

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 08/07/2012

TIME: 09:58:00 AM

DEPT: C-71

JUDICIAL OFFICER PRESIDING: Ronald S. Prager

CLERK: Lee Ryan

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: 37-2011-00102161-CU-NP-CTL CASE INIT.DATE: 12/08/2011
CASE TITLE: Abbe vs. San Diego City Employees' Retirement System [IMAGED]
CASE CATEGORY: Civil - Unlimited CASE TYPE: Non-PI/PD/WD tort - Other

EVENT TYPE: Motion Hearing (Civil)

APPEARANCES

The Court, having taken the above-entitled matter under submission on 06/22/12 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court rules on defendant City of San Diego's ("City") demurrer to the first amended complaint ("FAC") as follows:

After taking the matter under submission, the Court affirms its tentative ruling.

The demurrer to the first cause of action for aiding and abetting SDCERS' breach of SDMC section 24.1312 ("section 24.1312") is sustained without leave to amend. The Court notes that plaintiffs Thomas Abbe et al. (collectively "Plaintiffs") have withdrawn the first cause of action for violation of section 24.1312 with respect to a concurrently filed demurrer by SDCERS and stated that the allegations set forth in that cause of action would be subsumed within the third cause of action. Thus, this claim is redundant.

The demurrer to the fourth cause of action for aiding and abetting SDCERS is sustained without leave to amend, as Plaintiffs failed to establish the existence of a primary wrong for the reasons stated in the Court's ruling on SDCERS's concurrently filed demurrer and motion to strike. As this Court stated in its prior ruling, there can be no liability for aiding and abetting where no primary wrong has occurred. (*Levine, Inc. v. Higashi* (2005) 131 Cal.App.4th 566,575.) Here, Plaintiffs' claim against the City for aiding and abetting is premised on SDCERS' alleged violation of SDMC section 24.1312 via its authorization of the window period. However, the court in *City of San Diego* specifically declined to make a determination on the lawfulness of the Board's action in 2003 and noted that the petition's challenge was limited the Board's decision in 2007 to charge the City for the shortfall. (*Id.* at pp. 82-83,

85.) Furthermore, it noted that a board member indicated at the time they voted to allow for the window period in 2003 that "the cost of the benefit would be borne by the employees." (*Id.* at p. 83.) It also stated that "the unfunded liability was not created in 2003." (*Ibid.*)

In addition, the Board is a separate entity from SDCERS. (*Lexin v. Super. Ct.* (2010) 47 Cal.4th 1050, 1064.) Thus, the vote of three ex officio City members on the SDCERS' board to approve the window period was an act of SDCERS, not the City.

IT IS SO ORDERED.

Ronald S. Prager

Judge Ronald S. Prager

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Abbe vs. San Diego City Employees' Retirement System [IMAGED]

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2011-00102161-CU-NP-CTL

I certify that I am not a party to this cause. I certify that a true copy of the attached minute order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 08/07/2012.

Clerk of the Court, by:  L. Ryan, Deputy

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