Craig A. Sherman, Esq. (SBN 171224)
CRAIG A. SHERMAN,
A PROFESSIONAL LAW CORP.
1901 First Avenue, Ste. 219
San Diego, CA 92101
Tel: (619) 702-7892
CraigShermanAPC@gmail.com

Attorney for Interested Party Defendants
JULIAN VOLUNTEER FIRE COMPANY ASSOCIATION and
BRIAN CROUCH

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

JULIAN-CUYAMACA FIRE PROTECTION DISTRICT and BRIAN KRAMER,

Plaintiffs,

v.

SAN DIEGO COUNTY LOCAL AGENCY FORMATION COMMISSION; COUNTY OF SAN DIEGO; MICHAEL VU, IN HIS CAPACITY AS REGISTRAR OF VOTERS FOR THE COUNTY OF SAN DIEGO; and ALL PERSONS INTERESTED IN THE MATTER OF SAN DIEGO COUNTY LOCAL AGENCY FORMATION COMMISSION RESOLUTION NO. RO18-09 ET AL. ORDERING THE REORGANIZATION AFFECTING THE JULIAN-CUYAMACA FIRE PROTECTION DISTRICT AND COUNTY SERVICE AREA NO. 135, PROVIDING FOR THE DISSOLUTION OF THE JULIAN-CUYAMACA FIRE PROTECTION DISTRICT, EXPANSION OF COUNTY SERVICE AREA NO. 135'S EXISTING LATENT POWERS IN THE AFFECTED TERRITORY, AND DESIGNATING COUNTY SERVICE AREA NO. 135 AS THE SUCCESSOR AGENCY TO THE DISSOLVED DISTRICT, AND RELATED ACTIONS,

Defendants;

Case No. 37-2019-00018076-CU-MC-CTL

RESPONSE TO *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION; DECLARATION OF CRAIG A. SHERMAN

Ex Parte Date: April 17, 2019
Time: 8:30 a.m.
Dept.: C-64
I/C Judge: Hon. John S. Meyer
Trial Date: None Set

JULIAN VOLUNTEER FIRE COMPANY ASSOCIATION and BRIAN CROUCH are interested party defendants (referred to together as "Julian Fire Association") in this validation action brought by JULIAN-CUYAMACA FIRE PROTECTION DISTRICT and BRIAN KRAMER pursuant to Code of Civil Procedure 860 et seq. (*See Complaint* ¶ 9.)

Julian Fire Association is appearing and will be later answering as defendants pursuant to Code of Civil Procedure sections 861-863. Further, Julian Fire Association is the principal plaintiff in Case No. 37-2018-00020015-CU-WM-CTL ("Brown Act Case")[1] to which the above-captioned case is currently being considered as a related case.

I.

INTRODUCTION

Julian Fire Association files this response to the ex parte application and the oppositions of County of San Diego ("County") and San Diego Local Agency Formation Commission ("LAFCO") because they both make inflammatory and unsupported statements that are not supported by fact or law.

Firstly, the evidence, findings, and judgment in the Brown Act Case were not procured by *fraud* and it is remarkably irresponsible and unprofessional of County and LAFCO legal counsel to use such language. Notably, there is no *actual evidence* presented in the opposition papers filed by County or LAFCO that Brown Act violations did not occur – in the form of *actual* deliberations, secret meetings, and polled pre-approvals. The best County and LAFCO proffer are a few procedural arguments and a conclusory remark by a former board member that she did not violate the Brown Act. (Tucker Decl., ¶ 3; County Opp. at 8:1-3)

Secondly, there is no merit to the County and LAFCO's arguments that the bringing and prosecution of the Brown Act Case was procedurally flawed in any way. As set forth below, the plaintiffs in the Brown Act case presented to the Superior Court the full array of procedural requisites and evidence that supported the Brown Act Case filing, violations, and judgment. As such, there is no

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[1] For emotional or psychological reasons the County and LAFCO call the case the "Union Case." However, for more practical, logical, and legal reasons, Case No. 37-2018-00020015-CU-WM-CTL should be more aptly be denominated as the "Brown Act Case" because the case is based on clear evidence of extra-legislative manipulation and dealing by County fire officials and a set of rogue District board members that met and pre-negotiated the breakup and dissolution of JCFPD in violation of the Brown Act.

support or merit that will enable the County or LAFCO to belatedly intervene and collaterally attack the Superior Court's finding and judgment made in the Brown Act Case.

Neither the County nor LAFCO were a party to the Brown Act Case - nor should they have been. No demand was made against the County or LAFCO, and no Brown Act violations against the County or LAFCO were alleged. There was no decision, approval, or action that was even close to being vested, secured, or approved by or in favor of County or LAFCO at the time the April 23, 2018 Brown Act Case was filed. Therefore, neither the County nor LAFCO can make a showing that either of them are an indispensable party to the Brown Act Case, nor do either of them have a right to intervene or attempt to disrupt or vacate the Superior Court's findings and final judgment rendered said case.

For purposes of the instant *ex parte* TRO application in this Case No. 37-2019-00018076-CU-MC-CTL ("Validation Case"), it must be recognized that neither County nor LAFCO have been granted a right to intervene and the findings and judgment of the Brown Act Case are demonstrably supported and valid. , and a writ has issued that ordered the Julian Cuyamaca Fire Protection District ("District") to rescind all void the subject pre-decided and pre-negotiated (secret) approvals and conditions the District Board made and accepted as the basis to dissolve the District. (*See* LAFCO RJN at Exhibit 6, p. 2 [Judge Trapp's Statement of Decision "Respondent Julian-Cuyamaca Fire Protection District shall take action to rescind the following actions taken on February 13, 2018 [Item No. 14]; March 13, 2018 [Item No. 11]; and April 10, 2018 [Item No. 13] including Resolution No. 2018-03."].)

What is missing in the opposition papers of County and LAFCO is how LAFCO's decision to take final action to dissolve the District on April 8, 2019 was a blatant and knowing affront to a Superior Court order and judgment that the JCFPD's 2018 decisions to negotiate and agree to terms of dissolution for the LAFCO dissolution application were *nun pro tunc* when made in early 2018. With the JCFPD initiating application being unlawful (and void) since 2018, LAFCO's April 8, 2019 action to dissolve is a violation of Government Code Section 56650 because the dissolution of the District was neither "initiated by petition or by resolution of application." (Id.; *see also* Government Code § 56654 ["A proposal for a change of organization or a reorganization may be made by the adoption of a resolution of application by the legislative body of an affected local agency. . ."]) Although **LAFCO may be rightfully disgruntled that prior District board member violated the Brown Act, it nonetheless has**

a duty to follow the law and was not entitled, nor did it have any discretion, to make any final approval to dissolve the District. LAFCO had a ministerial duty to follow the law and not approve dissolution when doing so would be an illegal act. (*Cf. persuasive authority in Kroese v. General Steel Castings Corp.*, (3d Cir. 1950) 179 F.2d 760, 763-764.) LAFCO was made aware on April 8, 2019 it could not legally proceed because there had been Brown Act violations leading up to the District's decisions to initiate a dissolution pursuant to Government Code section 56650 et seq. But, it did so anyway, despite knowledge that it was proceeding on an application that had been tainted and rendered void by Brown Action violations.

II.

ARGUMENT

A. LAFCO's Allegations of Fraud are False and None of LAFCO's Arguments Merit Reconsideration of the Judgment in the Brown Act Case

1. LAFCO's Fraud Allegations Are Recklessly Made

The County's and LAFCO's claims, that plaintiffs and defendant in the Brown Act Case hid documents from the court and committed fraud (and colluded), is an inflammatory and unsupported argument that has no evidence to support its wild claims.

For example, LAFCO insinuates that there were secret opposition papers to the petition for writ of mandate that the Court did not consider. (LAFCO Opp. at 5:27-28; 6:1-2.) LAFCO fails to mention that said papers were publicly available in the Court's files and records in its Register of Actions (as ROA Nos. 20-24), and plaintiffs in the brown Act Case affirmatively presented and addressed their standing and timeliness procedural prerequisites in their application and motion for writ of mandate. The arguments of the County and LAFCO run afoul of accusing plaintiffs and the Court of not reviewing and considering facts and laws applicable and controlling the Brown Act Case.

Due to impending time concerns, Julian Fire Association and other plaintiffs moved *ex parte* in the Brown Act Case for an expedited hearing. As a part of plaintiffs' motion and motion hearing held on April 5, 2019, the plaintiffs, to the satisfaction of the Superior Court, presented **direct and objective evidence** of violations of the Brown Act by the District, including presentation and review of plaintiffs'

timely filing of the lawsuit and prefiling prerequisites. The Superior Court considered the evidence put forward and determined that:

> Here, through emails and secret meetings in January 2018, three of the five board members agreed to dissolve the District. Thus, by the time the District met on February 13, 2018 to purportedly authorized the commencement and negotiations to dissolve the District, terms had already been discussed and agreed upon between Shelver, Starlin and Tucker in their meetings. Subsequent open meetings accepted certain terms and conditions and culminating in the Board adopting a resolution to dissolve the District. Further, evidence is presented that a timely demand of the legislative body to cure or correct the actions taken in violation of the enumerated statutes and that the legislative body did not cure or correct the challenged action. [Citations Omitted].

(LAFCO RJN at Ex. 6, p. 2.)

The Court was not defrauded. It considered the evidence and rendered a decision. LAFCO's allegations of fraud should be rejected in strong terms to discourage such reckless accusations.

2. Julian Fire Association and the Other Plaintiffs Satisfied all Prerequisites for an Order and Judgment for Rescission by Preparing, Presenting, and Timely Filing their Action in Compliance with Government Code Section 54960.1

On March 9, 2018, one or more of the Julian Fire Association's members and representative plaintiffs had prepared and delivered a written cure and correct letter pursuant to California Government Code section 54960.1, subdivision (b) – demanding that the District cure the District's actions taken in violation of the Brown Act with regard to the District's February 13, 2018 conduct. **The March 9, 2018 letter demanded the District cure its violation or else it would be litigated and ordered null and void.** The District did not cure its violations of the Brown Act as to action taken at the February 13, 2018 (and its immediate and subsequent follow-on related and dependent February 13, and April 10 dissolution decisions) in that the District did not voted to withdraw the action and has taken no action to cure prior to judgment and the Court's writ order in the Brown Act Case.

Therefore, pursuant to Government Code section 54960.1, subdivision (c)(2), District failed to **take action** to cure and correct the challenged Brown Act violations by the expiration of 30 days on April 8, 2018. Then, pursuant to Government Code section 54960.1, subdivision (c)(4), Julian Fire Association had 15 days from April 8, 2018 to file a lawsuit. Julian Fire Association filed the Brown Act

Case on April 23, 2018 – exactly fifteen days from April 8, 2018 and in full compliance with filing requirements of Government Code section 54960.1.

The County and LAFCO wrongfully base their belated and after-the-fact arguments on a failure to correctly read Government Code section 54960.1, subdivision (c)(2), which requires that a local agency (1) take action to cure and correct; and, only after, (2) write to the demanding party that corrective action has been taken. (Id.) LAFCO argues that merely sending a letter is sufficient. (LAFCO Opp. at 6:26-27 ["JCFPD responded in a letter dated April 3, 2018"].) This is wholly incorrect. In the Brown Act Case, the District **did not** cure and correct, and its letter sent on April 3, 2018 was not a denial. Rather, it was a promise and commitment to cure and correct – but it never did so, so plaintiffs' lawsuit was timely filed on April 23, 2018. Thus, even if County and LAFCO had timely intervened, they have no valid or meritorious statute of limitations argument.

Having presented the entirety of the timeliness, merits, and law to the Superior Court on March 25, 2019, for the April 5, 2019 court hearing, the judgment can hardly be considered a fraud. (*See* Plaintiffs moving Application at 9:19-10:10.)

B. The County and LAFCO May Not Belatedly Intervene in the Brown Act Case; In any Event, Neither LAFCO Nor County are or were Indispensable Parties

1. The County and LAFCO Have Delayed Making any Motion or Request for Intervention or Dismissal Due to Either of them Being an Interested or Indispensable Party

Despite actual notice and awareness of the Brown Act Case approaching almost a full year, neither County nor LAFCO made any effort to appear or argue that they had a significant or vested interest such that they wanted to intervene of become a party to the Brown Act Case. Since at least July of 2018, well before LAFCO considered its first September 2018 conditional approval[2], the County and LAFCO were well aware of the Brown Act Case. (Sherman Decl. ¶¶ 2-3.) On February 22, 2019,

[2] It should be noted that LAFCO took no affirmative action that would give the County or LAFCO any affirmative or vested rights until at least September 2018. This was well after the April 23, 2018 filing of the Brown Act Case.

LAFCO counsel again acknowledged that it was aware that the District board was evaluating exposure and damages (both civil and criminal liability) arising from violations encompassed within the Brown Act Case. (Id. at ¶ 3) The County and LAFCO only now, after the case was adjudicated, seek to gain party status and claims there was a flaw in not naming them.

2. LAFCO May Not Intervene in the Brown Act Case After the Final Judgment Was Rendered

As found by *Leonard Corp. v. San Diego*, (1962) 210 Cal.App.2d 547, an application for "intervention is not permitted after the trial has been concluded and judgment entered." (*Id*. at p. 552, citing 1 Cal. Pleading, § 668, p. 561; *see also Braun v. Brown*, 13 Cal.2d 130, 133 ["it has been definitely decided that a motion to intervene after judgment has been entered was made too late."].) LAFCO is simply too late to file an application to intervene in the Brown Act Case. And LAFCO had knowledge of the litigation in the Brown Act Case, evidenced by communicating with counsel Craig Sherman about said case. (Sherman Decl. ¶ 3.) LAFCO simply has no right to interfere with the entered judgment and no right to try to undue completed litigation.

3. LAFCO is not an Indispensable Party

LAFCO's insistence that it is an indispensable party is not supported due to both – the untimeliness of their raised argument and the applicable legal authorities.

The California Fourth District case controlling in this matter is *Leonard Corp. v. San Diego*, (1962) 210 Cal.App.2d 547, which specifically reiterated caution against "the common blunder of regarding any 'necessary party' as 'indispensable.'" (*Id.* at p. 551, citing *Bank of California, National Association v. Superior Court of San Francisco*, ("*Bank of California*") (1940) 16 Cal.2d 516, 521.)

Indeed, that is exactly what LAFCO has done, conflated an interested, perhaps even a belated necessary party, with an **indispensable** party. As stated by the court in *Bank of California*:

> While necessary parties are so interested in the controversy that they should normally be made parties in order to enable the court to do complete justice, yet if their interests are separable from the rest and particularly where their presence in the suit cannot be obtained, they are not indispensable parties. The latter are those without whom the court cannot proceed.

(*Bank of California, supra*, 16 Cal.2d at p. 521.)

LAFCO relies on the statement in *Save Our Bay, Inc. v. San Diego Unified Port Dist.*, ("*Save Our Bay, Inc.*) (1996) 42 Cal.App.4th 686 that "The controlling test for determining whether a person is an indispensable party is, [w]here the plaintiff seeks some type of affirmative relief which, if granted, would injure or affect the interest of a third person not joined, that third person is an indispensable party." (*Id.* at p. 692.) However, *Save Our Bay, Inc.* cites *Bank of California* for the very "controlling test" it espouses, and *Bank of California* clearly distinguishes between "necessary" and indispensable" parties. (*Bank of California, supra*, 16 Cal.2d at p. 523 ["These latter may perhaps be 'necessary' parties to a complete settlement of the entire controversy or transaction, but are not 'indispensable' to any valid judgment in the particular case."].) Further, LAFCO cites to *Save Our Bay, Inc.* for the proposition that prejudice to the third person is solely determinative of whether the third party is indispensable, is outdated. As stated by the Court in *Quantification Settlement Agreement Cases*, (2011) 201 Cal.App.4th 758

> In 1971, however, the Legislature revised Code of Civil Procedure section 389 "to substitute practically in its entirety Rule 19 of the Federal Rules of Civil Procedure for former Section 389." [Citation] Under the revised version of the statute, prejudice to an absent party is only one factor to be considered in determining whether that party is indispensable, rather than being the *only* determinative factor as it was under the previous version of the statute.

(*Id.* at p. 857, internal citations removed.)

The other factors are described in Code of Civil Procedure section 389, subdivision (b), none of which LAFCO cites and none of which are met:

> The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder.

(Id.)

Thus, LAFCO is not an "indispensable" party, even if it can claim an interest from the litigation.

As stated, Code of Civil Procedure Section 389 does not dictate that every person who may have a later or contingent interest in an action is "indispensable." (*See* Code of Civil Procedure Section 389, subd. (b) ["the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable."].)

The Fourth District in *Leonard Corp. v. San Diego* made clear that it is purely discretionary whether a necessary party is permitted to intervene in a case. (*Id.* at p. 551, citing 1 California Law Revision Commission Reports (1957) on pages M-9 to M-21; *Peabody Seating Co.* v. *Superior Court*, 202 Cal.App.2d 537 *et al.*)

Here, the County and LAFCO, with full knowledge of the ongoing Brown Act Case, sat on their hands and waited too long to raise this argument and attempt to intervene.

III.

CONCLUSION

For the above foregoing reasons, Julian Fire Association hereby opposes and responds to the inaccurate and unsupported arguments of the County and LAFCO, such that their opposition to the application of plaintiffs in this Validation lawsuit should be determined substantially meritless and disregarded.

Dated: April 12, 2019

CRAIG A. SHERMAN,
A PROFESSIONAL LAW CORPORATION

CRAIG A. SHERMAN
Attorney for Plaintiffs and Petitioners,
JULIAN VOLUNTEER FIRE COMPANY ASSOCIATION, BRIAN CROUCH

DECLARATION OF CRAIG A. SHERMAN

I, CRAIG A. SHERMAN declare as follows:

1. I am counsel of record for plaintiffs and petitioners JULIAN VOLUNTEER FIRE COMPANY ASSOCIATION and BRIAN CROUCH, in his capacity as President of the Julian Volunteer Fire Company in Case No. 37-2018-00020015-CU-WM-CTL ("Brown Act Case") to which the above captioned case is being considered as a related case. I am personally aware of all of the information contained herein, and if I was called to testify, I could and would do so as set forth herein.

2. The County of San Diego and the San Diego Local Agency Formation Commission, by and through their respective counsel of record, have known of the existence of the Brown Act Case since at least **July 17, 2018** when they were served briefing in a referendum petition lawsuit: "There is another ongoing and separate lawsuit between Appellants and the JDFPD arising from certain Brown Act and statutory noticing violations involving the adoption of Resolution No. 2018-03 (S.D. Super. Case No. 2018-00020015)." (Case No. D074324, Opening Brief at p. 13)

3. The County of San Diego and the San Diego Local Agency Formation Commission, by and through their respective counsel of record, have also known of the existence of the Brown Act Case since at least July 17, 2018 when LAFCO counsel Holly Whately wrote on **February 22, 2019** to the District, as copied to my office, about the District's closed session discussions about liabilities, exposure, and possible settlement of Brown Act Case being agendized for discussion by the District's board of directors at its February 25, 2019 meeting.

Executed on April 12, 2019 in San Diego County.

Craig A. Sherman

PROOF OF SERVICE

San Diego Superior Court - Case No. 37-2019-18076-CU-MC-CTL
Julian-Cuyamaca Fire Protection District v. San Diego LAFCO

I, the undersigned, declare under the penalty of perjury that I am over the age of eighteen years, my place of business is in the County of San Diego, located at 1901 First Avenue, San Diego, CA, and I am currently the attorney to this action; that I served the below-named person(s) the following document(s):

RESPONSE TO EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE REGARDIGN PRELIMINARY INJUNCTION; DECLARATION OF CRAIG A. SHERMAN

On April 12, 2019 on the following person(s) in a sealed envelope or package, addressed as follows:

Cory J. Briggs, Esq. Briggs Law Corporation 99 East C Street, Suite 111 Upland, CA 91786 cory@briggslawcorp.com	Joshua M. Heinlein, Esq. Office of County Counsel 1600 Pacific Highway Room 355 San Diego, CA 92101 joshua.heinlein@sdcounty.ca.gov	Carmen A. Brock, Esq. Colantuono Highsmith & Whatley 790 E Colorado BL, Suite 850 Pasadena, CA 91101 cbrock@chwlaw.com

in the following manner:

☒ **BY ELECTRONIC SERVICE VIA ONE LEGAL:** I caused a true and correct copy of the document(s) to be served through One Legal at www.onelegal.com addressed to the parties shown herein appearing on the above-titled case. The service transmission was reported as complete and a copy of One Legal's Receipt/Confirmation Page will be maintained with the original document in this office.

I declare under the penalty of perjury under the laws of the State of California that the above foregoing is true and correct.

Executed on April 12, 2019 at San Diego, California.

Paul Best