

CAUSE NO. CV25-02-079

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| EMOB DECATUR, L.P., | § IN THE DISTRICT COURT OF |
| <i>Plaintiff</i> | § |
| | § |
| | § |
| v. | 271ST JUDICIAL DISTRICT |
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| | § |
| CAREY WILLIAMS, RAY COOK, JEFF BAKKER, GARY COCANOUGHER MARK DUNCUM, and CHRISTOPHER FORBIS, In Their Official Capacities of Board Members of Decatur Hospital Authority d/b/a Wise Health System | § |
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| | § |
| <i>Defendants.</i> | WISE COUNTY, TEXAS |
| | § |
| | § |

**EMOB DECATUR, L.P.’S RESPONSE TO DEFENDANTS’ PLEA TO THE
JURISDICTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff EMOB Decatur, L.P. (“EMOB”) hereby files its Response (the “Response”) to Defendants’ Plea to the Jurisdiction (the “Plea”) and, in support, states as follows:

I. SUMMARY

A clearly written statute specifically requires hospital districts like Decatur Hospital Authority d/b/a Wise Health System (the “Authority”) to provide for their debt obligations and other liabilities once they sell a hospital before spending money on other priorities. While the Authority’s board (the “Board”) has discretion in its budgeting, that discretion does not allow it to violate a statute. The purpose of an *ultra vires* suit like the one filed by EMOB is to address a violation of law by the agents of the governmental entity. When the Board voted to violate the law by not providing for the Authority’s obligation to EMOB and to instead spend the money on other priorities, they violated the law. Defendants characterize this suit as retaliatory, but an *ultra*

vires suit such as this one is EMOB’s remedy to prevent the Authority’s Board from causing the Authority to act in violation of the statute.

Defendants also argue that the relief sought in this suit is redundant of the relief sought by EMOB in its suit against the Authority. But this *ultra vires* suit focuses on the statutory requirements that the Authority provide for its obligations and that it not spend money on other priorities until it has done so. The suit against the Authority focuses on relief available under the lease between the parties (the “Lease”), while this one seeks the additional relief available under the statute. In particular, the prohibition on spending on other priorities until the obligation is provided for is important to EMOB for ensuring that the Authority does not spend the money needed to fulfill those obligations. The suit is therefore not redundant of the relief sought against the Authority.

This suit is an appropriate and necessary one to compel the Authority to comply with the statute governing its operations. Defendants’ Plea to the Jurisdiction should therefore be denied.

II. EXHIBITS

This Response is based upon the following evidentiary support:

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| Exhibit 1 | Deposition of Jason Wren |
| Exhibit 2 | Declaration of Jeffrey D. Echt |
| Exhibit 2-A | Lease |
| Exhibit 2-B | Amendment to Lease |
| Exhibit 2-C | Second Amendment to Lease |
| Exhibit 3 | Affidavit of Kristy Campbell with Exhibits |
| Exhibit 4 | Declaration of Brenda Kindt |
| Exhibit 4-A | Email from Todd Scroggins to Brenda Kindt |

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|-------------|---|
| Exhibit 5 | Authority's First Amended Petition in EMOB's suit against the Authority |
| Exhibit 6 | Authority's Motion for Summary Judgment on the Interpretation of Article 6.1 in EMOB's suit against the Authority (without exhibits) |
| Exhibit 7 | Affidavit of Matthew D. Hill |
| Exhibit 7-A | Authority's Governing Board Meeting Minutes dated February 26, 2024 ¹ |
| Exhibit 7-B | Authority's Governing Board Meeting Minutes dated November 18, 2024 ² |
| Exhibit 7-C | Authority's Governing Board Meeting Minutes dated December 16, 2024 ³ |
| Exhibit 7-D | Authority's Website: "Mission — Healthy Wise County" ⁴ |
| Exhibit 8 | Affidavit of Todd Scroggins |
| Exhibit 9 | Defendants' Fourth Amended Answer and Defendant's Fourth Amended Counterclaim and Third-Party Petition in Authority's suit against EMOB |

¹ Retrieved from Authority's website, "DHA Meeting Minutes — Healthy Wise County," (<https://www.healthywiseco.org/meeting-minutes>) on February 24, 2025.

² *Id.*

³ *Id.*

⁴ <https://www.healthywiseco.org/mission>, "Mission — Healthy Wise County," retrieved on February 21, 2025.

III. FACTUAL BACKGROUND

A. Authority's Obligations Under Lease

1. The Authority is a municipal hospital authority⁵ created by an ordinance of the City of Decatur, Texas.⁶

2. The Authority is governed by its board of directors,⁷ who are appointed by the City of Decatur.⁸

3. On May 5, 2016, EMOB and the Authority entered into a lease (the "Lease") for a cancer center building (the "Building") located at 2010 South Ben Merritt Drive, Decatur, Texas 76234.⁹ In 2020, those parties executed an Amendment to Lease that extended the term of the Lease to March 31, 2030.¹⁰ In 2021, the parties executed a Second Amendment to Lease that extended the term of the Lease to August 31, 2036.¹¹

4. That Lease obligates the Authority to pay base rent and other charges and amounts due under the terms of the Lease (collectively, the "Rent") by the first day of each calendar month throughout the term of the Lease.¹²

⁵ Exhibit A to Exhibit 3, the Affidavit of Kristy Campbell, p. 1.

⁶ Decatur Code of Ordinances § 2-76 (2024); Exhibit 5, Authority's First Amended Petition, ¶ 10; *see also* <https://capitol.texas.gov/tlodocs/88R/analysis/html/SB01097S.htm>, retrieved on February 21, 2025; Exhibit 8, Affidavit of Todd Scroggins, ¶ 4.

⁷ TEX. HEALTH & SAFETY CODE ANN. § 262.011.

⁸ *See* TEX. HEALTH & SAFETY CODE ANN. § 262.012(a).

⁹ Exhibit A to Exhibit 3, the Affidavit of Kristy Campbell.

¹⁰ Exhibit B to Exhibit 3, the Affidavit of Kristy Campbell.

¹¹ Exhibit C to Exhibit 3, the Affidavit of Kristy Campbell.

¹² Exhibit A to Exhibit 3, the Affidavit of Kristy Campbell, § 3.3.

B. Authority's Sale of Hospital and Failure to Pay Rent

5. The Authority closed on a sale of most of its assets to a private entity affiliated with HCA Healthcare on November 30, 2023.¹³

6. After the sale, the Authority no longer owned or operated a hospital.¹⁴

7. At least as of January 11, 2024, the Authority vacated all or substantially all of the Building.¹⁵

8. The Authority continued to pay Rent through December 1, 2024.¹⁶

9. Notably, the Authority has stated in a separate suit brought by the Authority against EMOB, citing supporting sworn testimony in a summary judgment motion, that “the Authority continues to pay rent and otherwise operate as the Tenant under the Lease.”¹⁷

10. Likewise, the Authority’s live petition in that suit states, “At all times during the life of the Lease, [the Authority] has duly and timely made lease payments as prescribed by the Lease. [The Authority] has never defaulted on the Lease, which remained in full force and effect up through closing of the sale.”¹⁸

11. Nonetheless, on January 1, February 1, March 1, and April 1, 2025, the Authority did not make its Rent payments.¹⁹

¹³ See Exhibit 1, Deposition of Jason Wren, 56:21-57:9, 87:13-22; see also “Spending Spree: Medical City Acquires Wise Health System and Sachse Hospital,” D Magazine, December 5, 2023, <https://www.dmagazine.com/healthcare-business/2023/12/spending-spree-medical-city-acquires-wise-health-system-and-sachse-hospital/>, retrieved on February 21, 2025; Exhibit 8, Affidavit of Todd Scroggins, ¶ 3.

¹⁴ See Exhibit 1, Deposition of Jason Wren, 27:8-16 (confirming that the Authority is not permitted to compete with the hospital it sold to HCA); Exhibit 8, Affidavit of Todd Scroggins, ¶ 5.

¹⁵ Exhibit 2, Declaration of Jeffrey D. Echt, ¶ 36; Exhibit 8, Affidavit of Todd Scroggins, ¶ 5; see also Exhibit 1, Deposition of Jason Wren, 100:18-25.

¹⁶ Exhibit 2, Declaration of Jeffrey D. Echt, ¶ 37.

¹⁷ Exhibit 6, Authority’s Motion for Summary Judgment on the Interpretation of Article 6.1, p. 13.

¹⁸ Exhibit 5, Authority’s First Amended Petition, ¶ 13.

¹⁹ Exhibit 2, Declaration of Jeffrey D. Echt, ¶ 38.

C. Authority's Approval of Budget Failing to Provide for Payment of Rent Obligations

12. When EMOB's property manager inquired about the missing Rent payment, the Authority's CEO and Executive Director, Todd Scroggins, sent her an email stating, "There were no funds allocated in the budget for rent for this space at 2010 Ben Merritt Drive in 2025 and as such no payments will be made for this space."²⁰

13. On December 16, 2024, the Authority's Governing Board held a meeting where they approved the 2025 annual operating and capital budget referred to by Scroggins.²¹

14. The Governing Board meeting minutes for that meeting, published on the Authority's website, reflect that each of the Acting Board Members was present at the meeting and voted unanimously to approve the 2025 annual operating and capital budget.²²

15. In doing so, the Acting Board Members approved the 2025 budget authorizing the expenditure of funds to promote public health and general welfare initiatives that did not make appropriate provision for the satisfaction of the Authority's liability to pay Rent to EMOB under the Lease.²³

16. Scroggins confirms that "2025 budget did not include Lease payments," explaining that the budget was passed after balancing and considering, among other factors, "the constitutionality of continuing the Lease, the continuing enforceability of the Lease, and the likelihood of the Authority having liability for the entire lease term."²⁴

²⁰ Exhibit 4-A, Email from Todd Scroggins, attached to Exhibit 4, Declaration of Brenda Kindt.

²¹ Exhibit 7-C, Authority's Governing Board Meeting Minutes dated December 16, 2024.

²² *Id.*

²³ *Id.*

²⁴ Exhibit 8, Affidavit of Todd Scroggins, ¶ 4.

17. In other words, the Authority believes (wrongly) that a technicality allows it to stiff EMOB on the amounts the Authority had promised to pay under the Lease and therefore stopped payments.²⁵

18. Scroggins has said that the Authority passed the 2025 budget to advance public purposes and described the ongoing operations of the Authority as “operat[ing] a gymnasium and aquatics center, a business office building, and various nursing facilities under the state/federal Quality Improvement Payment Program.”²⁶

19. Given these functions, the approval of the 2025 budget was also an expenditure of funds to promote public health and general welfare initiatives.²⁷

IV. ARGUMENT AND AUTHORITIES

A. Plea to the Jurisdiction Standard

When a plea to the jurisdiction challenges the pleadings, the court must determine if the pleader has alleged facts that, if true, affirmatively demonstrate the court’s jurisdiction to hear the cause.²⁸ Courts construe the pleadings liberally in favor of the plaintiff and look to the pleader’s intent.²⁹ If the pleadings do not contain sufficient facts to affirmatively demonstrate the trial court’s jurisdiction but do not affirmatively demonstrate incurable defects in jurisdiction, the issue is one of pleading sufficiency and the plaintiffs should be afforded the opportunity to amend before dismissal.³⁰ When a defendant challenges jurisdictional facts, courts consider relevant evidence in

²⁵ *See id.*

²⁶ Exhibit 8, Affidavit of Todd Scroggins ¶ 5. This is consistent with the functions described on the Authority’s website. *See Exhibit 7-D.*

²⁷ *See id.*

²⁸ *Jones v. Turner*, 646 S.W.3d 319, 325 (Tex. 2022).

²⁹ *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

³⁰ *Id.*

the record and will grant the plea only if there is no question of fact as to the jurisdictional issue.³¹ While a court may consider relevant evidence where necessary to resolve jurisdictional issues, in considering such evidence, it must take as true all evidence favorable to the nonmovant and indulge every reasonable inference and resolve any doubts in the nonmovant's favor, as with a summary judgment motion.³² Here, Defendants state that they are relying for the factual background "on EMOB's pleading allegations and assumes the truth of those allegations for purposes of this motion only."³³

B. The failure to provide for the Authority's obligation to EMOB is not an act of discretion but an *ultra vires* violation of law

While the Authority's Board has discretion in setting the budget for the Authority, it does not have the discretion to violate the law. "Governmental immunity generally bars suits for monetary damages against public officials, but governmental immunity does not bar prospective relief against government officers acting *ultra vires*, i.e., outside their legal authority."³⁴ While "an *ultra vires* claim may not be maintained if the officials' acts are within their discretion," a plaintiff may prevail by showing "that the officers failed to perform a purely ministerial act or acted *outside* the scope of their allotted discretion."³⁵

Defendants contend that EMOB may not sue them because their actions in not providing for the Authority's obligations under the Lease were in their discretion,³⁶ but that discretion does not extend to causing the Authority to violate the law.³⁷ Here, the enabling statute for the Authority following its sale of the hospital is Texas Health & Safety Code § 262.0331, governing the

³¹ *Jones*, 646 S.W.3d at 325.

³² *Id.*

³³ Plea to the Jurisdiction, p. 2, n.1.

³⁴ *Id.*

³⁵ *Id.* (emphasis in original).

³⁶ Plea to the Jurisdiction, pp. 5-9.

³⁷ See *Jones*, 646 S.W.3d at 325.

“Expenditure of Funds for Public Health initiatives After Sale or Closing of Hospital,” which constrains the Authority’s ability to spend money other than for specific purposes authorized by the legislature. It is contained in Chapter 262 of the Texas Health and Safety Code, the Hospital Authority Act, which authorizes the creation of hospital authorities like the Authority and constrains the powers and limitations of such authorities.³⁸ Defendants acknowledge that Chapter 262 of the Texas Health & Safety Code constituted the Authority’s “enabling provisions.”³⁹ Section 262.033 of the Texas Health & Safety Code provides the authorization for a board to sell or close all or part of a hospital under specific circumstances. But the Texas Legislature added an additional section in the code limiting what the hospital district may spend money on once it no longer has such a hospital.⁴⁰ Subsection a of that statute identifies what categories of expenses the authority may spend its funds on:

If, after the sale or closing of a hospital under Section 262.033, the authority does not own or operate a hospital, the board may use the authority’s available assets to promote public health and general welfare initiatives that the board determines will benefit the residents served by the authority. . . .⁴¹

But, importantly, subsection b of that statute contains an explicit limitation on an authority’s board’s ability to make such expenditures unless the board has provided for its obligations:

The board may not make an expenditure under Subsection (a) unless . . . (1) the board makes appropriate provisions for the satisfaction of any outstanding bonds, debt obligations, or other liabilities of the authority.⁴²

³⁸ TEX. HEALTH & SAFETY CODE § 262.001, *et seq.*

³⁹ Plea to the Jurisdiction, p. 7.

⁴⁰ TEX. HEALTH & SAFETY CODE § 262.0331.

⁴¹ TEX. HEALTH & SAFETY CODE § 262.0331(a).

⁴² TEX. HEALTH & SAFETY CODE § 262.0331(b).

Importantly, this limitation specifically references the board and contains a direct constrain on the circumstances in which it may spend money on other priorities.⁴³ This is a specific legal constraint on the Board’s discretion since such discretion does not extend to causing the Authority to violate the law.⁴⁴ EMOB’s allegations in this suit establish that the Authority did not make appropriate provisions for the satisfaction of the obligations contained in the Lease.

Defendants argue that the Texas Supreme Court’s decision in *Hall v. McRaven*⁴⁵ provides the Board with discretion to violate the law, but this entirely misreads that decision. *Hall* involved a regent of the University of Texas seeking to require the school’s chancellor to comply with a federal law governing the redactions permitted in student educational records.⁴⁶ The court there, as Defendants acknowledge,⁴⁷ distinguished between a governmental official who mistakenly interprets a law collateral to the government official’s enabling statute and one who mistakenly interprets the enabling statute itself.⁴⁸ There, the court found that where an official’s duty, as defined by the statute governing his compliance with information requests, was not to follow the enabling law (there, the Regent’s rule requiring him to interpret the federal privacy rule) but rather to interpret a collateral law, a misinterpretation of that collateral law does not violate the official’s duty even if his interpretation is erroneous.⁴⁹

But this holding is inapposite here. The statute limiting the Authority’s spending authority is contained in the enabling law constraining the Board’s authority to spend money.⁵⁰ The *Hall*

⁴³ *Id.*

⁴⁴ See *Jones*, 646 S.W.3d at 325.

⁴⁵ 508 S.W.3d 232 (Tex. 2017).

⁴⁶ *Id.* at 235-237.

⁴⁷ Plea to the Jurisdiction, p. 6.

⁴⁸ *Hall*, 508 S.W.3d at 241.

⁴⁹ *Id.* at 242.

⁵⁰ TEX. HEALTH & SAFETY CODE § 262.0331(b).

court acknowledged that binding Texas Supreme Court precedent requires that, in that context, “a public officer generally lacks discretion or authority to misinterpret the law.”⁵¹ While an *ultra vires* suit may not challenge an official’s exercise of absolute discretion, such a suit is appropriate to challenge “an officer’s exercise of judgment or *limited* discretion without reference to or in conflict with the constraints of the law authorizing the official to act.”⁵²

Instead, this case is like the one decided by the Texas Supreme Court in *Houston Belt*.⁵³ There, the court explained that “prohibiting *ultra vires* suits when an officer acts outside the bounds of his granted authority would run counter to the purposes behind immunity.”⁵⁴ In that case, the applicable ordinance provided that the area of an impervious surface would be “be determined on the basis of digital map data associated with tax plats and assessment rolls *or other similar reliable data as shall be determined by [the official]*.”⁵⁵ The court found that the official had discretion to determine what factors to consider in determining the area, but the ordinance limited that discretion and required that the official consider reliable data similar to tax plats and assessment rolls.⁵⁶ The court thus found that the court of appeals had erred by finding that there was no jurisdiction over an *ultra vires* suit based upon the official’s discretion because the court of appeals “stopped short of asking whether his authority might nonetheless have some limits.”⁵⁷ The official’s discretion to make the determination did not make him immune from an *ultra vires* suit where he nonetheless did not comply with the requirements of the governing law.⁵⁸

⁵¹ *Hall*, 508 S.W.3d at 241, citing *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 163 (Tex. 2016).

⁵² *Houston Belt*, 487 S.W.3d at 163 (emphasis in original).

⁵³ 487 S.W.3d at 163.

⁵⁴ *Id.* at 164 (emphasis in original).

⁵⁵ *Id.* at 168 (emphasis in original).

⁵⁶ *Id.* at 168-169.

⁵⁷ *Id.* at 168.

⁵⁸ *Id.* at 168-169.

Likewise, here, even if the Board had discretion on which priorities to spend its money upon following the sale of the hospital, its discretion was limited and required it to “make[] appropriate provisions for the satisfaction of any outstanding bonds, debt obligations, or other liabilities of the authority” before it could spend such money.⁵⁹ Contrary to Defendants’ argument, that requirement does not give it discretion to determine whether a debt obligation or other liability must be provided for—only what the appropriate provision for such obligation is.⁶⁰ EMOB has pleaded that Defendants “approved the 2025 budget authorizing the expenditure of funds to promote public health and general welfare initiatives that did not make appropriate provision for the satisfaction of the Authority’s liability to pay Rent to EMOB Decatur under the Lease.”⁶¹ Defendants have conceded that they have an obligation under the Lease repeatedly: they argue in their summary judgment motion, it argues that its unconstitutional obligation to make Lease payments illustrates the Authority’s lack of control⁶² and argue extensively that the Lease obligations constitute a debt.⁶³ Further, even in their evidence attached to their Plea to the Jurisdiction, Todd Scroggins states that there was no tax or fund within the control of the Authority at the time of contracting sufficient to pay “the entire lease obligation plus interest.”⁶⁴ Given Scroggins’s factual acknowledgment that there was an obligation, the Authority cannot argue that it is now in its discretion to determine whether there is such an obligation. And nowhere in the Plea to the Jurisdiction do Defendants contend that they made *any* provision for the Authority’s obligations to pay Rent to EMOB.⁶⁵ That

⁵⁹ TEX. HEALTH & SAFETY CODE § 262.0331(b).

⁶⁰ See TEX. HEALTH & SAFETY CODE § 262.0331(b).

⁶¹ Plaintiff’s Original Petition, ¶ 30.

⁶² Defendants’ Motion for Summary Judgment, pp. 17-18.

⁶³ *Id.*, pp. 18-22.

⁶⁴ Plea to the Jurisdiction, Exhibit 2, ¶ 2.

⁶⁵ See, generally, Plea to the Jurisdiction.

failure, combined with Defendants' admission that they allocated other funds to promote public health,⁶⁶ demonstrate that EMOB has pleaded an appropriate *ultra vires* claim.⁶⁷

Defendants also argue that, in refusing to comply with the statute requiring them to provide for their obligations to EMOB, they were interpreting law collateral to Chapter 262, namely Texas Constitution Article XI, §§ 3 and 5.⁶⁸ Defendants' argument here is that it was their discretion to make this constitutional determination whether there remains an obligation under the Lease.⁶⁹ But, as discussed, the Authority has conceded an obligation exists subject to that constitutional argument.⁷⁰ The constitutional interpretation (an interpretation of a collateral law) does not provide the Board with discretion to ignore the acknowledged obligation given that only when a state or federal law grants an official unrestrained authority to interpret that collateral law is an incorrect interpretation of that law immunized from an *ultra vires* suit.⁷¹ Here, the Board's obligation was controlled by Chapter 262, and the applicable provision gives the Board no authority to interpret the law. The Board is simply obligated to make appropriate provision for the obligations of the Authority, not to interpret whether the Texas Constitution allows it to ignore such obligations.⁷² Any incorrect interpretation of the Texas Constitution cannot immunize the Board's failure to comply with the statute's clear requirement⁷³

⁶⁶ Plea to the Jurisdiction, p. 3.

⁶⁷ See TEX. HEALTH & SAFETY CODE § 262.0331(b).

⁶⁸ Plea to the Jurisdiction, pp. 7-8.

⁶⁹ *See id.*

⁷⁰ Plea to the Jurisdiction, Exhibit 2, ¶ 2.

⁷¹ *Van Boven v. Freshour*, 659 S.W.3d 396, 403 (Tex. 2022).

⁷² TEX. HEALTH & SAFETY CODE § 262.0331(b).

⁷³ *See Van Boven*, 659 S.W.3d at 403.

C. The relief sought by EMOB is not redundant of the relief sought in its suit against the Authority

Despite this lawsuit seeking a declaration that the Board is required to provide for the Authority's obligations to EMOB under the Lease before it can spend funds on other priorities covered by the statute and EMOB's suit against the Authority seeking money damages as well as declarations of rights under its Lease, Defendants contend that the relief in this suit is redundant of the relief sought in EMOB's suit against the Authority. "Under the redundant remedies doctrine, courts will not entertain an action brought under the [Uniform Declaratory Judgments Act] when the same claim could be pursued through different channels."⁷⁴ Where the relief sought in the declaratory judgment action is different than what is available in the other suit, though, there is no bar.⁷⁵

The situation here is like the situation the Texas Supreme Court addressed in *Patel*. There, eyebrow threaders (a type of cosmetologist) were given citations under a law requiring certain training and certification under a Texas regulation.⁷⁶ The governmental defendants argued that a declaratory judgment action seeking to hold the regulation unconstitutional sought a remedy that was redundant of what was already available to the threaders in challenging their citations under the Administrative Procedures Act.⁷⁷ The court found that the relief that would be available in a challenging the citations under the ADA was not redundant of the relief sought in the *ultra vires* declaratory judgment suit brought by the eyebrow threaders.⁷⁸ There, in an APA claim, relief would have been limited to reversal of the particular orders at issue.⁷⁹ But in their *ultra vires* suit, the

⁷⁴ *Patel v. Tex. Dep't of Licensing & Regulation*, 469 S.W.3d 69, 79 (Tex. 2015).

⁷⁵ *See id.*

⁷⁶ *Id.* at 74.

⁷⁷ *Id.* at 79.

⁷⁸ *Id.*

⁷⁹ *Id.*

threaders sought “prospective injunctive relief against future agency orders based on statutes and regulations.”⁸⁰ The court found that the threaders could not attack the constitutionality of a regulation governing them in the other suit.⁸¹ Because the suit went beyond the relief that could be afforded in an action challenging the citations under the APA, the availability of that APA challenge did not render the *ultra vires* declaratory judgment suit did not provide a redundant remedy.⁸²

Likewise, here, EMOB’s suit against the Authority seeks to recover damages for breach of contract,⁸³ quantum meruit,⁸⁴ and declarations regarding EMOB’s rights and the Authority’s obligations under the Lease.⁸⁵ The suit does not, and could not, address the statutory requirement for the Board to make appropriate provision for the Authority’s obligations to EMOB, and it does not and could not seek any relief regarding the Board’s right to allocate funds to other priorities before making appropriate provision for the Authority’s obligations to EMOB. Like the threaders’ suit in *Patel*, EMOB is seeking different relief entirely in this *ultra vires* suit under different legal authority.⁸⁶ As in *Patel*, this suit seeks an interpretation of the governmental officials’ obligations under applicable law—there, the Texas Constitution,⁸⁷ here the statute. EMOB is not permitted to sue the Authority directly for its violation of the statute because sovereign immunity prevents such suits from being brought directly against a governmental entity but instead requires that it be brought via an *ultra vires* claim such as this one.⁸⁸ Thus, the suit here is not redundant, and Defendants Plea to the Jurisdiction must be denied.

⁸⁰ *Id.*

⁸¹ *Id.* at 80.

⁸² *Id.* at 79.

⁸³ Exhibit 9, ¶¶ 45-63.

⁸⁴ Exhibit 9, ¶¶ 64-69.

⁸⁵ Exhibit 9, ¶¶ 70-73.

⁸⁶ *Patel*, 469 S.W.3d at 79.

⁸⁷ *Id.*

⁸⁸ *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 and 377 (Tex. 2009).

D. Defendants are not entitled to recover fees and costs

Defendants seek to recover fees and costs under the Declaratory Judgment Act,⁸⁹ which authorizes the court to “award costs and reasonable and necessary attorney’s fees as are equitable and just.”⁹⁰ Defendants characterize the suit as retaliatory, but it is instead the only type of suit that is permitted to require the Authority to comply with the statute requiring it to provide for its obligation under the Lease. EMOB has not targeted Defendants for some retaliatory reason but instead because EMOB seeks a determination of its rights under the law. When the Board stopped the Authority from paying Rent under its Lease and authorized the approval of expenditures on other priorities,⁹¹ this *ultra vires* suit was the remedy available to EMOB to enforce its statutory rights.⁹² As discussed above, the lawsuit is appropriately brought and should not be dismissed, but, even should it be dismissed, an award of fees is not equitable to punish EMOB for seeking to enforce its statutory rights.

V. PRAYER

WHEREFORE, EMOB respectfully prays for the following relief:

1. That the Plea to the Jurisdiction be denied;
2. That Defendants’ request for attorneys’ fees and costs be denied; and
3. That the Court grant EMOB such other and further relief to which it may be justly

entitled.

Dated: April 28, 2025

⁸⁹ Plea to the Jurisdiction, p. 11.

⁹⁰ TEX. CIV. PRAC. & REM. CODE § 37.009.

⁹¹ Plea to the Jurisdiction, Exhibit 2, ¶ 4.

⁹² *Heinrich*, 284 S.W.3d at 372 and 377.

Respectfully Submitted,

PRYOR & BRUCE

By: /s/ Bobby G. Pryor

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served via eService and electronic mail upon the following on this 28th day of April, 2025.

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