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Attorneys for Defendants HERMOSA BEACH crry SCHOOL Govt. Code § 61031 DISTRICT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES - CENTRAL

BLAR SMITH, an individual,

Case No. BC672059

Plaintiff,

DEMURRER TO FIRST AMENDED
COMPLAINT

HERMOSA BEACH crry SCHOOL
DISTRICT, a California school district; and
DOES 1-20, inclusive,

[Filed concurrently with Declaration of
Suparna Jain, Esq.; Proposed Order]

Defendants.

DATE: February 14, 2018
DEPT: 042
JUDGE: Hon. Holly Kendig
TME.: 8:30 am
Reservation ID: 171023260819

Complaint Filed: August 14, 2017

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To PLAINTIFF AND ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE THAT on February 14, 2018 at 8:30 a.m., or as soc
thereafter as the matter may be heard in Department 042 of the above-entitled court located at
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North Hill Street, Los Angeles, California 90012, Defendant Hermosa Beach City School
District

("District") will demur to the First Amended Complaint of Plaintiff Hermosa Beach Taxpayers
Group ("Plaintiff") on the following grounds:

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Demurrer to the First Claim for Declaratory and Injunctive Relief

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(Violation of California Code of Civil Procedure 5526a)

District demurs to the First Claim for Declaratory and Injunctive Relief on the ground that it is uncertain and unintelligible. (California Code of Civil Procedure 430.10(f).)

District further demurs to the First Claim for Declaratory and Injunctive Relief under Code of Civil Procedure 526a on the ground that it fails to state facts sufficient to state a cause of action, including being barred by the statute of limitations . (California Code of Civil Procedure § 430.10@.)

Demurrer to the Second Claim for Declaratory and Injunctive Relief

(Violation of Education Code 515284)

District demurs to the Second Claim for Declaratory and Injunctive Relief on the ground that it is uncertain and unintelligible. (California Code of Civil Procedure 430.10(f).)

District further demurs to the Second Claim for Declaratory and Injunctive Relief under Education Code 15284 on the ground that it fails to state facts sufficient to state a cause of action, including being barred by the statute of limitations. (California Code of Civil Procedure § 430.10@.)

This demurrer will be based upon these moving papers, the pleadings and records on file in this Court, California statutes and case law, and any oral argument that may be heard at the hearing on this matter.

Dated: October 30, 2017

ATKNSON, ANDELSON, LOYA, RI-JUD & ROMO

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erry SCHOOL DISTRICT

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DEMURRER TO FIRST AMENDED COMPLAINT

B. PLANTFF'S SECTION 526A AND SECTION 15284 CLAMS FOR RELIEF BOTH FAIL TO STATE CAUSES OF ACTION BECAUSE THEY ARE BARRED BY THE STATUTE OF LMITATIONS.....10

C. PLANTFF'S CLAMS FOR RELEF ARE UNCERTAN AND UNNTELLIGIBLE_____ 10

D. PLANTFF'S FRST CLAM FOR RELEF FALS TO STATE FACTS SUFFICIENT TO STATE A CAUSE OF ACTION UNDER C.C.P. SECTION 526a_____ 11

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E. PLANTFF'S SECOND cLARvf FOR RELIEF FALS ro STATE FACTS SUFFICIENT TO STATE A CLAM OF RELEF UNDER

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EDUCATION CODE SECTION 15284 13

F. EVEN IF PLANTFF IS CORRECT THAT THE DISTRICT IS
CONTEMPLATNG MAKNG THE WRONG DECISION, PLAINTIFF'S
LAWSUIT IS PREMATURE 16

iii. CONCLUSION 17

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AUTHORITES
MEMORANDUM OF POINTS AND AUTHORITIES

1.

INTRODUCTION

4 This case is about a single taxpayer, Blair Smith , asking the court to second-guess the 5 District's
decision making process. In other words, this case stems from Plaintiff Hermosa Beach 6 Taxpayers
Group's (hereinafter referred to as the "Plaintiff") unhappiness with the District's
7 ongoing California Environmental Quality Act ("CEQA") process concerning the proposed North
8 School Reconstruction Project ("Project") and the possibility that the proposed Project may
9 involve the demolition of the currently abandoned building to allow for the construction of a new
o o 10 school building. In a premature attempt to impede the CEQA process, and, therefore, the 11 District's CEQA
decision-making discretionary authority, Plaintiff has filed a waste and misuse of 12 bond funds lawsuit, seeking

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Declaratory and Injunctive Relief under California Code of Civil 13 Procedure {526a ("Section 526a") and Education Code 15284 ("Section 15284").

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Defendant Hermosa Beach City School District (hereinafter referred to as the "District")

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demurs to the first and second claims for Declaratory and Injunctive Relief of Plaintiff's

First 16 Amended Complaint ("FAC") because both claims for relief are barred by the

statute of

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limitations. Moreover, the District demurs to both claims for Declaratory and Injunctive Relief

18 because they are so uncertain and unintelligible that the District cannot determine

which alleged

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facts are essential to Plaintiff's claims for relief.

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The District further demurs to the first and second claims for Declaratory and Injunctive

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Relief on the ground that Plaintiff fails to allege facts sufficient to state a cause of action.

As to

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Plaintiff's Section 526a claim for relief, Plaintiff fails to allege specific facts establishing

that the

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District is guilty of wasting public funds. As to Plaintiff's Section 15284 claim for relief,

Plaintiff

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not only fails to allege which of the statute's provisions the District violated, but fails to

allege any

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The original complaint named Blair Smith as the plaintiff; without explanation the amended complaint names the plaintiff as Hermosa Beach Taxpayer's Group.

2 In fact, they are so unintelligible that the District has to guess as to the identity of the Plaintiff.

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facts showing that any provision of Section 15284 was violated. Accordingly, the District respectfully requests that the Court sustain its demurrer without leave to amend.

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STATEMENT OF FACTS

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Plaintiff apparently alleges two causes of action , designated as "claims" in the First

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Amended Complaint ("FAC"), for Declaratory and Injunctive Relief, one under California Code of Civil Procedure 5526a, alleging taxpayer waste, and another under Education Code 515284,

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Plaintiff has alleged the following facts in the FAC:

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1. In the Fall of 2015 the voters passed Measure S, a school bond measure in the amount of \$59 million (FAC, 8173);

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2. Among the types of projects listed in Measure S was the construction, renovation

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and modernization of the District's North School (FAC, 8193; Ex. "53"); z 14 3. Measure

S states that "Projects may also include the costs of demolition and

reconstruction of existing facilities currently scheduled for modernization, if the Board of

Education determines that such an approach would be a more cost-

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effective solution" (FAC, 8195);

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18 4. The District is using Measure S funds to finance the environmental analysis under
19 CEQA of its proposed Project, which may involve the demolition of the current 20 abandoned
North School building in order to construct a modern school building

21 (FAC, %1106)*,

22 5. The District has not completed the CEQA process for the proposed Project
(FAC,

23 %1106)*,

24 6. The District has not yet circulated its draft Environmental Impact Report
("EIR")

25 for the proposed Project (FAC, %1106);

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Plaintiff forgoes the requirements of California Rules of Court Rule, 2.112, and the custom and practice of identifying its causes of actions, but does identify its "claims." The District believes that Plaintiff uses these terms interchangeably, and does so as well in this memorandum.

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- 7. The District has not approved the proposed Project nor taken any action to implement

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the proposed Project (FAC, 6, 106-107);

8. The District "has two better options" and/or alternatives, the lease and renovation of Pier Avenue or the renovation of North School (FAC, 8817, 8, 9, 10, 97-100);
9. The other two options are "excellent alternatives to demolition;" (FAC, 10);
10. That "Pier Avenue School amenities . . . go unused or under-used," (FAC, 81 13);
11. Allegations regarding the history of the City of Hermosa Beach, the Field Act and the Long Beach earthquake (FAC, 11-16);
12. That the District "gave up a prize property for a song," and that the District has failed to initiate "serious conversations regarding the site," (FAC 28);
13. That a study commissioned by the District was "woefully inadequate" because it was "only twenty pages," and that its "counter-intuitive and seemingly false assumption was not satisfactorily explained," (FAC, 44);
14. "Realistically, renovation is almost always a more cost-effective solution than demolition and new construction," because there is no such business model of destroying old properties to build the same one brand new for a reason: it's not cost-effective (FAC, 81100); and
15. That the "District is using funds from Measure S to advance the plan of demolishing and rebuilding North School—not exploring any other options." (FAC, 107).

The above allegations, plus allegations contained in nearly 100 additional paragraphs, are 22 all incorporated into the Plaintiff's causes of action for injunctive relief under Section 526a and 23 Section 15284. They are just a sample of the lengthy allegations that may or may not be relevant to the Plaintiffs causes of action.

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Nowhere does the Plaintiff allege that the District has reached a final decision in regard to North School. Without any support, the Plaintiff alleges that Measure S did not provide for the demolition of North School, so Measure S funds cannot be used to prepare an EIR for a proposed Project that may or may not involve the demolition of the school as one of the evaluated project

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ernatives. (FAC, 815.) In other words, rather than participating in the CEQA process, which

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MEMORANDUM OF

AND AUTHORITES

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requires an EIR and provides for citizen participation, the Plaintiff is attempting to obstruct that 3
process to prevent approval of a proposed Project which may or may not involve demolition of the
4 old abandoned school.

Plaintiffs prayer requests that the court "order, describe, and declare the proper
6 interpretation and application of the law(s) which are the subject of this lawsuit" (FAC, page 56, 7
Prayer for Relief, fill). The prayer does not identify the specific laws it seeks a proper 8 interpretation
of.

A. DEMURRER IS PROPER WHERE THE PLEADING DOES NOT STATE FACTS
SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION OR WHEN THE
PLEADING IS UNCERTAIN

California Code of Civil Procedure section 430.10 provides: "The party against whom a
m 13 complaint or cross-complaint has been filed may object, by demurrer," on grounds that include,
14 "(e) The pleading does not state facts sufficient to constitute a cause of action" or that, "(f) The
15 pleading is uncertain."

A complaint must contain a statement of the facts constituting a cause of action in ordinary
17 and concise language. (Cal. Code Civ. P. 5425.10(a).) Ultimate facts, rather than conclusions of
18 law, must be alleged. (Krug v. Meeham (1952) 109 Cal.App.2d 274, 277; Lopez v. City of San
19 Diego (1987) 190 Cal.App.3d 678, 681 [the function of a complaint is to plead facts, not legal
20 conclusions].) Accordingly, a demurrer is properly sustained "if the complaint contains
conclusory allegations that are not supported by specific factual allegations. . Recitals, references
to, or allegations of material facts that are left to surmise are subject to a special
23 demurrer for uncertainty." (California Judges Benchbook: Civil Proceedings Before Trial (1995)

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"2.23, p. 579, citing Ankeny v. Lockheed Missiles & space co. (1979) 88 Cal.App.3d 531, 537.)
25 A demurrer for uncertainty is appropriate "when a defendant cannot reasonably determine what he
or she is required to respond to; for example, when a plaintiff joins multiple causes of action as
one (Williams v. Beechnut Nutrition Corp., (1986) 185 Cal.App.3d 135, 139 n.2.)

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B. PLAINIFF'S SECTION 526a AND SECTION 15284 CLAIMS FOR RELIEF
BOTH FAIL TO STATE CAUSES OF ACTION BECAUSE THEY ARE BARRED
BY THE STATUTE OF LIMITATIONS

Plaintiff's Section 526a and Section 15284 causes of action fail as a matter of law because

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Plaintiff filed them well after the applicable statute of limitations elapsed. Plaintiff alleges the

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District's use of Measure S funds to perform an EIR that considers the possible demolition of the
7 Proposed Project is an illegal expenditure pursuant to Section 526a and Section 15284. (FAC, 8
81%1106, 111, 126.) The Notice of Preparation of the EIR (FAC, Exhibit 73) confirms that notice of
9 this expenditure was provided in February 2017. Case law establishes that such taxpayer waste
10 causes of action are subject to a sixty (60) day statute of limitations. (McLeod v. Vista Unified
11 School Dist. (2008) 158 Cal.App.4th 1156, 1171 "their action did challenge the validity of the
12 bond issuance, in part, and the District's financing mechanism for the project. We conclude that
13 under these circumstances, the entire action was subject to the validation statutes and a 60-day
14 limitations period.") Plaintiff's lawsuit was initially filed in August 2017, well after the 60 day
statute of limitations elapsed. Plaintiff failed to bring its causes of action within the statute of
16 limitations period. Accordingly, the FAC is time-barred and must be dismissed.

c. PLAINTIFF'S CLAIMS FOR RELIEF ARE UNCERTAIN AND UNINTELLIGIBLE

The District's demurrer should be sustained as Plaintiffs causes of action are uncertain
20 and unintelligible. In fact, the FAC is so unintelligible that the District is unable to identify the
plaintiff. In the original Complaint, Blair Smith was listed as the sole plaintiff. The FAC now
22 lists Hermosa Beach Taxpayers Group as the plaintiff. No leave of court was granted to allow this
23 switch of parties.

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Additionally, Plaintiff's first claim for relief under Section 526a is uncertain and unintelligible because it incorporates each and every one of the preceding 107 allegations. These allegations range from statements regarding the history of City of Hermosa Beach and the Field Act, to conclusory statements regarding the alleged historical nature of North School. Given the breadth of subject matter covered, the sheer number of allegations, and the fact that they are all incorporated into Plaintiff's first claim for relief, the District, absent an educated guess, is unable

4 to discern which allegation is material or essential to the relief Plaintiff is seeking. Accordingly,
5 the . cannot reasonably determine what it is required to respond to. As stated above, such
6 uncertainty is grounds for demurrer. (California Judges Benchbook: Civil Proceedings Before 7
Trial (1995) 512.23, p. 579, citing Ankeny v. Lockheed Missiles & Space Co. (1979) 88
8 Cal.App.3d 531, 537.)

9 Further, Plaintiffs second claim for relief under Section 15284 is also ambiguous,

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10 uncertain, and confusing in that it appears to incorporate all of the allegations mentioned in the
11 FAC, as well as improperly incorporating the first cause of action based on Section 526a. There 12
are over 100 allegations pled. This makes it difficult for the District to discern the essential facts
13 supporting the second basis of relief and thus what it is required to respond to. Moreover, it is
14 well established under California law that the practice of incorporating by reference entire causes
15 of action (i.e. "chain-letter" or "cumulative" type of pleading) into a different cause of action

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16 creates ambiguity and uncertainty. (Kelly v. General Telephone Co. (1982) 136 Cal.App.3d 278,
17 285.) For the reasons mentioned above, the District's demurrer to the first and second cause of

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18 action should be sustained without leave to amend.

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19 D. PLAINTIFF'S FIRST CLAIM FOR RELIEF FAILS TO STATE FACTS
20 SUFFICIENT TO STATE A CAUSE OF ACTION UNDER SECTION 526a

21 Under California Code of Civil Procedure section 526a ("Section 526a), "waste" is more
22 than a mere mistake in an exercise of discretion by a public entity (Sundance v. Municipal
Court

23 (1986) 42 Cal.3d 1101, 1138—1139). Therefore, Section 526a "should not be used to
invade,

24 supersede, or even inuude upon the discretion invested [in] public officials." (Humane
Soc. of

25 U.S. v. State Bd. of Equalization (2007) 152 Cal.App.4th 349, 358.) In determining
whether an agency has abused its discretion and committed a waste of taxpayer funds, the
court may not

⁴ The State of California has rejected all attempts by Blair Smith to have the abandoned North School building
designated as a historical site. Simply put, there is nothing special about the building.

substitute its judgment for that of the agency. (California Assn. for Safety Education v. Brown
(1984) 30 Cal.App.4th 1264, 1281.)

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It is well-established that in order to obtain relief under Section 526a, a taxpayer cannot

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merely allege that an expenditure was or would be improvident or inefficient. (Ibid.) Therefore, in pleading a cause of action under Section 526a, a plaintiff, "must cite specific facts and reasons 6 supporting a belief that the state may be guilty of illegally spending public funds." (Sagaser v.

7 McCarthy (1986) 176 Cal.App.3d 288, 310.) A complaint must plead "specific facts and reasons"

8 that would indicate that the public entity is guilty of wasting public funds. (Ibid.)

As stated by the Court of Appeal in Elliott v. Superior Court in and for Solano County (1960) 180 Cal.App.2d 894, if a taxpayer could sue on matters of discretion, the discretion to act would not reside in elected public officials, but would be subject to the individual determinations of particular taxpayers. (Id. at 897.) "Such a result could lead to chaos. [citation] Governments cannot operate if every citizen who concludes that a public official has abused his discretion is granted the right to come into court and bring such official's public acts under judicial review."

15 (Ibid.)

In this matter, the Court must sustain the District's demurrer to Plaintiff's first claim for relief because Plaintiff fails to allege any facts sufficient to constitute a cause of action under

18 Section 526a. The crux of Plaintiffs Section 526a taxpayer waste cause of action appears to be

19 Plaintiff's conclusory allegations that the District has "better options" and more cost effective

20 alternatives to a plan that the District is considering. (FAC, ¶¶ 7, 8, 9, 10, 97-100.) In other words,

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21 the Plaintiff believes that the District is making a mistake about which of the available options is
22 better. However, a complaint under Section 526a cannot be based on a mere mistake in
judgment of public officials (Humane Society, supra, at 152 Cal.App.4th 358.)

The insufficient allegations are spread throughout the FAC. For example, in Paragraph 10,
25 Plaintiff alleges "The District has repeatedly refused to seriously entertain either of these two
excellent alternatives to demolition, and has given a multitude of unsupported and/or false
reasons why neither would be feasible." Again, the Plaintiff is attempting to have the court
substitute the

Plaintiff's judgment in place of the District's elected officials' judgment.

Plaintiff's general allegations, innuendo, and legal conclusions are not sufficient to state a cause
of action under Section 526a. (Sagaser, supra, at 176 Cal.App.3d 288, 310.) Accordingly,
Plaintiff has failed to state facts sufficient to state a cause of action under Section 526a. As this
defect in the FAC cannot be corrected the District's demurrer to Plaintiff's first cause of action
should be sustained without leave to amend.

E. PLAINIFF'S SECOND CLAIM FOR RELIEF FAILS TO STATE FACTS
SUFFICIENT TO STATE A CLAIM OF RELIEF UNDER SECTION 15284
Education Code section 15284 ("Section 15824"), added by Proposition 39, allows a

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taxpayer within a school district to bring an action, a "School Bond Waste Prevention Action"

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(Education Code section 15284(e)), "to obtain an order restraining and preventing any expenditure of funds received by a school district . . . through the sale of bonds authorized by [Proposition

12 39]." To assert a basis for relief under Section 15284, a taxpayer must plead and establish one of the following conditions is present:

- (1) An expenditure of funds received by a school district or community college district through the sale of bonds authorized by this chapter is for purposes other than those specified in paragraph (3) of subdivision (b) of Section I of Article Xm A of the California Constitution.
- (2) The expenditure is not in compliance with paragraph (3) of subdivision (b) of Section 1 of Article Xm A of the California Constitution.
- (3) That an expenditure in violation of paragraph (3) of subdivision (b) of Section 1 of Article XIH A of the California Constitution will be made or will continue to be made during the litigation that would produce waste or great irreparable injury.
- (4) The governing board of a school district or community college has willfully failed to appoint the citizens; oversight committee in violation of the requirements of Section 15278.

Plaintiff fails to allege which of these provisions it contends that the District violated.

Plaintiff also fails to allege any facts showing that one of these provisions was violated.

Therefore, the FAC fails to state a cause of action under Section 15284. In addition, this failure renders the FAC uncertain. The District's demur to the second claim for relief must therefore be sustained.

Moreover, though uncertain, the basis for relief under Section 15284 appears to be

Plaintiff's allegations that the language of Measure S expressly prohibits demolition of any sort at

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North School and that Measure S funds are being used to "further demolition of North School."

(FAC, 81126.) Plaintiffs conclusory allegations not only fail to state a cause of action under Section 15284, but the interpretation it seeks the Court to validate through its Section 15284 cause of action would have unreasonable implications. As a result of Plaintiffs failure to plead facts sufficient to establish a violation under Section 15284, the District's demurrer must be sustained without leave to amend.

Plaintiffs allegations and interpretation of the text of Measure S contradict established

principles of interpretation. One of the cardinal rules of interpreting an instrument is to give it such consideration as will make it effective rather than void. (Edwards v. Arthur Andersen LLP (2008) 44 Cal.4th 937.) This reiterates the maxim of jurisprudence "[a]n interpretation which gives effect is preferred to one which makes void." (Civil Code 53541.) Moreover, another

established rule of statutory construction is that, if giving a word or phrase its literal meaning

would result in absurdity, such meaning must be disregarded, and a meaning ascribed consistent with the context and evident object of the act, that would render it not only consistent, but

reasonable in effect, and therefore effectual. (People v. Camp (1919) 42 Cal.App.411.) The maxim of jurisprudence codified in Civil Code 3542 states: "[i]nterpretation must be reasonable."

Plaintiff's conclusory allegations that Measure S funds can only be used for "construction" and not for "demolition" are spurious. (FAC, 95.) As even Plaintiff concedes in the FAC, Measure S included funding for the destruction or demolition of any of the listed facilities. (FAC, f195.) Furthermore, no construction can ever occur without some amount of destruction or demolition of a site. Thus, the term "construction" always includes "destruction" of some sort.

This is supported by the definition of "Public Project," which in the context of public bidding,

23 includes both construction and destruction.

24 Plaintiff is in essence, alleging that construction, renovation, and modernization at North

25 School, the types of projects identified in the text of Measure S (see FAC, Exhibit 53),
would not

⁵ Public Contract Code section 22002(c) defines "Public Project" as meaning any of the following: (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.

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do not entail demolition of any sorts. Such an interpretation is unsupported, extremely narrow,

and absurd. It is unclear how any construction, renovation, and/or modernization projects could take place without any sort of demolition, and Plaintiff provides no legal support for its

assertion. This conclusory allegation would render the voter approved Measure S funds essentially futile since none of the work specified in Measure S would be permitted under such an

6 interpretation. Not only do Plaintiffs conclusory allegations fail to establish that the District has
7 violated any provision of Section 15284, they ascribe an extremely narrow interpretation which
8 would render the voter approved Measure S funds futile and prevent the District from exercising
9 its legal obligations and/or discretionary authority.

Plaintiff's conclusory allegation that Measure S funds are being used to "further the demolition of North School" is also vague, disingenuous, and inaccurate. Not only does the allegation lack specificity (what expenses does Plaintiff claim further the "demolition of North

School"?), but as mentioned above, the District is currently engaged in the CEQA process and has
14 not made any decision regarding the proposed Project. This conclusory allegation fails to support
a cause of action under Section 15284. Moreover, to accept Plaintiffs allegation would mean that
Measure S funds could not be used to even consider demolition as an option and/or alternative, as

17 required under CEQA. (14 Cal Code Regs. 515126.6.) In other words, Plaintiffs interpretation
implies that Measure S, a voter approved bond, prevents the District from performing its
mandated obligations under CEQA. This interpretation that Plaintiff seeks validated by the Court
via its

20 Section 15284 claim for relief is illogical and absurd.

Moreover, the text of Measure S refutes Plaintiff's allegation, clearly stating: "Each project
22 financed will include its share of architectural, engineering, and similar planning costs

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23 Projects also may include the payment of the costs of preparation of all facility planning, facility assessment reviews, environmental studies, construction documentation . Accordingly, 25 Plaintiff's conclusory and inaccurate allegation fails to establish that the District is expending Measure S funds for purposes other than what was specifically identified in Measure S.

In other words, Plaintiff's Section 15284 claim for relief is based on unsupported allegations that are extremely conclusory in nature and whose interpretation would have

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significant and illogical implications. Pursuant to Plaintiff's failure to plead facts sufficient to 2 constitute a cause of action under Section 15284, the District's demurrer must be sustained 3 without leave to amend.

4 EVEN IF PLAINTIFF IS CORRECT THAT THE DISTRICT IS 5 CONTEMPLATING MAKING THE WRONG DECISION, PLAINTIFF'S 6 LAWSUIT IS PREMATURE

7 Under CEQA, Public Resources Code 21000 through 21189.57, a citizen does have the 8 right to challenge a public entity's decisions. Public Resources Code, #21165 et seq. provides 9 the exclusive means to challenge a public entity's decisions under CEQA.

10 It is worth noting that North School has not been demolished, nor has the District made a 11 decision to "demolish" North School. Plaintiff concedes in its FAC that the District is currently in

12 the process of completing an ER (11106.) In other words, the District is currently engaged in the 13 CEQA process and assessing its options. It has yet to exercise any of its discretionary authority 14 with respect to making a decision regarding the proposed Project. Through its Section 526a and 15 Section 15284 claims for relief, Plaintiff is seeking to deny the District its ability to exercise its 16 discretionary authority.

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17 Therefore, it appears that by way of its complaint, Plaintiff is essentially seeking court z z 18
intervention to prevent the District from performing and complying with its legal obligations

19 under CEQA because it disagrees with the wisdom of its method. At the very least, Plaintiff's
20 causes of action are premature. Not only does Plaintiff have an opportunity to participate in the
21 public process under CEQA, before the District makes a decision, in the event Plaintiff disagrees
22 with that decision, it has the ability to challenge the decision. (See Public Resources Code,
23 "21168, 21168.5.)

24 The District should be allowed to exercise its discretionary authority and make a decision 25
with respect to the proposed Project.

As detailed above, Plaintiff has failed to plead facts sufficient to state causes of action
under Section 526a and Section 15284. As this defect in the FAC cannot be corrected the
District's demurrer to Plaintiff's FAC should be sustained without leave to amend.

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CONCLUSION

For the foregoing reasons, this Court should sustain the District's demurrer to Plaintiffs

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t leave to

amend.

Dated: October 30, 2017

ATKINSON, ANDELSON, LOYA, RI-JUD &
ROMO


Subarna Jain
Attorneys for Defendants HE OSA BEACH
Cerrito SCHOOL DISTRICT

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pomrs

PROOF OF SERVICE

[CCP 1013; CRC Rule 2.304 - Revised 01/01/07]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 12800 Center Court Drive South, Suite 300, Cerritos, California 90703-9364;

On October 30, 2017, I served the foregoing document described as:

DEMURRER TO FIRST AMENDED COMPLAINT

on the interested parties in this action by the method indicated below:

Morgan Ricketts, Esq.
RICKETTS & YANG
540 El Dorado Street #202
Pasadena, CA 91101

(213) 995-3935
(213) 995-3963 fax
morgan@rickettsandyang.com

Attorneys for
Plaintiffs

- BY MAIL: I placed the envelope for collection and mailing following the firm's ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
- BY PERSONAL SERVICE: I placed the above document in a sealed envelope. I caused said envelope to be handed to our messenger service to be delivered by hand to the parties shown herein.
- BY OVERNIGHT COURIER: I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed it to the parties shown herein. I placed the envelope or package at my place of employment in accordance with regular business practices for collection and overnight delivery.

Executed on October 30, 2017, at Cerritos, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and, that I am employed in the office of a member of the bar of this court at whose direction the service was made.

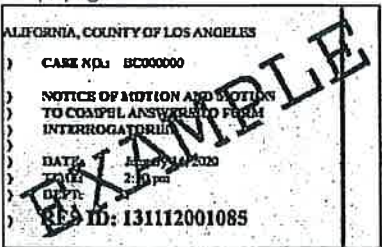


Stephanie L. Thomas

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10/23/2017

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INSTRUCTIONS	
Please print this receipt and attach it to the corresponding motion/document as the last page. Indicate the Reservation ID on the motion/document face page (see example). The document will not be accepted without this receipt page and the Reservation ID.	
	

RESERVATION INFORMATION

Reservation ID: 171023260819
Transaction Date: October 23, 2017 11 AM
Case Number: BC672059
Case Title: BLAIR SMITH VS HERMOSA BEACH CITY SCHOOL DISTRICT
Party: HERMOSA BEACH CITY SCHOOL DISTRICT (DefendanURespondent)
Courthouse: Stanley Mosk Courthouse
Department: 42
Reservation Type: Demurrer - without Motion to Strike
Date: 2/14/2018
Time: 08:30 am

FEE INFORMATION (Fees are non-refundable)

First Paper Fee: (See below)

Description	Fee
First Paper (Unlimited Civil)	\$435.00
Total Fees:	\$435.00

PAYMENT INFORMATION

Special Condition:

NO FEE REQUIRED - Gov. Code, S 6103

The reserving party asserts they are filing on behalf of government agency HERMOSA BEACH CITY SCHOOL DISTRICT. (Validity must be confirmed at the time of filing the motion/document. Document must include required Government Agency language on face page.)

Waived fees are recoverable (plus a one-time administrative fee upon judgment if the party becomes a judgment creditor).

**A COPY OF THIS RECEIPT MUST BE ATTACHED TO THE CORRESPONDING
MOTION/DOCUMENT AS THE LAST PAGE AND THE RESERVATION ID INDICATED ON THE
MOTION/DOCUMENT FACE PAGE.**

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