Wayne P. Tate, Esq., SBN: 139270
OSTENDORF, TATE, BARNETT & TAGTMEYER, L.L.P.
23041 Mill Creek Drive
Laguna Hills, CA 92653
Phone: (949) 246-7688; Fax: (949) 380-1128

Attorney for Plaintiff, James M. Reardon

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JAMES M. REARDON, Plaintiff, vs. CAPISTRANO UNIFIED SCHOOL DISTRICT, a political subdivision of the State of California, and CAPISTRANO UNIFIED SCHOOL DISTRICT BOARD OF TRUSTEES Defendants.	**CASE NO:** 30-2011-00461701 ICJ: Gregory H. Lewis Dept.: C-26 Date: December 5, 2011 Time: 10:30 a.m. **OPPOSITION TO DEMURRER TO THE SECOND AMENDED COMPLAINT AND PETITION FOR DECLARATORY, INJUNCTIVE AND MANDAMUS RELIEF (CCP §§ 526, 526a , 1060, 1085 & GOVERNMENT CODE § 54950, ET SEQ)** Complaint Filed: March 28, 2011 Trial Date: March 19, 2012

Plaintiff, James M. Reardon, opposes the Demurrer to the Second Amended Complaint as follows:

1. INTRODUCTION

As will be shown, the defendant, Capistrano Unified School District (CUSD or District), has engaged in a devious scheme to conceal the truth of its actions from the public in direct violation of and utter disregard for the Brown Act.

2. STANDARDS FOR RULING ON A DEMURRER

The standards for deciding a demurrer were specifically stated by the court in *Sisemore v. Master Financial, Inc.* (2007) 151 Cal.App. 4th 1386, 1396-1397, as follows:

"in reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-

settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.]"..... "It is not the ordinary function of a demurrer to test the truth of the plaintiff's allegations, or the accuracy with which he describes the defendant's conduct. A demurrer tests only the legal sufficiency of the pleading." [Citation.] Thus, as noted, in considering the merits of a demurrer, 'the facts alleged in the pleading are deemed to be true, however improbable they may be.' [Citation.]

Reardon's Second Amended Complaint must be construed "liberally . . . with a view to substantial justice between the parties." (Code Civ. Proc., § 452.) If the petition states any possible legal theory, the trial court's order sustaining the demurrer must be reversed. (*Palestini v. General Dynamics Corp.* (2002) 99 Cal.App.4th 80, 86.) The court must assess the sufficiency of Reardon's Second Amended Complaint, not the truth or accuracy of the factual allegations therein or Reardon's ability to prove them. (See *216 Sutter Bay Assocs. v. County of Sutter* (1997) 58 Cal.App.4th 860, 866; *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d. 493, 496.)

3. BACKGROUND INFORMATION RE: THE PERTINENT PARTIES/ENTITIES

CUSD is a public school district created and operating under the laws of the State of California, that is located entirely within the County of Orange, State of California. CUSD Board of Trustees (BOT or Board), consists of the trustees elected or appointed to manage and oversee CUSD collectively as a board.

Capistrano Unified Education Association (CUEA), an affiliate of CTA/NEA, is the union that is the exclusive representative/bargaining unit for all certificated employees in CUSD, who shall be members of CUEA except those employees who are excluded by contract and/or law:

Capistrano Unified Chapter 224, California School Employees Association (CSEA) is the union that is the exclusive representative/bargaining unit for all classified employees in CUSD who are full-time or part-time probationary and permanent employees and who are not otherwise

excluded.

General Truck Drivers, office, Food & Warehouse Union, Teamsters Local 952, affiliated with the International Brotherhood of Teamsters (Teamsters), is the union that is the exclusive representative/bargaining unit for all classified employees who are full-time or part-time, probationary or permanent employees who hold a positions in the CUSD Transportation Department.

Capistrano Unified Management Association (CUMA) is an association that represents administrators in CUSD.

4. SUMMARY OF PERTINENT FACTS

Due to a steep reduction in revenue and the need to make substantial budget cuts in order to achieve a state mandated balanced budget, the District entered into contracts with CUEA, CSEA and the Teamsters in 2010 [See Exhibit A to the RJN [1], p. 29, Section 10.6.] that mandated unpaid furlough days. The contracts with CUEA and CSEA contain language that requires the automatic restoration of furlough days if certain benchmarks are met. The contract with the Teamsters does not contain automatic restoration language. In order for any of the contractually mandated furlough days for the Teamsters to be restored, the District has to properly vote to do so. The District does not have a contract with CUMA, which is simply an association and not a union, thus CUMA has no collective bargaining rights. The District imposed eight furlough days on CUMA after a vote of its Board on June 29, 2010. [See Exhibit B to the RJN, p.2, Agenda Item #24 D.] For CUMA to have any of the imposed furlough days restored, the District would have to properly vote to do so.

The District's own records unequivocally show that the District voted in December of 2010, (by all accounts on December 13, 2010) to restore furlough days to the Teamsters and CUMA, even though such a vote was never on the agenda for either the general meeting on December 7, 2010, or the special meeting on December 13, 2010. (These are the only two

---

[1] RJN refers to the Request for Judicial Notice in Support of Opposition to Demurrer to Second Amended Complaint for Declaratory, Injunctive and Mandamus Relief

meetings the District had in December of 2010). Further, at neither meeting did the District report out that it had voted to restore furlough days to the Teamsters and/or CUMA.

The agenda for the December 7, 2010 BOT meeting under Closed Session, Item # 48 F, states:

CONFERENCE WITH LABOR NEGOTIATORS

Dr. Joseph Farley/Jodee Brentlinger/Ron Lebs

Employee Organization:

1) Capistrano Unified Education Association (CUEA)
2) Capistrano School Employees Association (CSEA)
3) Unrepresented Employees (CUMA)
4) Teamsters

[See Exhibit C to the RJN.]

It was reported out that no action was taken with regard to Item No. 48 F. The minutes for the December 7, 2010 CUSD Board meeting state no action was taken on Item No. 48 F. [See Exhibit D to the RJN.] The BOT held a Special Meeting on December 13, 2010. The agenda for that meeting only lists two items to be discussed in closed session, No. 1 Consulting Agreement - Legal Services with George Cooper Rudolph, Attorney & Counselor at Law; and No. 2 Public Employee Performance Evaluation - Superintendent. [See Exhibit E to the RJN.] It was reported out that agenda item No. 1 was adopted by the CUSD Board, and that no action was taken with regard to item No. 2. The minutes for the December 13, 2010 Special Meeting state the same thing. [See Exhibit F to the RJN.]

However, on December 15, 2010, Joe Farley, District Superintendent, sent an e-mail message to the parents in the District by capotalk@listserver.capousd.org as follows:

"Sent on behalf of Superintendent Joseph M. Farley.

Dear CUSD Parents,

On behalf of the Capistrano Unified School District Board of Trustees, I am pleased to announce the reinstatement of two days of instruction into the 2010-2011 school calendar.

The days were to be non-working furlough days for District employees, but were restored according to negotiated agreements. The reinstated days will be Thursday, February 17, 2011, and Friday, May 27, 2011.

Please support this calendar change by making sure students attend school on both of the reinstated days. (They were originally scheduled around President's Day and Memorial Day.)

If you have any additional questions, please go to the District website for more information or contact your local school.

Sincerely,

Joe Farley" [See Exhibit G to the RJN.]

The same date (December 15, 2010), CUSD posted the following press release on its website:

"The Capistrano Unified School District Board of Trustees and Superintendent Joseph M. Farley are pleased to announce the reinstatement of two days of instruction into the 2010-2011 school calendar. The days were to be non-working furlough days for District employees, but were restored according to negotiated agreements with employee associations. The reinstated days will be Thursday, Feb. 17, 2011 and Friday, May 27, 2011.

Please support this calendar change by making sure students attend school on both of the of reinstated days. (They were originally scheduled around President's Day and Memorial Day.)

Posted by: Marcus Walton Published:12/15/10"

[See Exhibit H to the RJN.]

Even more damning is the admission by the District contained in the e-mails exchanged between Marcus Walton, Chief Communication Officer for the District and its official spokesperson, and Scott Martindale, a reporter with the Orange County Register, on February 2, 2011. In his e-mail to Martindale dated February 2, 2011 at 1:20 p.m. Walton states: "**Two**

instructional and unpaid furlough days were rescinded for all employee groups in December." (emphasis added) [Exhibit I to the RJN, p. 2.]

Agenda Item No. 4 for the January 11, 2011 regular meeting for the Board states: REVISED 2010 - 2011 SCHOOL CALENDAR: Approval, revisions to the 2010 -2011 School Calendar restoring two instructional days. This agenda item was on the consent calendar, which means it was to be voted on (along with 27 other agenda items) ***without any discussion.*** [See Exhibit K to the RJN, p. 3.] However, Agenda Item No. 4 was pulled from the consent calendar by a trustee, forcing a discussion on this agenda item.

In the memo from Julie Hatchel, Assistant Superintendent, Education, to Joseph M. Farley, Superintendent, entitled, "Projected Revisions to 2010-11 Calendar" for Agenda Item 4 dated January 11, 2011, Hatchel reported, "**On Monday, December 13, 2010, the Board of Trustees approved the reinstatement of two days of instruction into the 2010-2011 school calendar, Thursday, February 17, 2011, and Friday, May 27, 2011.** (emphasis added) [See Exhibit J to the RJN.]

Under Closed Session, Agenda Item No. 41 states:

CONFERENCE WITH LABOR NEGOTIATORS

Dr. Joseph Farley/Jodee Brentlinger/Ron Lebs

Employee Organization:

1) Capistrano Unified Education Association (CUEA)
2) Capistrano School Employees Association (CSEA)
3) Unrepresented Employees (CUMA)
4) Teamsters

The minutes for the January 11, 2011 meeting [Exhibit L to the RJN, pgs. 3-4.] reflect the following with regard to Agenda Item No. 4:

Trustee Addonizio expressed her concern regarding restoring the furlough days without a state budget and Trustee Palazzo stated that she too was concerned due to the ACLU settlement and other issues that will impact the budget. Dr. Farley stated the furlough days

had already been restored and this item was only to officially reinstate the two instructional days on the 2010-2011 School Calendar. Following discussion, it was moved by Trustee Alpay, seconded by Trustee Bryson, and the motion carried by a 5-2 vote (with Trustees Addonizio and Palazzo voting "no") to approve revisions to the 2010-2011 school calendar restoring two instructional days.

During public discussion regarding Agenda Item No. 4 Superintendent Farley stated the following:

"I think we need some clarification. **The furlough days that action has already been taken to reinstate these days. There was extensive discussion on their cost in closed session as you all recall.** So it is not correct to say that you did not receive that data. I'd be happy to give it to anyone who asks for it again. We have it all delineated and articulated as it was represented to you in closed session. I'm not able to discuss that in detail in an open session but it was gone over with the entire board and I'd ask the other trustees to confirm that my recollection is correct. **But you've already taken action on the furlough days. All this is doing is simply reinstating them officially on the calendar. So you can vote to not do that but you've already reinstated the days, they will be part of the calendar. It's finished.** As to the other discussion I think it's very umh, you have to be very careful about sharing some of the deliberations that occur as we prepare for our negotiations. I'd ask other trustees to just confirm that my recollection of this is correct." Both Trustees Bryson and Hatton confirmed Superintendent Farley's recollection. (emphasis added)

As for Agenda Item No. 41, the minutes for the January 11, 2011 board meeting state that no action was taken.

By letter dated February 28, 2011, from his counsel to the District's BOT, Reardon placed the District on notice of several Brown Act violations, and requested the District take the appropriate action to correct the Brown Act violations. [See Exhibit M to the RJN.] Jack M. Sleeth, Jr., Esq., the attorney retained by the District, responded to the asserted Brown Act

violations by letter dated March 11, 2011. [See Exhibit N to the RJN.] In sum, Sleeth stated that there has been no violations of the Brown Act by the District. Reardon, care of his counsel, responded to Sleeth's letter by letter dated March 12, 2011. [See Exhibit O to the RJN.] Notwithstanding the proclamation by its attorney that no violations had been committed, the District scheduled a Special Meeting on March 16, 2011. The agenda for that meeting that listed as Agenda Item No. 2, "Report on the Restoration of the Furlough Days, and Pay, for Four Employee Organizations;" Agenda Item No. 3, "Response to Demand to Cure and Correct Alleged Brown Act Violations;" and Agenda Item No. 4, " Reaffirmation of Previously Considered Restoration of Furlough Days and Pay for Four Employee Organizations." [See Exhibit P to the RJN.]

In his memo to the District's BOT dated March 16, 2011, Superintendent Farley claims the BOT voted to restore/reinstate furlough days and pay for furlough days when it voted on January 11, 2011, to adopt a revised calendar for the 2010-2011 school year. [See Exhibit Q to the RJN, p. 2.] At the March 16, 2011 meeting, the District's BOT voted to reaffirm its prior votes affirming agreements with CUEA, CSEA, the Teamsters and CUMA, and its vote on January 11, 2011, to adopt a revised calendar for the 2010-2011 school year. [See Exhibit R to the RJN.] By letter from his counsel to the BOT dated April 15, 2011, Reardon advised the BOT of Brown Act violations that occurred at the March 16, 2011 meeting. [See Exhibit S to the RJN.]

5. THE DISTRICT IMPROPERLY VOTED TO RESTORE FURLOUGH DAYS TO THE TEAMSTERS AND CUMA IN DECEMBER OF 2010 IN BLATANT VIOLATION OF THE BROWN ACT

Though the District claims it never voted to restore furlough days and the pay for the furlough days for the Teamsters and CUMA in December of 2010, its own records clearly show otherwise. [See Exhibits G, H, I & J to the RJN.] The restoration of furlough days and pay for the furlough days by the District in December of 2010 without scheduling a proper meeting, issuing a legally sufficient agenda and voting at that meeting to restore to the Teamster and CUMA furlough days and pay for the furlough days are blatant violations of the Brown Act.

Since neither the agenda for the general meeting on December 7, 2010, or the special

meeting on December 13, 2010, listed an item pertaining to restoring or reinstating furlough days and the pay for the furlough days to the Teamster and/or CUMA, the District clearly violated Government Code [2] § 54954.2(a), which requires the posting of an agenda containing a "brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session," and "no action or discussion shall be undertaken on any item not appearing on the posted agenda...." This provision has been held to apply to special meetings (*Moreno v. City of King* (2005) 127 Cal. App. 4th 17, 26), and to closed meetings as well. (*Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904, 923) The purpose of the general description is to inform interested members of the subject matter under consideration so that they can determine whether to monitor or participate "in the meeting of the body." (The Brown Act, Open Meetings for Legislative Bodies, Office of the Attorney General, 2003 Edition, at page 16) The description should therefore contain enough detail to fulfill this function. No items pertaining to reinstating furlough days were on the agenda for either meeting. Accordingly, discussion of and voting on this topic violated the Brown Act.

The holding in *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196 is particularly instructive. On April 8, 1970, a copy of the agenda for the regular meeting of the governing board of the Paradise Unified School District to be held on April 13, 1970, was posted at the Paradise Unified School District office where parents, teachers and the general public could view it, and it remained so posted until after the meeting had been held. The agenda contained, among other things, 13 items listed under the heading "New Business." Item No. 7 under this heading was "Continuation school site change." The agenda did not designate the site to which the continuation school was to be changed, nor did it indicate that consideration was to be given to discontinuing elementary education at the Canyon View School.

The meeting held on April 13, 1970, was the regular monthly meeting of the governing board and all members were present. The governing board took action at the meeting on April 13, 1970, under the agenda item "Continuation school site change" to change the location of the

---

[2] All future references are to the Government Code unless otherwise indicated.

district's continuation high school from the site where it was then located to the Canyon View School in Magalia, to discontinue elementary school education at the Canyon View School as of September 1970, and to transfer the Canyon View School elementary students to another school in the district as of September 1970. The action was taken at an open, public session during the meeting. Plaintiff attempted unsuccessfully at subsequent meetings of the governing board to persuade the board to rescind its action discontinuing elementary education at Canyon View. The plaintiff filed suit and obtained an injunction. Issuance of a preliminary injunction by the court was based solely upon the court's conclusion of law that the agenda-posting requirements of Education Code section 966 were mandatory and had not been complied with by defendant. The defendant appealed this ruling.

First, defendant contended the trial court's conclusion that the agenda-posting requirements of Education Code section 966 are mandatory was erroneous as a matter of law, and therefore the trial court abused its discretion in granting a preliminary injunction. Secondly, defendant contended it complied with the provisions of section 966. The *Carlson* court found the defendant wrong on both counts. Section 966 of the Education Code [3] provided, in pertinent part, as follows: "[A]ll meetings of the governing board of any school district shall be open to the public, and all actions authorized or required by law of the governing board shall be taken at such meetings and shall be subject to the following requirements: "(b) A list of items that will constitute the agenda for all regular meetings shall be posted at a place where parents and teachers may view the same at least 48 hours prior to the time of said regular meeting ...."

In affirming the trial court's ruling, the *Carlson* court noted "There has been a long and vigorous battle fought against secrecy in government. (See, e.g., Gov. Code, § 54950 et seq.; *Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs.* (1968) 263 Cal.App.2d. 41, 49-50 [69 Cal.Rptr. 480]; see also 37 State Bar J. 540.) [2] It is now the rule that local governing bodies, elected by the people, exist to aid in the conduct of the people's business, and thus their

[3] The requirements for an agenda under Education Code § 966 are less demanding the requirements for an agenda under the Brown Act.

deliberations should be conducted openly and with due notice with a few exceptions not applicable here. (See Gov. Code, § 54950 et seq.; cf. 3 Witkin, Summary of Cal. Law (1960) Constitutional Law, § 116, p. 1919; 70 Ops.Cal.Atty.Gen. 113.) [1b] The process of the education of our children is properly a matter of public concern. (See *Brown v. Board of Ed. of Topeka* (1955) 349 U.S. 294 [99 L.Ed. 1083, 75 S.Ct. 753]; see also *Robinson v. Sacramento City etc. Sch. Dist.* (1966) 245 Cal.App.2d 278 [53 Cal.Rptr. 781].)

We think the legislative intent of section 966 of the Education Code is to make the notice requirement mandatory. Decisions of local governing bodies of school districts may directly affect parents and teachers alike, as well as the students themselves. Thus, it is imperative that the agenda of the board's business be made public and in some detail so that the general public can ascertain the nature of such business. It is a well-known fact that public meetings of local governing bodies are sparsely attended by the public at large unless an issue vitally affecting their interests is to be heard. To alert the general public to such issues, adequate notice is a requisite. In the instant case, the school board's agenda contained as one item the language "Continuation school site change." This was entirely inadequate notice to a citizenry which may have been concerned over a school closure. On this point alone, we think the trial court was correct because the agenda item, though not deceitful, was entirely misleading and inadequate to show the whole scope of the board's intended plans. It would have taken relatively little effort to add to the agenda that this "school site change" also included the discontinuance of elementary education at Canyon View and the transfer of students."

6. AGENDA ITEM NO. 4 FOR THE BOT GENERAL MEETING ON JANUARY 11, 2011, VIOLATES THE BROWN ACT BECAUSE IT IS PATENTLY MISLEADING AND WOEFULLY INADEQUATE BECAUSE IT DID NOT GIVE THE PUBLIC ANY NOTICE OR WARNING THAT THE RESTORATION OF FURLOUGH DAYS AND THE PAY FOR THE FURLOUGH DAYS FOR THE TEAMSTERS AND CUMA WERE BEING CONSIDERED, MUCH LESS VOTED ON BY THE BOT AT THIS MEETING

Agenda Item No. 4 for the January 11, 2011 meeting which states: "REVISED 2010-2011 SCHOOL CALENDAR: Approval, revision to the 2010-2011 School Calendar, restoring two instructional days." was on the consent calendar. [See Exhibit K to the RJN, p. 2.] By placing

Agenda Item No. 4 on the consent calendar Superintendent Farley and his staff wanted the BOT to approve this agenda item **without any discussion**. In addition to trying to "sneak" passage of Agenda Item No. 4 through without any discussion, there is nothing in Agenda Item No. 4 that alerts the public to the true plan and intent of the District, to restore furlough days and pay for the furlough days to the Teamsters and CUMA.

From all appearances, Agenda Item No. 4 appears to be a simple house keeping matter, i.e. putting two furlough days (February 17, 2011 & May 27, 2011) that had already been reinstated by the BOT in December of 2010 [See Exhibits G, H, I & J to the RJN.] back on the school calendar. There is nothing in Agenda Item No. 4 that suggests the BOT would in reality be restoring furlough days and the pay for the furlough days for the Teamsters and CUMA if this agenda item was approved. Further, restoration of furlough days and pay for the furlough days for the Teamsters and/or CUMA did not appear anywhere on the agenda for the January 11, 2011 meeting. So, to the extent the District claims the approval of Agenda Item No. 4 at the January 11, 2011 meeting constitutes approval of the restoration of furlough days and pay for the furlough days for the Teamsters and CUMA, it is acknowledging and admitting it violated the Brown Act. (See § 54954.2(a), and the holdings in *Moreno*, *Shapiro* and *Carlson*.)

7. **THE BOT'S VOTE ON MARCH 16, 2011, DID NOT CURE ITS VIOLATIONS OF THE BROWN ACT**

At its special meeting on March 16, 2011, the BOT, in an effort to cure and correct the Brown Act violations it denies committing, voted to affirm its votes on May 19, 2010 (CUSD-CUEA settlement agreement), June 29, 2010 (Teamsters), August 3, 2010 (salary reduction: approval, CUMA salary reductions), September 28, 2010 (CUSD/CSEA settlement agreement; and January 11, 2011. The votes taken on June 29, 2010, and August 3, 2010, make clear that the BOT had to vote to restore furlough days and pay for furlough days for the Teamsters and CUMA, because neither the Teamsters or CUMA were entitled to have furlough days and pay for furlough days automatically reinstated.

Out of the five votes it "reaffirmed," the only one that could possible constitute an effort to approve furlough days and pay for the furlough days for the Teamsters and CUMA is the one

taken on January 11, 2011. However, as established above, the vote on Agenda Item No. 4 at the January 11, 2011, is a violation of the Brown Act to the extent the District claims that vote properly authorized the restoration of furlough days and pay for those furlough days to the Teamsters and CUMA. Thus, the BOT's vote (March 16, 2011) to affirm a vote (January 11, 2011) that violates the Brown Act cannot and does not constitute a legally sufficient cure and correct.

The strategy employed by the District at its special meeting on March 16, 2001, bears an eerie resemblance to the unsuccessful strategy unitized by the defendant college district in *Page v. MiraCosta Community College District* (2009) 180 Cal.App.4th 471. This is likely due to the fact that the current attorney for the District (Sleeth) was the attorney for the defendant college district in *Page*.

In *Page*, the plaintiff appealed from an adverse judgment in favor of MiraCosta Community College District (MCCD) and Victoria Richart, its former president and superintendent. The plaintiff had filed a multi-count petition challenging the actions of the MCCD board of trustees in approving a settlement between MCCD and Richart. In sum, the MCCD board of trustees and its counsel engaged in mediation and negotiations with Richart and her attorney, with the aid of an outside mediator, under the guise of a closed session. The mediator never entered the boardroom where the trustees were located; groups of trustees less than a quorum left the boardroom to meet with the mediator. Through these efforts a settlement was reached and a settlement agreement executed.

As part of the judgement the trial court sustained, with prejudice, a demurrer to the cause of action for violation of the Brown Act. The plaintiff contended MCCD violated section 54956.9 of the Brown Act, also known as the pending litigation exception. As part of its argument in favor of sustaining the demurrer, MCCD argued that even if it had violated the Brown Act, the trial court correctly took notice of a subsequent agenda and meeting minutes from August 27, 2007, showing that any Brown Act violation had been cured, requiring the court to sustain its demurrer without leave to amend. (§ 54960.1(e).)

In holding the trial court erred, the *Page* court concluded that the issuance of a notice identifying Richart as the litigant, and minutes showing the MCCD Board had reconsidered and approved her settlement agreement, did not establish a cure of the Board's acts in impermissibly conducting information gathering in the course of mediating and negotiating with Richart in a closed meeting, actions that fell outside the Brown Act's pending litigation exception. The policy underlying the Brown Act is that public boards and agencies exist to aid in the conduct of the people's business; the law is intended to mandate open and public actions and deliberations. (Citations omitted) Thus, the public is entitled to monitor and provide input on the Board's collective acquisition and exchange of facts (citation omitted) in furtherance of a mediation or resolution of Richart's claims. (*Page v. MiraCosta Community College, supra*, 180 Cal.App. 4th at p.505.) The trial court was directed, in part, to enter an order overruling the demurrer.

Here, as in *Page*, the effort to cure the Brown Act violations fails because the "cure" employed by the District does not address, at all, its Brown Action violations, i.e. approving furlough days and pay for the furlough day for the Teamsters and CUMA without prior and adequate notice to the public of its intent to do so (legally sufficient agenda), a proper vote, and the proper record of the action it claims to have taken (minutes). Asserting that voting to put two days back on the school calendar that were already reinstated, and reaffirming that vote with another vote, does not constitute, as a matter of law, a bonafide cure by the District of its Brown Act violations. (See *Page v. MiraCosta Community College, supra*, 180 Cal.App. 4th at p.505.) Instead, these votes are the continuation of a pattern and practice by the District to deceive and hoodwink the public.

8. THE UNANNOUNCED, IMPROMPTU MEETING AT THE MARCH 16, 2011, CONSTITUTES A DIRECT VIOLATION OF THE BROWN ACT

At the meeting on March 16, 2011, prior to a discussion on Agenda Item No. 4, Trustees Ellen Addonizio and Sue Palazzo left the meeting on the advice of legal counsel. During a discussion on Agenda Item No. 4, Trustee John Alpay offered a substitute motion which was seconded by Trustee Jack Brick, president of the Board. Trustee John Alpay then requested a brief recess which was granted, without a vote by the BOT, by Trustee Gary Pritchard, who was

chairing the meeting. During the recess, the remaining trustees present, Jack Brick, Gary Pritchard, John Alpay, Anna Bryson and Lynn Hatton, a clear majority of the Board, conferred amongst themselves "off the record," behind the dais, and outside of the hearing of the public attendees. The meeting then resumed and Trustee Brick immediately withdrew his second to the substitute motion offered by Trustee John Alpay. Trustee Brick withdrew his second of the motion only after he had been cajoled to do so by the other remaining trustees during their impromptu, unnoticed and unannounced meeting.

The unannounced, impromptu meeting of the remaining BOT members at the end of the dais outside the hearing range of the public on a pending motion was an open and obvious Brown Act violation. (§§ 54953 and 54962).

9. CONCLUSION

Based on the sufficiency of the Second Amended Complaint and the applicable legal authorities, the subject demurrer should be overruled, and the District ordered to file an answer forthwith.

OSTENDORF, TATE, BARNETT & TAGTMEYER, L.L.P.

Dated: November 21, 2011

By: _____
WAYNE P. TATE, ESQ.
Attorney for Plaintiff, James M. Reardon

Reardon v. CUSD/Opp. to Dem. To SAC(112111)