint with prejudice and without
23 leave to amend. While liberality in permitting amendment is the general rule, Plaintiffs still carry
24 the burden of showing a “reasonable possibility” that amendment could cure the alleged
25 deficiencies. *Blank v. Kirwan* 39 Cal.3d 311, 318 (1985). The court may properly deny leave to
26 amend where, as here, the defect is of a persistent legal nature and Plaintiffs are not entitled to relief
27 on any legal theory. *McDonald v. Superior Court*, 180 Cal.App.3d 297, 303 (1986). As there is no
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1 legal basis by which Plaintiffs would be entitled to relief against Defendants, the court may sustain
2 this demurrer dismissing the Complaint with prejudice and without leave to amend.

3 **IV. MEET AND CONFER REQUIREMENTS**

4 Pursuant to Code of Civil Procedure section 430.41, the parties met and conferred regarding
5 the basis for the Defendants' Demurrer. *See* Van Roo Decl. The parties were unable to reach an
6 agreement that would resolve Defendants' objections to the Complaint. *Id.* Therefore, Defendants
7 filed the instant motion.

8 **V. CONCLUSION**

9 Defendants respectfully requests the Court sustain their demurrer to Plaintiffs' complaint
10 without leave to amend and dismiss the case with prejudice.

11
12 Respectfully submitted,

13 Dated: January 16, 2026

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