

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 08/23/2011 TIME: 10:41:00 AM DEPT: C26

TEMPORARY JUDGE: JAMES E. LOVEDER
CLERK: Kimberly A Boettner
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT: Linda OConnor

CASE NO: 30-2011-00461701-CU-WM-CJC CASE INIT.DATE: 03/28/2011
CASE TITLE: Reardon vs. Capistrano Unified School District
CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 71303416
EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 8-22-11, now makes the following ruling:

Following the hearing on the Demurrer, the court took this matter under submission. Upon further review, the court rules as follows:

The Demurrer is SUSTAINED without leave to amend as to the First Cause of Action. The Demurrer is SUSTAINED with leave to amend as to the Second Cause of Action.

First Cause of Action: The failure to oppose the Demurrer may be construed as having abandoned the claims. *Herzberg v. County of Plumas* (2005) 133 Cal. App. 4th 1, 20. ("Plaintiffs did not oppose the County's demurrer to this portion of their seventh cause of action and have submitted no argument on the issue in their briefs on appeal. Accordingly, the court deems plaintiff to have abandoned the issue.") Plaintiff conceded the issue is moot.

Second Cause of Action: The Legislature requires anyone complaining of a Brown Act violation to send a letter to the agency within 90 days to demand correction. Govt. Code §54960.1. If, during the pendency of any action under section 54960.1, the court determines the alleged Brown Act violation has been cured or corrected by the legislative body, the action "shall be dismissed with prejudice." Govt. Code §54960.1(e).

Additionally, Govt. Code §54960.1(f) provides that: "The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter."

Plaintiff contends that this action is limited to declaratory relief for future conduct similar to *California Alliance for Util. Safety & Education v. San Diego* (1997) 56 C.A.4th 1024; 9 Witkin, Summary of California Law (10th Ed.) Administrative Proceedings § 31. However, that case did not consider the

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application of Govt. Code §54960.1(e). As there be a reasonable possibility that the defect may be cured by amendment, leave to amend is appropriate. Goodman v. Kennedy (1976) 18 Cal.3d 335, 349.

Defendants' Request for Judicial Notice: Pursuant to Evidence Code §452(c) a court may take judicial notice of the official acts of the legislative, executive, and judicial departments of the United States and any state of the United States. Thus, pursuant to Evidence Code §452(c), a court may take judicial notice of public records contained within the files of government entities. Lungren v. Community Redevelopment Agency for the City of Palm Springs (1997) 56 Cal.App.4th 868, 871. Further, pursuant to Government Code §6252, "public records include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by a any state or local agency." Thus, judicial notice is appropriate and Defendant's request is GRANTED.

Plaintiff's Request for Judicial Notice: Plaintiff's Request for Judicial Notice fails to comply with CRC 3.1306(c), as Plaintiff does not provide a copy of the material for which judicial notice is requested. Thus, Plaintiff's request for judicial notice is DENIED.

Court orders clerk to give notice.