

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 05/08/2015

TIME: 10:00:00 AM

DEPT: C-71

JUDICIAL OFFICER PRESIDING: Gregory W Pollack

CLERK: Terry Ray

REPORTER/ERM:

BAILIFF/COURT ATTENDANT: L. Wilks

CASE NO: 37-2014-00030567-CU-JR-CTL CASE INIT.DATE: 09/11/2014

CASE TITLE: **Center for Local Government Accountability vs. City of San Diego [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Judicial Review - Other

EVENT TYPE: Demurrer / Motion to Strike

MOVING PARTY: City of San Diego, Todd Gloria

CAUSAL DOCUMENT/DATE FILED: Demurrer AND SUPPORTING DOCUMENTS, 11/03/2014

APPEARANCES

Craig A Sherman, counsel, present for Plaintiff(s).

David J. Karlin, specially appearing for counsel Walter C Chung, present for Defendant(s).

The Court informs counsel that the court does not publish written tentative rulings, but orally states the courts unpublished tentative.

The Court hears argument of counsel.

RULING AFTER ORAL ARGUMENT:

The Court sustains without leave to amend the demurrer of Defendants CITY OF SAN DIEGO and TODD GLORIA on the ground that Plaintiff failed to submit the prerequisite cease and desist letter required by Government Code section 54960.2(a)(1) prior to filing its Complaint.

The Court finds that the concurrent enactment of Government Code section 54960.2 and amendment of Government Code section 54960, both effective January 1, 2013, makes the cease and desist letter requirement applicable irrespective of whether Plaintiff is proceeding on a "past action violation" challenge or a "future threatened violation" challenge.

Government Code section 54960.2 expressly requires a cease and desist letter prior to commencement of a lawsuit for a past action violation. Amended Government Code section 54960, which covers, *inter alia*, future threatened violations, now makes such actions "subject to Section 54960.2," *i.e.*, subject to the cease and desist letter requirement. The Court rejects Plaintiff's argument that the insertion of "subject to Section 54960.2" modifies only the reference to past actions mentioned immediately antecedent to that insertion. Rather, the Court finds that the phrase, "subject to Section 54960.2," modifies all of the antecedent phrases in the sentence, not just the one phrase immediately prior to the insertion. If the modification of Section 54960 pertained only as to "past actions," as maintained by

Plaintiff, the reference to past actions would not have a comma separation, *i.e.*, it would read "... past actions of the legislative body subject to Section 54960.2," rather than as actually amended, *i.e.*, "...past actions of the legislative body, subject to Section 54960.2,"

Furthermore, the Court questions whether Plaintiff's action, which purportedly challenges only future violations, is, in fact, only a challenge to future actions. Since the scheduling of one, rather than two, open non-agenda public comment sessions per week is based upon the "past action" of deciding to adopt a policy or practice of scheduling only one, rather than two, non-agenda public comment sessions per week, the challenge to holding only one such session per week is necessarily a challenge to a past action. In other words, the threatened future violations which the Complaint challenges (having only one, and not two, open-agenda public comment sessions per week) is really nothing more than consequences of a past action.

Finally, the Court takes judicial notice that in January of 2015, approximately three months after the filing of the subject lawsuit, Defendants changed their practice of holding just one non-agenda public comment session per week, instead holding two, which the Complaint alleges is required by the Brown Act. Thus, any claim for on-going harm, whether characterized as "future threatened harm" or "a consequence of past action," is moot after January 2015.

IT IS SO ORDERED.



Judge Gregory W Pollack

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

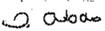
Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Center for Local Government Accountability vs. City of San Diego [IMAGED]

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2014-00030567-CU-JR-CTL

I certify that I am not a party to this cause. I certify that a true copy of the Minute Order dated 5/8/15 Ruling After Oral Argument 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 05/12/2015.

Clerk of the Court, by: , Deputy
T. Abbas

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Additional names and address attached.