Lunetta, Kim@SLC

From: alison madden < >
Sent: Monday, April 26, 2021 9:16 AM
To: Lucchesi, Jennifer@SLC; Lunetta, Kim@SLC; Nicholas Tsukamaki; Andrew Vogel
Subject: Re: Public comments prior to tomorrow's meeting?

Hi,

Sorry for the talk to text typo - "you may have and will" was supposed to somehow have been "you may have already decided to move comments to the front" of the meeting....[as a general rule/matter of procedure overall at the Commission meetings, I know sometimes before the chair of the commission allowed/allows the public comments to go early or first, for the convenience of the public vs. waiting till the end.

If not, can we be accomodated due to the conflict? We are having a lot of discovery and other motion issues at the CMC so it could go from 2 to as long as 4, or could be over quick, we don't know.

This is a lawsuit seeking relocation benefits under CRAL, Gov. Code Sec. 7260 et seq., which the City is saying does not apply b/c we are illegal and the Vogel letter proves it. We believe Mr. Bogianno's testimony in the PMQ/PMK deposition by Ms. Frostrom in the CRAL suit (Mr. Tsukamaki was there), demonstrates both that the safety/security consideration has resulted in some liveaboards at some marinas on public trust land, but/and also that the Vogel Letter was not intended to deprive people of Cal. relocation assistance benefit payments.

We believe that, from as early as 2012 forward, the City (Council) has had a plan and design to develop the Inner Harbor and specifically the Docktown upland, as this was express in the Inner Harbor Task Force (called Inner Harbor Specific Plan and Particular Plan). Of course it was shelved due to the developers deciding to go their own way (Strada and J Pauls with Harbor View). I have no issue with these developments but the City now is denying that its eviction and removal of Docktown is a public project. Removing residential liveaboards is one thing, and even that we believe SLC did not intend on a 2 year time frame (from start to finish, 2016 to 2018, we've extended it due to our advocacy in the jurisdiction suit (wrongly decided) as well as the UDs in front of the Supreme Court; we now believe we cannot be evicted before being paid CRAL and that the 1DCA unpublished decision in 17CIV00316/A156288 is only law of the case in that matter and "not" collateral estoppel b/c the SLC and AG never took the position that PRC Sec. 6009.1(c)(13) precluded independent Ports).

We are asking the AG (as in Mr. Bonta) to take a position on whether PRC 6009.1(c)(13) preempts local charters that have created independent (and semi independent) Ports

statewide. This is not longer just about Redwood City, but Oakland, S.F., Stockton, San Diego and more (L.A., Long Beach...).

The 1DCA took a position that was result oriented for that case, that the SLC and AG never advised upon (whether this basic, fundamental agency and trust law black letter priciple) has pre-emptive effect over local democracy to create an independent Port by charter.

I am asking that you put this email into the record, and will send others shortly.

Thanks!
Alison

On Monday, April 26, 2021, 07:15:26 AM PDT, alison madden < > wrote:

Hi Jennifer, and Kim,
I hope you both are well. We have a case management conference in the lawsuit for California relocation benefits tomorrow at 2 PM, so I am wondering if we can address the commission for three minutes at the beginning of the meeting? You may have and will your public comments front of the meeting, at least I see that that is what happened last time, so I'm wondering if that is possible this time. I will also send an email later today. If that could be included in the record I would appreciate it. Thank you very much,
Alison

Sent from Yahoo Mail for iPhone

Lunetta, Kim@SLC

From: alison madden < >
Sent: Monday, April 26, 2021 9:25 AM
To: Lucchesi, Jennifer@SLC; Lunetta, Kim@SLC; Nicholas Tsukamaki; Andrew Vogel
Subject: Fw: Thank you Oakland, Alameda and San Leandro! My service to you will continue!
Attachments: Tsukamaki_SLC_AG_Brief_A156288.pdf; Pro_Per_PI_Madden_VerifiedReply2City_2021Apr27.pdf

Hello, Jennifer/Kim,

Can you ask for this to also be put into the public record? It's a follow up email to Mr. Bonta, after having provided some information in his Assembly role prior to his confirmation. He was on the Alameda Council as well as then Assembly Member for Oakland, he knows the importance of independent Ports, of which Oakland is a fantastic example. It's charter is verbatim the same as Redwood City's. Either Oakland's (adopted in the 1980s but originally around 1900) copied from Redwood City, or Redwood City (established in the 1930s) took Oakland's original verbiage. I'd have to do more research, but it's nearly verbatim as to the Port. Both called Port Dept. with Board of Port Commissioners, Port Area the same, jurisdiction etc. all the same. And Oakland observes this and its Council would not have done what occurred here.

This has Mr. Tsukamaki's Opposition brief in the 1DCA A156288 (in which he made various arguments to retain dismissal of the SLC) and from my review I did not see that he ever advocated that PRC 6009.1(c)(13) pre empts local charters.

By way of reminder on the background, I was ordered to sue SLC. Although the City and SLC/AG may later have misconstrued, this was never or not solely for the dec relief action. Judge Miram ordered me to create "one cause of action" but dec relief remedy and prayer were always there. Of course, any Judge specifically ordering how a plaintiff may and can and should and must plead is not permitted (as to "you shall plead solely in one cause of action", but he did it. I had my eyes on one thing alone -- getting to trial on the one fact Q of who had jurisdiction by the back and forth in the 1960s and 70s. This is what Judge Miram had ordered after demurrer to 2AC, that this fact issue existed, hence he refuted any possibility that he ever held PRC 6009.1(c)(13) really pre empts the charter, otherwise this ruling would have been nonsensical.

In any event, I knew I was just walking through all the shenanigans to get to trial. We now have this SAME issue as a defense to UD, as I am taking the position that b/c the 1DCA opinion was unpublished, and the SLC/AG never advocated that 6009.1(c)(13) pre empts the charter, that the court got it wrong. So it is final and applies to the 'law of the case' but not to any other issue as collateral estoppel.

I can hardly fathom how irresponsible it was for the 1DCA to have achieved this clearly result-oriented position, but it did.

Anyway, this is the advocacy below I have been doing, speaking to Port authorities and our Senators and Assembly members.

Thank you,
Alison

----- Forwarded Message -----
From: alison madden < >
To: Christopher Bricca < >; Dolores Huerta < >
Sent: Sunday, April 25, 2021, 06:17:06 PM PDT
Subject: Fw: Thank you Oakland, Alameda and San Leandro! My service to you will continue!

Hi, Tatanka and Dolores,

I had spoken to Tatanka last Sunday and emailed to follow up and he so graciously introduced me to you Ms. Huerta.

I had reached out to Mr. Bonta in his Assembly role and now as of last Friday he is confirmed as AG! Such great news for progressives and I look forward to watching him advocate for more and all of California as AG. In the meantime, I have also reached out to our Senator and Assembly Member, and I have spoken at the Port of Oakland and S.F. Port Commission meetings, and had follow up from the chairs and attorneys, so we are getting some traction to socializing this very important "independent Port" issue.

I also attach a screenshot which should show visibly below, it shows me and the 3 opposing counsel in the first district court of appeals, and the 3 judges. This is the case decided just last Fall (Nov. 2020) in which the First District (1DCA) wrongly held that the Public Resources Code basic introductory provision on fiduciary and agency responsibilities, means that the voters cannot create an independent Port authority.

One of those attorneys shown is DAG Nicholas Tsukamaki who never took the position that the PRC section about basic agency and fiduciary law prohibits local charters from providing for independent Ports. That's PRC Sec. 6009.1(c)(13), which the lead Justice, Kline, utilized to say that Redwood City voters could not create their independent Port. My action was a taxpayer action to enforce the charter, undo a $1.5 million side-deal to a politically connected attorney and stop disabled, at-risk, low income and veterans from being evicted from living on their boats in a marina without Cal. Relocation benefits payments.

Only the politically connected attorney and his cohorts raised this issue (the City's outside counsel the Burke law firm, unsure if you know them, not a citizen friendly or union/environmental advocates firm).

The City of Redwood City first relied on an informal legal advice of counsel letter from DAG Vogel that advised the staff of the SLC, but they (Vogel and SLC) never meant it to

support imminent evictions and denial of CRAL benefits. They thought there was a place to move us to.

By way of background, "every" "single" unit of affordable housing East of 101 has been eradicated and the ENTIRE General Plan community area is solely for high end super dense luxury condos and apartments.

Not a single person of low income, veteran/SSA/SSI, disabled or other at-risk is allowed to have views of the water - only the owners of the condos and apartments, and this has been well over 1000 since 2012. They are selling for $1.5 million and up, and not a single unit is BMR. We are trying to keep what is left of our marina and some diversity East of 101, including the diversity mentioned (vets on limited retirement, disabled (autistic) young person who has nice independent living here, elderly, low income, etc.).

I was hoping to get the attached Brief of Mr. Tsukamaki and screenshot that shows me and him with the others, to highlight to AG Bonta that the SLC and AG "never" took the position that the 1DCA held.

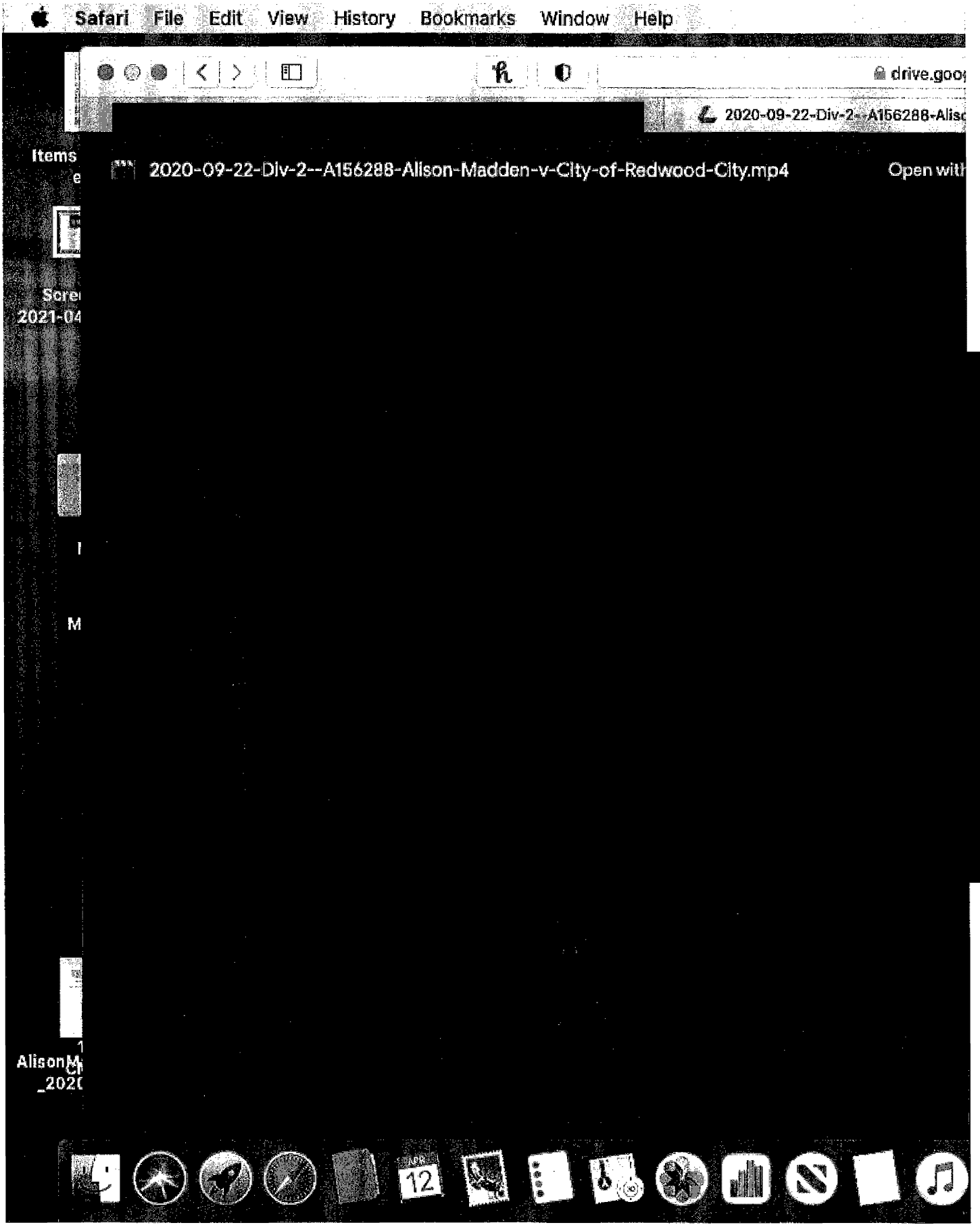
We have an important landlord-tenant case at the Supreme Court right now, and it may be decided any day. I am asking the Court to allow more time due to recently discovered fraud in my UD (eviction). The attached Reply memorandum lays that out. If the Supreme Court will allow the additional time I will bring to their attention that the 1DCA did not have the briefing of the SLC or AG supporting the 1DCA.

I know there is a lot. There are 4 actions - my UD, the CRAL suit, the jurisdiction suit, and the original action by the attorney. There's a lot of moving part, but the upshot is that statewide tenants rights, low income housing, accountable government, and independent Ports are all on the table, or the chopping block as it were.

I would so appreciate passing on this information to Mr. Bonta with a request that he give it a quick look and potentially be willing for someone on his staff to speak with us.

Thank you so much!
Alison (screenshot below)

Screenshot: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----- Forwarded Message -----
From: Alison Madden < >
To: alison madden < >
Sent: Sunday, April 25, 2021, 05:40:33 PM PDT
Subject: Fwd: Thank you Oakland, Alameda and San Leandro! My service to you will continue!

Exciting!

---------- Forwarded message ---------
From: <Assemblymember.Bonta@outreach.assembly.ca.gov>
Date: Fri, Apr 23, 2021 at 2:58 PM
Subject: Thank you Oakland, Alameda and San Leandro! My service to you will continue!
To:

Thank you Oakland, Alameda and San Leandro! My service to you will continue!

Dear Friends,

I had that moment yesterday morning when it all hits you.

The Assembly had just voted to confirm my nomination as California's next Attorney General and the Speaker Pro Tem announced the news that the Senate had almost simultaneously also voted to confirm my nomination.

As my Assembly colleagues broke into applause, I was extremely proud, humbled and honored.

My colleagues had shown the same trust in me that Governor Newsom had when he nominated me to fill the remainder of the Attorney General's term after former Attorney General Xavier Becerra was confirmed as U.S. Secretary of Health and Human Services.

Though full of excitement and anticipation, this moment is also bittersweet. And it has everything to do with the people of Oakland, Alameda and San Leandro.

Serving this District for the past 8 ½ years has been a privilege and an honor! California calls our area the 18th Assembly District. I call it the most progressive, most active, most passionate District in the entire Golden State!

I thank you for supporting me, partnering with me, and leaning in with me to go further, push harder, and be bolder.

With your energy, we've passed groundbreaking laws to reform our criminal justice system that is broken in too many places. We've created the toughest gun laws in the nation to prevent untold tragedies. We've stood up for immigrants in the face of a full-frontal, xenophobic assault by the previous administration. We've enacted tough laws that embrace science and protect the planet from the climate crisis. We've fought to protect and provide support to California's children in the classroom and at home. And we've strengthened California's access to high-quality and affordable health care. There's always more to do, but I'm extremely proud of what we accomplished together.

As my transition to the Office of Attorney General takes place, I want you all to know that I'm not going anywhere. I'll still call this District home and I'm honored that I will still represent you and fight for you in my new capacity. I will continue to fight for greater justice, protect our precious environment, defend human rights, and stand up for Californians who've been wronged. As California's Attorney General, I will be the People's Attorney. Your fights will be my fights!

I will be sworn-in during a short ceremony TODAY (Friday) at 5pm. It will be streamed live, and I invite you to join and watch. It would mean a lot to me if you could tune in and be a part of it!

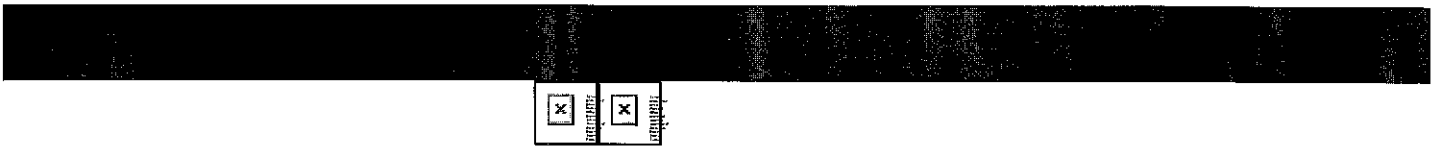
Office of The Attorney General: http://www.oag.ca.gov/

Thank you again for being my rock, my home base, and my North Star!

Here's to the next chapter.

Warmly,

Rob Bonta
Assemblymember, 18th District



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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

ALISON MADDEN,

Plaintiff/Appellant,

v.

CITY OF REDWOOD CITY *EX REL.* ITS COUNCIL; CITY OF REDWOOD CITY *EX REL.* ITS PORT DEPARTMENT & BOARD OF PORT COMMISSIONERS; TED J. HANNIG; CITIZENS FOR THE PUBLIC TRUST; OFFICE OF THE ATTORNEY GENERAL; CALIFORNIA STATE LANDS COMMISSION; DOES 1-50,

Defendants/Respondents.

Case No. A156288

San Mateo County Superior Court, Case No. 17-CIV-00316
The Honorable George A. Miram

RESPONDENT'S BRIEF

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Attorneys for State Lands Commission

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

Case Name: *Alison Madden v. City of Redwood City ex rel. its Council; City of Redwood City ex rel. its Port department & Board of Port Commissioners; Ted J. Hannig; Citizens for the Public Trust; Office of the Attorney General; California State Lands Commission; Does 1-50*

Court of Appeal No.: A156288

CERTIFICATE OF INTERESTED PARTIES OR ENTITIES OR PERSONS
(Cal. Rules of Court, Rule 8.208)

(Check One) **INITIAL CERTIFICATE** [X] **SUPPLEMENTAL CERTIFICATE** [ ]

Please check the applicable box:

[X] There are no interested entities or persons to list in this Certificate per California Rules of Court, rule 8.208(d).

[ ] Interested entities or persons are listed below:

Full Name of Interested Entity or Party	Party *Check One*	Non-Party *Check One*	Nature of Interest *(Explain)*
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	

The undersigned certifies that the above listed persons or entities (corporations, partnerships, firms or any other association, but not including government entities or their agencies), have either (i) an ownership interest of 10 percent or more in the party if an entity; or (ii) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Attorney Submitting Form

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Party Represented

Attorneys for State Lands Commission

/s/ Nicholas Tsukamaki
(Signature of Attorney Submitting Form)

November 5, 2019
(Date)

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INTRODUCTION AND SUMMARY OF ARGUMENT

Appellant Alison Madden ("Madden") appeals from various orders and a judgment entered by the San Mateo County Superior Court in her lawsuit against the City of Redwood City ("City"), Citizens for the Public Trust and Ted J. Hannig (collectively the "Hannig Parties"), and the State Lands Commission ("Commission"). The suit alleges misconduct by these parties relating to an agreement settling a suit brought by the Hannig Parties against the City, and the City's subsequent adoption of the "Docktown Plan," which resulted in the relocation of residential houseboats at Docktown Marina located in the City.

Of the various arguments Madden asserts in her opening brief, only one pertains to the Commission—that the trial court erred in granting the Commission's motion to strike Madden's fourth amended complaint. (See AOB 42-45.) To support this argument, Madden contends that the fourth amended complaint sufficiently alleged that the Commission contributed to the City's adoption of the Docktown Plan, that the court had previously required Madden to name the Commission in the complaint, and that the Commission was always properly named in the complaint since being converted from a Doe defendant in July 2017. (AOB 42-45.) None of these reasons has merit.

Madden's fourth amended complaint only alleged one cause of action (see 6 CT 1789-1799; 7 CT 1800-1801), and the only portion of that cause of action that could have applied to the Commission is the allegation that the Commission colluded with the other defendants to bring about the closure of Docktown Marina. (See 7 CT 1800.) The fourth amended complaint, however, failed to state facts sufficient to support a collusion claim against the Commission. For example, that complaint contains no allegations that the Commission entered into a secret or deceitful agreement with the City, the Hannig Parties, or others for a fraudulent or deceitful

purpose. These allegations are required in order to prove collusion. (See, e.g., *Span, Inc. v. Associated Internat. Ins. Co.* (1991) 227 Cal.App.3d 463, 484.)

While the trial court previously determined that the Commission was an indispensable party for purposes of the declaratory relief cause of action in the first amended complaint (see 4 CT 971:4-11), that determination has no bearing on the court's ruling on the Commission's motion to strike the fourth amended complaint, because that complaint did not assert a cause of action for declaratory relief against the Commission or any of the other defendants. (See 6 CT 1789-1799; 7 CT 1800-1802.) Moreover, the trial court's determination that the Commission was an indispensable party does not mean that simply adding the Commission as a defendant to the fourth amended complaint, by itself, relieved Madden of the pleading requirements associated with such an amendment. Madden was still required to allege facts sufficient to support a cause of action against the Commission, which she failed to do.

Also, neither the record nor the law supports the argument that the Commission was properly named in the complaint since the time it was converted from a Doe defendant. Although Madden added the Commission as a defendant to the second amended complaint (4 CT 990), she omitted the Commission as a named defendant in the third amended complaint, which Madden filed three months later. (4 CT 1150-1157.) That omission resulted in the dismissal of the Commission from the action. (See *Fireman's Fund Ins. Co. v. Sparks Construction, Inc.* (2004) 114 Cal.App.4th 1135, 1142.) The trial court later denied: (1) Madden's motion for leave to file a fourth amended complaint without prejudice (6 CT 1782); (2) Madden's first motion for leave to file a fifth amended complaint without prejudice (9 CT 2548:7-10); and (3) Madden's second motion for leave to file a fifth amended complaint with prejudice. (10 CT 2709-2711.)

Accordingly, Madden never properly renamed the Commission as a defendant after the Commission was dismissed from the action upon Madden's filing of the third amended complaint.

In this appeal, Madden does not challenge the trial court's final order denying her second motion for leave to file a fifth amended complaint with prejudice. As a result, Madden has waived any argument with regard to that order. The court did not, in any event, abuse its discretion in denying Madden's second motion for leave to file a fifth amended complaint, because the proposed fifth amended complaint attached to that motion did not allege facts sufficient to state a cause of action against the Commission.

It bears mentioning that Madden has stated on multiple occasions—including in her fourth amended complaint, at a hearing before the trial court judge, and in her opening brief on appeal—that she does not believe the Commission is a necessary or indispensable party, that she never wanted to sue the Commission, and that she does not have a problem dismissing the Commission from the lawsuit. (See Fourth Amended Complaint, 6 CT 1793:1-7 ["Plaintiff disagrees that [the Commission] is a necessary or indispensable party . . . . Plaintiff would rather 'not' sue the [Commission] . . . . Plaintiff now regretfully names and serves [the Commission] solely under Court order."]; RT 77:13-17 ["So I don't have a problem dismissing the [Commission] . . . . I never wanted to sue them. I don't think they're necessary or indispensable . . . ."]; AOB 24 ["So how the [Commission] can be ruled a necessary or indispensable party . . . is not possible to grasp."].)

For these reasons and those discussed below, the Court should affirm the trial court's orders granting the Commission's motion to strike the fourth amended complaint and dismissing the Commission from the lawsuit.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2015, Andrew Vogel, a Deputy Attorney General with the California Attorney General's Office, submitted a letter to Jennifer Lucchesi, the Executive Officer of the Commission, addressing the legality of the residential houseboat (or "liveaboard") community at Docktown Marina in the City ("Vogel letter"). (1 CT 257-263.) The letter concludes that private residential use of houseboats and liveaboards at the marina violates both the terms of the statutes by which the Legislature granted sovereign tidelands to the City and the common law public trust doctrine. (1 CT 257.)

In February 2016, the Hannig Parties and the City entered into a stipulated settlement agreement settling a suit that the Hannig Parties had previously filed against the City. (1 CT 51-63.) The settlement agreement required the City to adopt a "Plan that will be in conformance with the Commission's policies concerning residential use of the public trust portion of Docktown and consistent with the [Vogel letter]." (1 CT 57.) The City ultimately adopted the Docktown Plan, which provided a process and schedule for the relocation of the households at Docktown Marina. (1 CT 146-235; 2 CT 448-451.)

On January 23, 2017, San Francisco Bay Marinas For All ("SFBM"), the previous plaintiff in this matter, filed a complaint against the City, the Hannig Parties, and Does 1-20. (1 CT 1-7.) The following month, SFBM filed a first amended complaint. (1 CT 8-14.) The gist of the allegations in these complaints was that the City illegally entered into the settlement agreement with the Hannig Parties and illegally adopted the Docktown Plan. (1 CT 8-14.)

The City and the Hannig Parties demurred to the first amended complaint (3 CT 781-791, 797-822), and the trial court sustained those demurrers with leave to amend as to some claims and overruled the

demurrers as to other claims. (4 CT 961-973.) With regard to the City's demurrer to SFBM's cause of action for declaratory relief, the court found that that cause of action "seeks a direct adjudication of the rights of Docktown liveaboards with respect to the policies promulgated by [Commission] Policy. Clearly, the [Commission] is an indispensable party for the simple reason that no judgment will be enforceable against the [Commission] unless they are [a] party to the action." (4 CT 971:4-9.) The court then sustained the demurrer (with leave to amend) to the declaratory relief cause of action for failure to name an indispensable party. (4 CT 971:10-11.)

On July 10, 2017, SFBM and Madden (a newly named plaintiff) filed a second amended complaint against the City and the Hannig Parties. (4 CT 992-998.) That complaint did not name the Commission as a defendant. (4 CT 992.) On the same day, however, SFBM's counsel filed an "Amendment to Complaint," which added the Commission as a named defendant. (4 CT 990.)

The City and the Hannig Parties demurred to the second amended complaint (4 CT 1000-1019, 1073-1082), and the trial court granted and denied them in part. (4 CT 1116-1128.) On October 12, 2017, Madden filed a third amended complaint against the City and the Hannig Parties in which she proceeded in pro per as the sole plaintiff. (4 CT 1150-1157.) Although the Commission had been added as a named defendant to the second amended complaint three months earlier (see 4 CT 990), Madden did not name the Commission as a defendant in the third amended complaint. (4 CT 1150.)

On January 18, 2018, Madden filed a motion for leave to file a fourth amended complaint. (5 CT 1216-1219.) Among the grounds for the motion were that Madden "is required to add the [Commission] as a converted DOE," and "is required to add [the Commission] under the stated

captions for Causes of Action." (5 CT 1217:25-27.) The proposed fourth amended complaint attached to the motion named the Commission and the Office of the Attorney General as defendants, in addition to the City and the Hannig Parties. (5 CT 1223.) The complaint's first cause of action "to set aside agreements for violation of city charter" did not include the Commission. (5 CT 1234-1236.) Only the second cause of action (declaratory relief) and the third cause of action (declaratory relief and mandamus) included the Commission. (5 CT 1236-1238.) The City and the Hannig Parties demurred to the third amended complaint (5 CT 1243-1264, 1416-1435) and opposed the motion for leave to file a fourth amended complaint. (5 CT 1444-1466.)

On July 17, 2018, Madden served the Commission with a summons and a copy of the third amended complaint, even though that complaint did not name the Commission as a defendant. (6 CT 1725.) This was the first time the Commission was served with documents in the matter.

On August 2, 2018, the trial court sustained the demurrers to the third amended complaint's first and second causes of action with leave to amend to allege, in a single cause of action brought under Code of Civil Procedure section 526a, acts by the City alleged to be unlawful or the product of collusion, and each remedy sought. (6 CT 1787.) The court also sustained the demurrer to Madden's third cause of action for declaratory relief without leave to amend. (6 CT 1788.) Finally, the court denied Madden's motion for leave to file a fourth amended complaint without prejudice "to the right *to seek leave to amend* to allege specific causes of action against specific parties for specific relief that are appropriately joined to the instant action against [the City and the Hannig Parties]." (6 CT 1782, emphasis added.) The court ruled that the "Proposed Second and Third Cause of action in the Proposed Fourth Amended Complaint improperly join a variety of parties and claims only marginally related to the instant action

and fail to establish a basis for relief against those parties," and that "the Proposed Fourth Amended Complaint contains no allegations establishing Taxpayer Standing with[ ] regard to the Attorney General or the [Commission] . . . ." (*Ibid.*)

Then, without seeking leave of court, Madden filed a fourth amended complaint, which included the Commission and the Office of the Attorney General as defendants. (6 CT 1789-1799; 7 CT 1800-1802.) That complaint alleged a single cause of action against all of the defendants "to set aside agreements for violation of city charter; illegal contract; [and] collusion." (6 CT 1798-1799; 7 CT 1800-1801.) The complaint did not include a cause of action for declaratory relief. (6 CT 1789-1799; 7 CT 1800-1802.) The Commission demurred to the fourth amended complaint (7 CT 1821-1839) and moved to strike it. (7 CT 1805-1820.)[1] The City and the Hannig Parties also demurred to the fourth amended complaint. (7 CT 1848-1871; 8 CT 2194-2212.)

On October 3, 2018, before the trial court heard the demurrers to and motion to strike the fourth amended complaint, Madden filed a motion for leave to file a fifth amended complaint. (8 CT 2218-2219, 2234-2238.) The proposed fifth amended complaint, like the fourth amended complaint, alleged a single cause of action against all of the defendants, including the Commission, "to set aside agreements for violation of city charter; illegal contract; [and] collusion." (8 CT 2228-2232.) Again, no cause of action for declaratory relief was included. (8 CT 2220-2233.) Madden also filed

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[1] In its motion to strike, the Commission argued that the trial court should strike the fourth amended complaint because Madden filed it without seeking leave of court, which she was required to do based on the trial court's August 2, 2018 order denying her motion for leave to file a fourth amended complaint without prejudice. (See 7 CT 1816-1818; 6 CT 1782.) The trial court, however, did not rule on this issue when it granted the Commission's motion to strike. (See 9 CT 2580:13-15.)

a motion to consolidate the action with a separate unlawful detainer proceeding the City had commenced against her. (8 CT 2275-2276.)

The trial court granted the Commission's motion to strike the fourth amended complaint and denied leave to amend because Madden "failed to articulate a viable CCP[2] § 526a collusion claim against" the Commission. (9 CT 2580:13-15.) The court also sustained the City's demurrer to the fourth amended complaint and denied leave to amend (9 CT 2554:8-11), and it sustained the Hannig Parties' demurrer, denied leave to amend, and dismissed the Hannig Parties from the action. (9 CT 2576:3-9.) The court also denied the motion for leave to file a fifth amended complaint, but did so without prejudice "to the right [to] seek leave to file[ ] an amended complaint alleging viable Mandamus or CCP § 526a claims against the [City], the Port, the [Commission], or the Attorney General." (9 CT 2548:7-10.) Finally, the court denied Madden's motion to consolidate. (9 CT 2557-2560.)

After the court entered those orders, Madden filed a second motion for leave to file a fifth amended complaint. (9 CT 2616-2631.) The proposed fifth amended complaint attached to that motion contained a single cause of action against the City, the Commission, and the Attorney General for "Mandamus and CCP Sec. 526a Violation (Illegal Acts)." (9 CT 2639-2645.) On January 28, 2019, the court denied Madden's motion for leave to file a fifth amended complaint with prejudice. (10 CT 2709-2711.) The minute order denying the motion states that Madden "has failed, on multiple occasions, to state a viable cause of action against any Defendant, and since this court has previously sustained, without leave to

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[2] "CCP" refers to the Code of Civil Procedure. For purposes of this brief, the Commission will retain the trial court's shorthand used in trial court documents.

amend, demurrers to the prior causes of action brought against these defendants, the matter is dismissed and judgment awarded to Defendants herein." (10 CT 2748; see also 10 CT 2747 ["The Request for Dismissal is GRANTED and Judgment is entered in favor of Defendants herein."].) On the same day, the court entered a judgment of dismissal in favor of the City. (10 CT 2751-2753.)[3] Madden subsequently filed this appeal. (9 CT 2685-2687, 2696-2699.)

STANDARD OF REVIEW

This appeal only presents one issue related to the Commission—whether the trial court erred in striking Madden's fourth amended complaint as to the Commission. (AOB 42-45.) The propriety of an order striking all or part of a pleading is reviewed for abuse of discretion. (See *Quiroz v. Seventh Avenue Center* (2006) 140 Cal.App.4th 1256, 1282 ["An order striking all or part of a pleading under Code of Civil Procedure section 435 et seq. is reviewed for abuse of discretion. [Citation.] This means that the reviewing court will disturb the ruling only upon a showing of a 'clear case of abuse' and a 'miscarriage of justice.' [Citations.]

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[3] The judgment entered by the trial court did not include the Commission. (See 10 CT 2751-2753.) Nonetheless, the minute order denying Madden's motion for leave to file a fifth amended complaint with prejudice makes clear that the trial court intended to enter judgment in favor of all of the remaining defendants, including the Commission. (See 10 CT 2747-2748.) The order also removed the only cause of action alleged against the Commission ("Mandamus and CCP Sec. 526a Violation (Illegal Acts)" [9 CT 2639-2645]) and left no issues to be determined as to the Commission. As a result, this Court should treat that order as appealable. (See *Haro v. City of Rosemead* (2009) 174 Cal.App.4th 1067, 1078; *Figueroa v. Northridge Hospital Medical Center* (2005) 134 Cal.App.4th 10, 12 ["An order denying leave to amend a complaint is not appealable, unless it has the effect of eliminating all issues between the plaintiff and a defendant so that there is nothing left to be tried or determined."].)

Discretion is abused only when, in its exercise, the trial court 'exceed[ed] the bounds of reason, all of the circumstances before it being considered.' [Citation.]"]; *Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 612 [holding that a trial court's determination to strike a pleading under Code of Civil Procedure section 436 is reviewed for abuse of discretion, and that the burden is on the plaintiff to establish such abuse].)

DISCUSSION

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN GRANTING THE COMMISSION'S MOTION TO STRIKE MADDEN'S FOURTH AMENDED COMPLAINT

A. The Fourth Amended Complaint Did Not Allege Facts Sufficient To State A Collusion Claim Against The Commission Under Code Of Civil Procedure Section 526a[4]

The fourth amended complaint Madden filed on August 14, 2018, contained a single cause of action "to set aside agreements for violation of City charter; illegal contract; collusion." (6 CT 1798-1799; 7 CT 1800-1801.) The first two parts of this cause of action—setting aside agreements for violation of the City charter and entering into an illegal contract—relate solely to alleged conduct by the City and the Hannig Parties. (See 6 CT 1796:25-1797:7.) There are no allegations in the fourth amended complaint

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[4] The record indicates that Madden never intended to state a section 526a claim against the Commission. (See RT 69:23-24 ["So I wasn't actually intending to state a 526(a) case in my 4th amended complaint."]; RT 75:24-76:13 ["The Court: With regard to the Commission, it's even difficult to perceive of a thread that would include the Commission on a collusion claim . . . . Ms. Madden: I did want to address that. We never sued them on a 526a. . . . We never even brought them in. . . . So I actually don't really have a problem with the [Commission] not being in this case . . . ."]; RT 77:13-17 ["So I don't have a problem dismissing the [Commission] . . . . I never wanted to sue them. I don't think they're necessary or indispensable . . . ."].)

that the Commission or its staff entered into an agreement that violated the City charter, or that the Commission or its staff entered into an illegal contract. (See 6 CT 1789-1799; 7 CT 1800-1802.) That leaves the question of whether Madden pleaded facts sufficient to support a cause of action against the Commission for collusion. In granting the Commission's motion to strike and denying leave to amend[5] , the trial court ruled that the fourth amended complaint "failed to articulate a viable CCP § 526a collusion claim against" the Commission. (9 CT 2580:13-15.)[6] This ruling is fully supported by the allegations (and lack of allegations) in that complaint.

Collusion generally requires the existence of a deceitful or secret agreement between two or more persons for fraudulent or deceitful purposes. (See *Hone v. Climatrol Industries, Inc.* (1976) 59 Cal.App.3d 513, 522, fn. 4 ["Collusion has been variously defined as (1) 'a deceitful agreement or compact between two or more persons, for the one party to bring an action against the other for some evil purpose, as to defraud a third party of his right'; (2) 'a secret arrangement between two or more persons, whose interests are apparently conflicting, to make use of the forms and proceedings of law in order to defraud a third person, or to obtain that

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[5] Although the court granted the motion to strike and denied leave to amend, on the same day it issued that ruling, the court denied Madden's first motion for leave to file a fifth amended complaint *without prejudice.* (See 9 CT 2529, 2534, 2546-2548, 2579-2581.) Madden subsequently filed a second motion for leave to file a fifth amended complaint (9 CT 2616-2645), which the court denied with prejudice. (10 CT 2709-2711.) As discussed below in Section II, Madden does not challenge the court's denial of her second motion for leave to file a fifth amended complaint in this appeal.

[6] The court's order granting the motion to strike did not address whether Madden had sufficiently established taxpayer standing under section 526a as to the Commission. Nor has Madden raised this issue on appeal. As a result, the Commission does not address this issue.

which justice would not give them, by deceiving a court or its officers'; and (3) 'a secret combination, conspiracy, or concert of action between two or more persons for fraudulent or deceitful purpose.'"]; *Span, supra*, 227 Cal.App.3d at p. 484; *Andrade v. Jennings* (1997) 54 Cal.App.4th 307, 327.)

Although the fourth amended complaint contained numerous allegations involving collusion, only a handful of those allegations specifically referenced the Commission. For example, the complaint alleged that the "official actions" of Commission staff in refusing to recharacterize the Vogel letter as informal advice "support the allegations of collusion." (6 CT 1793:18-1794:3.) The complaint also refers to the lawsuit brought by the Hannig Parties against the City, and alleges that Citizens for the Public Trust, City officials, a developer, and "other monied interests" colluded in bringing the lawsuit and settling it, which was done "to set up the closure of Docktown and enrich Hannig and his associated developer monied interests . . . ." (7 CT 1800:3-11.) According to the complaint, this alleged collusion between the City, the Hannig Parties, and others is enough to state a claim for collusion as to the Commission, which was "aware of and joined the collusive plan to act illegally." (7 CT 1800:13-14.)

These allegations are insufficient to state a cause of action for collusion against the Commission. For one, the fourth amended complaint did not allege any facts showing how the Commission was involved in the lawsuit between the City and the Hannig Parties or the settlement resolving that suit. There were no allegations that the Commission was a party to the lawsuit, that the Commission participated in the settlement, or that the Commission somehow benefitted from the lawsuit or settlement. Nor did the complaint allege that the Commission entered into a secret or deceitful agreement with the City, the Hannig Parties, or others for a fraudulent or deceitful purpose. (See *Span, supra*, 227 Cal.App.3d at p. 484.) Rather,

the alleged collusion primarily involved the City and the Hannig Parties, not the Commission. (See 6 CT 1795:16-20 ["Plaintiff alleges the Hannig lawsuit was a collusion between Citizens, [a developer], [city officials], [and others, not including the Commission]"]; 6 CT 1797:8-12 ["Plaintiff alleges the lawsuit was a collusion between Citizens, [a developer], [city officials] as well as [others, not including the Commission]"]; 7 CT 1800:20-1801:9.)

With regard to the allegations in the fourth amended complaint that Commission staff did not heed Madden's request to recharacterize the Vogel letter as an "informal advice" letter (see 6 CT 1793:27-1794:8), these allegations in no way suggest any collusion on the part of Commission staff or the Commission itself. The complaint did not state how that alleged inaction by Commission staff was improper, nor did it allege that staff had a legal duty to heed Madden's request. In fact, Commission staff had no such obligation. At most, staff's alleged failure to recharacterize the Vogel letter as an informal advice letter was a discretionary act (or failure to act), which does not provide the basis for a section 526a action. (See *Daily Journal Corp. v. County of Los Angeles* (2009) 172 Cal.App.4th 1550, 1557-1558 ["Section 526a gives citizens standing to challenge governmental action and is liberally construed to achieve that purpose. Taxpayer suits are authorized only if the government body has a duty to act and has refused to do so. If it has discretion and chooses not to act, the courts may not interfere with that decision."]; *City of Ceres v. City of Modesto* (1969) 274 Cal.App.2d 545, 555 ["[T]he term 'waste' as used in section 526a means something more than an alleged mistake by public officials in matters involving the exercise of judgment or wide discretion."].)

Moreover, the fourth amended complaint did not allege how Commission staff's purported failure to recharacterize the Vogel letter was part of an agreement or arrangement with the City, the Hannig Parties, or

others to defraud Madden or another third party. (See *Span, supra*, 227 Cal.App.3d at p. 484.) The trial court reached a similar conclusion at the hearing on the motion to strike, stating that "[w]ith regard to the Commission, it's even difficult to perceive of a thread that would include the Commission on a collusion claim, because all the allegations that have been made thus far do not seem to include the Commission in any such claim." (RT 75:24-76:2.)

Madden argues on appeal that she sufficiently alleged that the Commission contributed to the City's "ultra vires act" by sending the Vogel letter and characterizing it as an "AG Opinion." (AOB 42.) For example, Madden claims that Sheri Pemberton ("Pemberton"), a Commission employee, "postured" the Vogel letter as an "AG Opinion" in a "cover memo" to City employee Diana O'Dell ("O'Dell"); that a Ms. Calvo, a Commission staff person, revealed the letter to Ted J. Hannig's attorney and then to the City Council; and that Pemberton and others not affiliated with the Commission thereafter referred to it as an "AG opinion." (AOB 43-44.) Madden also argues that the record is "replete" with the Vogel letter, that the letter was the basis for the Hannig settlement, that it was "the centerpiece of the [City] Council's *raison d'etre* to enter into the Settlement and adopt a Docktown Plan," and that it has "driven the entire series of events" in this matter. (AOB 42-43.)

These arguments suffer from several problems. First, Madden has mischaracterized the nature of the claims in the fourth amended complaint, which does not contain any allegations involving a Ms. Calvo. (See 6 CT 1789-1799; 7 CT 1800-1802.) Second, while the complaint does allege that Pemberton attached a cover letter to O'Dell in which Pemberton called the Vogel letter an "attorney general opinion" (6 CT 1799:25-27), that allegation does not rise to the level of collusion, since it does not state how or why Pemberton's alleged conduct was improper or how it was part of an

agreement or arrangement with the City, the Hannig Parties, or others to defraud Madden or another third party. (See *Span, supra*, 227 Cal.App.3d at p. 484.) Third, the same is true with regard to the claims that the Vogel letter was the basis for the Hannig settlement and the Docktown Plan, and that the letter drove the entire series of events in this case. These claims do not allege, and cannot be construed to mean, that the Commission was a party to the Hannig lawsuit, that the Commission participated in the settlement of that suit, that the Commission somehow benefitted from the lawsuit or settlement, or that the Commission entered into a secret or deceitful agreement with the City, the Hannig Parties, or others for a fraudulent or deceitful purpose. (See *ibid.*)

Fourth, the record does not support Madden's assertion that the Commission characterized the Vogel letter as an "AG Opinion." The "cover memo" or letter from Pemberton to O'Dell referenced in the fourth amended complaint and Madden's opening brief does not state that the Vogel letter is an "AG Opinion." Rather, the Pemberton letter refers to the Vogel letter as an "opinion letter from the Attorney General's office" (3 CT 644), which is not a formal, published, or citable Attorney General opinion. (See *Melendez v. City of Los Angeles* (1998) 63 Cal.App.4th 1, 13 [referring to several "*formal* Attorney General opinions," which were citable (emphasis added)]; *Rideout Hospital Foundation, Inc. v. County of Yuba* (1992) 8 Cal.App.4th 214, 227 [referring to two "*published* Attorney General opinions," which were citable (emphasis added)].)

Finally, Madden argues that "AG Opinions may only be ordered for specific State officials . . . and only after a public vote by those officials," and that "there was no public vote nor public record of the Commissioners voting to request that the AG issue an AG Opinion; indeed, there is not even a public record of a public vote to 'waive attorney-client privilege' to have disclosed the Vogel Letter even if it had been properly called by Ms.

Pemberton 'informal legal advice.'" (AOB 44.) These arguments are irrelevant to whether the trial court abused its discretion in granting the motion to strike. Whether the Commission voted to request that the Attorney General issue a formal opinion, whether such a vote was reflected in the public record, or whether there is a public record of a vote by the Commission to waive the attorney-client privilege as to the Vogel letter, all have no bearing on whether the Commission or its staff colluded with the City or the Hannig Parties with respect to the Hannig lawsuit and settlement or the Docktown Plan.

In summary, the fourth amended complaint failed to plead facts sufficient to support a cause of action against the Commission for collusion, which is the only basis for the section 526a cause of action that could have applied to the Commission based on how Madden pleaded the complaint. The trial court therefore did not abuse its discretion in granting the Commission's motion to strike the fourth amended complaint without leave to amend.

B. The Trial Court Did Not Abuse Its Discretion In Granting The Commission's Motion To Strike Even Though The Court Had Previously Determined That The Commission Was An Indispensable Party

In addition to the arguments discussed above in Section I.A, Madden argues that it was improper for the trial court to strike the fourth amended complaint as to the Commission because the court had previously ruled that the Commission was a necessary party and ordered Madden to name and serve the Commission. (AOB 8-9, 42.)

In its order on the City's and the Hannig Parties' demurrers to the first amended complaint, the trial court sustained with leave to amend the City's demurrer to the third cause of action for declaratory relief on the ground that that cause of action "seeks a direct adjudication of the rights of Docktown liveaboards with respect to the policies promulgated by

[Commission] Policy. Clearly, the [Commission] is an indispensable party for the simple reason that no judgment will be enforceable against the [Commission] unless they are [a] party to the action." (4 CT 971:4-9.)

The fact that the court determined at an earlier point in the litigation that the Commission was an indispensable party for purposes of the declaratory relief cause of action in the first amended complaint is not relevant to the court's ruling on the motion to strike the fourth amended complaint, because the latter pleading did not assert a cause of action for declaratory relief against the Commission or any of the other defendants. (See 6 CT 1798-1799; 7 CT 1800-1801; 7 CT 1801:18-19 ["Plaintiff has omitted causes for declaratory relief, mandamus and the like."].)

Moreover, if the court believed that the Commission was an indispensable party for purposes of Madden's *proposed* fourth amended complaint, which was attached as an exhibit to Madden's motion for leave to file a fourth amended complaint and which named the Commission as a defendant (see 5 CT 1222-1239), the court presumably would have granted Madden leave to file that pleading as to the Commission. The court did not do so. Rather, the court denied Madden's motion without prejudice "to the right to seek leave to amend to allege specific causes of action against specific parties for specific relief that are appropriately joined to the instant action against [the City and the Hannig Parties]." (6 CT 1782.) The court further determined that the proposed second and third causes of action in the proposed fourth amended complaint (declaratory relief, and declaratory relief and mandamus, respectively [5 CT 1236-1238]), which were the only causes of action alleged against the Commission, "improperly join a variety of parties and claims only marginally related to the instant action and fail to establish a basis for relief against those parties," and that the proposed fourth amended complaint "contains no allegations establishing Taxpayer Standing with[ ] regard to . . . the [Commission]." (*Ibid.*)

Also, the fact that the court previously determined that the Commission was an indispensable party for purposes of an earlier pleading does not mean that simply amending the complaint to add the Commission as a defendant relieved Madden of the pleading requirements associated with such an amendment. More specifically, Madden was still required to allege facts sufficient to support a cause of action against the Commission, which, as discussed above in Section I.A, she failed to do.

Finally, the argument that the trial court erred in striking the fourth amended complaint as to the Commission because the court had previously ruled that the Commission was a necessary party rings hollow because Madden has stated more than once, including in the fourth amended complaint itself, that the Commission is *not* a necessary or indispensable party to the litigation. (See Fourth Amended Complaint, 6 CT 1793:1-7 ["Plaintiff disagrees that [the Commission] is a necessary or indispensable party . . . . Plaintiff would rather 'not' sue the [Commission] . . . . Plaintiff now regretfully names and serves [the Commission] solely under Court order."]; RT 69:20-21 ["I had always said I don't think [the Commission is] necessary"]; RT 77:16-17 ["I don't think [the Commission is] necessary or indispensable"]; AOB 24 ["So how the [Commission] can be ruled a necessary or indispensable party, when it was first not a party in the Hannig Suit, and later failed to join the CEQA suit after notice, and later moved to exit this 17CIV00316 case, is not possible to grasp."].) Madden has also stated that she does not have a problem dismissing the Commission from the lawsuit. (RT 76:12-13 ["So I actually don't really have a problem with the [Commission] not being in this case"]; RT 77:13-16 ["So I don't have a problem dismissing the [Commission] . . . . I never wanted to sue them."].)

C. The Commission Was Dismissed From The Action Upon The Filing Of The Third Amended Complaint And Was Never Again Properly Added As A Defendant To The Complaint

In arguing that the trial court erred in striking the fourth amended complaint as to the Commission, Madden claims that the Commission was always named as a defendant to the complaint "since the Doe conversion . . . in July 2017." (AOB 42; see also *id.* at p. 33 [stating that the Commission, "as named in July 2017, was always a party defendant, and had an obligation to answer and plead."].) As discussed below, the Commission was not, from July 2017 onward, "always named as a defendant" to the complaint.

On July 10, 2017, SFBM and Madden filed a second amended complaint against the City, the Hannig Parties, and Does 1 to 20. (4 CT 992-998.) That complaint did not name the Commission as a defendant. (4 CT 992.) On the same day, SFBM's counsel filed an "Amendment to Complaint," which substituted the Commission as a Doe defendant. (4 CT 990.) Three months later, Madden filed a third amended complaint against the City, the Hannig Parties, and Does 1 to 20. (4 CT 1150-1157.) Although the Commission had been added as a named defendant to the second amended complaint three months earlier (see 4 CT 990), Madden did not name the Commission as a defendant in the third amended complaint. (4 CT 1150.) This omission resulted in the dismissal of the Commission from the action. (See *Fireman's Fund, supra*, 114 Cal.App.4th at p. 1142 ["It has long been the rule that an amended complaint that omits defendants named in the original complaint operates as a dismissal as to them."]; *Kuperman v. Great Republic Life Ins. Co.* (1987) 195 Cal.App.3d 943, 947 [holding that the dismissal is without prejudice].)

In addition to the Commission's omission from the third amended complaint, there is other evidence in the record indicating that the Commission was dismissed from the suit upon the filing of that complaint. For example, Madden's proposed fourth amended complaint, which was attached as an exhibit to Madden's motion for leave to file a fourth amended complaint (see 5 CT 1222-1239), expressly stated that it "*adds* parties and causes of action." (5 CT 1224:15, emphasis added.) The parties added to the proposed fourth amended complaint that were not named as defendants in the third amended complaint are the Commission and the Office of the Attorney General. (See 4 CT 1150-1157; 3 CT 1222-1239.) Similarly, the fourth amended complaint filed on August 14, 2018, states that it "*adds* parties and causes of action based on prior rulings of the court, without limitation the [Commission]." (6 CT 1791:8-10, emphasis added; see also AOB at p. 31 [stating that the fourth amended complaint filed on August 14, 2018 "added parties the court contemplated, and was asserted against Council, the Port Dept., [the Commission], and the AG's office . . . ."].) The fact Madden added or intended to add the Commission as a defendant to the proposed and actual fourth amended complaints necessarily means that the Commission was not a named defendant in the third amended complaint, which is consistent with the notion that Madden's failure to name the Commission in the third amended complaint resulted in the dismissal of the Commission from the action without prejudice.

The trial court sustained the demurrers to the third amended complaint with leave to amend (6 CT 1787) and denied Madden's motion for leave to file a fourth amended complaint without prejudice. (6 CT 1782.) The court later denied Madden's first motion for leave to file a fifth amended complaint without prejudice (9 CT 2546-2548) and her second motion for leave to file a fifth amended complaint with prejudice, which resulted in the case being dismissed. (10 CT 2709-2711, 2747-2748.) Because the third

amended complaint resulted in the dismissal of the Commission from the action without prejudice, and because the court never granted Madden leave to file an amended complaint adding the Commission as a defendant after that dismissal, the Commission was never a properly-named defendant in this matter after October 12, 2017 (the date the third amended complaint was filed [see 4 CT 1150]).

II. MADDEN DOES NOT CHALLENGE THE TRIAL COURT'S ORDER DENYING HER SECOND MOTION FOR LEAVE TO FILE A FIFTH AMENDED COMPLAINT AS TO THE COMMISSION, AND HAS THEREFORE WAIVED ANY ARGUMENT WITH REGARD TO THAT ORDER; EVEN IF MADDEN HAD CHALLENGED THAT ORDER, THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE MOTION

A. Madden Has Waived Any Argument That The Trial Court Erred In Denying Her Second Motion For Leave To File A Fifth Amended Complaint As To The Commission

The trial court's final order in this matter, which denied Madden's second motion for leave to file a fifth amended complaint with prejudice (10 CT 2709-2711), resulted in the dismissal of the remaining defendants—i.e., the City and the Commission. (10 CT 2747-2748.) Madden does not argue on appeal, however, that the court erred in denying that motion with regard to the allegations against the Commission. In other words, Madden does not contend that the fifth amended complaint contains allegations sufficient to state a cause of action against the Commission. Instead, the only basis for Madden's appeal as to the Commission is that the trial court erred in granting the Commission's motion to strike the fourth amended complaint. (See AOB 42-45.) As a result, Madden has waived any argument that the court erred in denying her second motion for leave to file a fifth amended complaint with respect to the allegations in that pleading against the Commission. (See *Kelly v. CB&I Constructors, Inc.* (2009) 179

Cal.App.4th 442, 451-452; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived."].)

B. The Trial Court Did Not Abuse Its Discretion In Denying Madden's Second Motion For Leave To File A Fifth Amended Complaint With Prejudice, Because The Proposed Fifth Amended Complaint Did Not Allege Facts Sufficient To State A Cause Of Action Against The Commission, And Because Madden Had Several Previous Chances To Adequately Plead A Cause Of Action Against The Commission

After the trial court granted the Commission's motion to strike the fourth amended complaint, sustained the City's and the Hannig Parties' demurrers to that complaint, and denied Madden's first motion for leave to file a fifth amended complaint without prejudice, Madden filed a second motion for leave to file a fifth amended complaint. (9 CT 2616-2631.) The proposed fifth amended complaint attached to that motion contained a single cause of action against the City, the Commission, and the Attorney General for "Mandamus and CCP Sec. 526a Violation (Illegal Acts)." (9 CT 2639-2645.) As mentioned above, the court denied the motion with prejudice and then dismissed the action. (10 CT 2709-2711, 2747-2748.)

An order denying a motion for leave to amend a complaint is reviewed for abuse of discretion. (*Record v. Reason* (1999) 73 Cal.App.4th 472, 486; *Bedolla v. Logan & Frazer* (1975) 52 Cal.App.3d 118, 135-136.) As with Madden's fourth amended complaint (see discussion above in Section I.A), the gist of the allegations in the second proposed fifth amended complaint had little, if anything, to do with the Commission. Instead, Madden directed the cause of action in the complaint exclusively to the City. For example, under the cause of action section, the complaint alleged that Madden "brings this taxpayer action to invalidate the

Docktown Plan and all acts of [the City] Council in excess of jurisdiction pertaining to Docktown Marina, settlement of the Hannig Suit, adoption of the Docktown Plan . . . ." (9 CT 2639:25-27.) Then, over the course of several paragraphs, the complaint alleged that the Port Department, rather than the City, has jurisdiction over Docktown Marina, and that the City therefore did not have jurisdiction to adopt the Docktown Plan. (9 CT 2640:5-27.) Next, Madden spent several pages alleging that the City Council knew it did not have jurisdiction over Docktown Marina and "attempted to assume it anyway." (9 CT 2641-2643.) The complaint further stated that certain "[i]legal acts in violation of city charters are void" and that "[f]unds paid to any entity or individual must be returned to the City." (9 CT 2644:19-20.)

None of these allegations in the second proposed fifth amended complaint alleges misconduct by the Commission, nor do they explain how any action by the Commission supports a cause of action for mandamus. For example, the complaint does not allege that the Commission has a clear, present, and ministerial duty, or that Madden has a clear, present, and beneficial right in the performance of that duty. (See *Barnes v. Wong* (1995) 33 Cal.App.4th 390, 394-395.) In fact, there is no mention of the typical statutory grounds for mandamus relief (i.e., Code of Civil Procedure sections 1085 and 1094.5) anywhere in the pleading. While the complaint did allege that the Commission knew the City Council did not have jurisdiction over a certain area subject to a particular land swap, and that the Commission "has a long history of issuing communications pertaining to Redwood City that acknowledge and reflect the [Commission's] understanding that the Port . . . has jurisdiction over granted lands" (9 CT 2643:24-2644:1), the complaint did not articulate how these allegations form the basis of a mandamus action against the Commission. Nor does the complaint explain how Madden's request "for declaratory and injunctive

relief pertaining to the allegations" in the complaint (9 CT 2644:25) apply to the Commission.

The prayer for relief in the second proposed fifth amended complaint further underscores the fact that the pleading is directed to the City rather than the Commission. For example, Madden asks the court to "declare the Docktown Plan and Hannig Settlement void" and to "order recovery of all monetary amounts paid to any recipients of funds related to the Docktown Plan, Hannig Settlement and any and all relocation services by OPC." (9 CT 2645:8-11.) Madden further prays for "temporary, preliminary and ultimately, permanent injunctive relief preventing the implementation of the Docktown Plan and the eviction of any residential liveaboard tenant," and asks that the court "direct the Port to enter into leases with Docktown residents of substantial similarity to other Redwood City liveaboards . . . ." (9 CT 2645:13-17.) The second proposed fifth amended complaint does not allege that the Commission implemented the Docktown Plan, that it was involved in the settlement between the City and the Hannig Parties, that it paid or was the recipient of funds related to the Docktown Plan, or that it sought to evict liveaboard tenants at Docktown Marina. In fact, the Commission is not mentioned anywhere in the prayer.

The "Introduction" section of the second proposed fifth amended complaint alleges that the Commission advised the City Council "that residential liveaboards were not permitted on State public trust tide and submerged lands," and that the Commission "opining on the matter without authority was a pre-agreed 'set up' for the Council to take the position that Docktown must be closed . . . ." (9 CT 2637:27-2638:2, 2638:6-7.) The complaint further alleges that the Commission and the Attorney General's Office "colluded" to characterize an "informal advice letter" as an "Attorney General opinion." (9 CT 2638:20-22.)

As to the first of these allegations, the second proposed fifth amended complaint fails to explain how the Commission advising the City that residential liveaboards are not permitted on sovereign lands equates to a "set up" or collusion—i.e., a secret or deceitful agreement or arrangement with the City (or others) for a fraudulent or deceitful purpose. (See *Span, supra,* 227 Cal.App.3d at p. 484.) Moreover, the trial court, in granting the Commission's motion to strike the fourth amended complaint, determined that Madden had failed to sufficiently plead a "set up" between the Commission and the City Council regarding the closure of Docktown Marina. (See 9 CT 2580:13-15 [finding that Madden "failed to articulate a viable CCP § 526a collusion claim against" the Commission].)

Next, the allegation that the Commission and the Attorney General's Office "colluded" to characterize the Vogel letter as an Attorney General Opinion suffers from two problems. First, the record does not support the claim that either the Attorney General's Office or the Commission characterized the Vogel letter as a formal Attorney General Opinion. The mere format of the Vogel letter, for example, indicates that it is not a formal Attorney General Opinion, and nowhere in the letter does the author state or suggest that the letter is a formal Attorney General Opinion. (See 1 CT 257-263.) Instead, the letter indicates that it constitutes "informal advice." (1 CT 257.) Madden concedes as much in her opening brief. (See AOB 43 ["[The Vogel letter] is by its very admission (the words it uses, in the introductory paragraphs), an 'informal legal advice' letter."].) Also, the January 4, 2016 letter from Commission employee Sheri Pemberton to Diana O'Dell at the City does not, as Madden claims in her brief (see AOB 43), state that the Vogel letter is an "AG Opinion." Rather, Pemberton's letter refers to the Vogel letter as an "opinion letter from the Attorney General's office" (3 CT 644), which is not the same thing. Similarly, a January 5, 2016 email from Commission employee Lucinda Calvo to

attorney Trevor Ross attaching the Vogel letter refers to the letter as an "informal opinion letter from the Attorney General's office." (1 CT 256.) Madden has failed to cite to any portion of the record where either the Commission or the Attorney General's Office represented the Vogel letter as a formal Attorney General Opinion.

Second, the second proposed fifth amended complaint does not contain any other facts showing that the Commission and the Attorney General's Office engaged in collusion, i.e., that the Commission had a secret or deceitful agreement or arrangement with the Attorney General's Office for a fraudulent or deceitful purpose. (See *Span, supra*, 227 Cal.App.3d at p. 484.)

Finally, while the trial court denied Madden's second motion for leave to file a fifth amended complaint with prejudice (10 CT 2709-2711), the second proposed fifth amended complaint was not the first, or the second time Madden had filed or attempted to file a complaint alleging misconduct by the Commission. The first attempt was the proposed fourth amended complaint attached to Madden's motion for leave to file a fourth amended complaint. (5 CT 1223-1239.) The trial court denied that motion without prejudice, finding that the proposed second and third causes of action in the proposed fourth amended complaint, which were the only causes of action alleged against the Commission, "improperly join a variety of parties and claims only marginally related to the instant action and fail to establish a basis for relief against those parties." (6 CT 1782.) The second attempt was the actual fourth amended complaint that Madden filed on August 14, 2018 (6 CT 1789-1799; 7 CT 1800-1802), which, as discussed above, the court struck on the ground that it "failed to articulate a viable CCP § 526a collusion claim against" the Commission. (9 CT 2580:13-15.)

Then, after the Commission filed its motion to strike the fourth amended complaint and before that motion was decided, Madden filed her

first motion for leave to file a fifth amended complaint, to which she attached a proposed fifth amended complaint. (7 CT 1805-1819; 8 CT 2218-2233.) The court denied Madden's first motion for leave to file a fifth amended complaint without prejudice "to the right [to] seek leave to file[ ] an amended complaint alleging viable Mandamus or CCP § 526a claims against the [City], the Port, the [Commission], or the Attorney General" (9 CT 2548:7-10), which led to Madden seeking leave to file her second proposed fifth amended complaint. (9 CT 2616-2645.) In this way, Madden had several chances to adequately allege a cause of action against the Commission before the court denied with prejudice her last motion for leave to amend.

In summary, Madden's second proposed fifth amended complaint did not allege facts sufficient to state a mandamus or collusion claim against the Commission under section 526a. Madden also had several opportunities to adequately allege misconduct by the Commission before the trial court denied her second motion for leave to file a fifth amended complaint. Under these circumstances, the court did not abuse its discretion in denying that motion with prejudice.

III. WHETHER THE TRIAL COURT ERRED IN DISMISSING SFBM FROM THE SUIT IS NOT AT ISSUE HERE BECAUSE SFBM IS NOT AN APPELLANT

Madden argues that because SFBM sufficiently alleged representative entity standing under section 526a, the trial court erred in dismissing SFBM from the suit. (AOB 45-47.) The Commission adopts by reference those sections of the briefs filed by the City and the Hannig Parties addressing this issue. (See Cal. Rules of Court, rule 8.200(a)(5) ["Instead of filing a brief, or as part of its brief, a party may join in or adopt by reference all or part of a brief in the same or a related appeal."].)

IV. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING MADDEN'S MOTION TO CONSOLIDATE THIS ACTION WITH THE UNLAWFUL DETAINER ACTION

Madden further argues that the trial court erred in denying her motion to consolidate this action with the unlawful detainer action brought against her by the City. (AOB 47-49.) The Commission adopts by reference those sections of the briefs filed by the City and the Hannig Parties addressing this issue. (See Cal. Rules of Court, rule 8.200(a)(5).)

V. THE COURT NEED NOT DECIDE WHETHER THE TRIAL COURT IMPROPERLY FOUND THAT JURY TRIALS ARE NOT PERMITTED IN WRIT OR SECTION 526A INJUNCTION PROCEEDINGS, BECAUSE MADDEN HAS FAILED TO SUFFICIENTLY PLEAD A WRIT OR 526A CLAIM AGAINST THE COMMISSION

Finally, Madden argues that the trial court improperly decided that jury trials are not permitted in writ or section 526a injunction proceedings. (AOB 49-50.) It is true that the trial court, in ruling on the City's demurrer to Madden's third amended complaint and in responding to Madden's objection to the assignment of the matter to Department 28, found that "[j]ury trials are not permitted in either Writ or CCP 526a Injunction proceedings." (6 CT 1787.) That finding, however, was not germane to the trial court's order on the City's demurrer to the third amended complaint, because Madden did not request a jury trial in that complaint. (See 4 CT 1150-1157.) The parties, in fact, did not brief the issue before the trial court. In any event, this Court need not reach the issue of whether Madden is entitled to a jury trial on the causes of action in her complaint, because, as discussed above, she failed to plead facts in the fourth amended complaint sufficient to state a collusion claim against the Commission under section 526a.

If the Court nevertheless determines that Madden sufficiently pleaded a section 526a claim against the Commission (or should be given a further

opportunity to state a claim against the Commission), and the Court remands the matter to the trial court, the Commission requests that the issue of whether Madden is entitled to a jury trial be remanded as well for briefing by the parties and further consideration by the trial court.

CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Court affirm the orders granting the Commission's motion to strike Madden's fourth amended complaint and denying Madden's second motion for leave to file a fifth amended complaint.

Dated: November 5, 2019

Respectfully submitted,

XAVIER BECERRA
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DANIEL A. OLIVAS
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/s/ Nicholas Tsukamaki
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Deputy Attorney General
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Madden Respondents Brief.doc

CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S BRIEF uses a 13 point Times New Roman font and contains 9,124 words.

Dated: November 5, 2019

XAVIER BECERRA
Attorney General of California
DANIEL A. OLIVAS
Senior Assistant Attorney General
DAVID G. ALDERSON
Supervising Deputy Attorney General

/s/ Nicholas Tsukamaki
NICHOLAS TSUKAMAKI
Deputy Attorney General
Attorneys for State Lands Commission

DECLARATION OF SERVICE BY E-MAIL

Case Name: ***ALISON MADDEN v. CITY OF REDWOOD CITY EX REL. ITS COUNCIL***

Case No.: **A156288**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On November 5, 2019, I served the attached **RESPONDENT'S BRIEF** by transmitting a true copy via electronic mail, addressed as follows:

Alison M. Madden
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Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

San Mateo County Superior Court
The Honorable George A. Miram
Judge of the Superior Court
400 County Center, Dept. 28
Redwood City, CA 94063

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 5, 2019, at Oakland, California.

Shontane Adams
Declarant

Shontane Adams
Signature

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91180885.docx

ALISON MADDEN, Pro Per
[redacted]
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In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

FRANCESCA FAMBROUGH, et al, Petitioners/Plaintiffs, v. REDWOOD CITY, Respondent/Defendant.	Case No.: 17CIV05387 *Single-assigned to Dept. 2* **PLAINTIFF-INTERVENOR ALISON MADDEN'S REPLY TO CITY'S OPPOSITION TO P-I MADDEN'S MOTIONS TO CONSOLIDATE UD ACTION AND TO AMEND COMPLAINT** Date: Apr. 27, 2021, 2 p.m. Judge/Dept.: Hon. Marie S. Weiner, Dept. 2

Plaintiff-Intervenor Alison Madden ("**P-I Madden**") submits this Reply to City's Opposition to P-I's Motions to Consolidate and Amend Complaint ("**Reply**" & "**Motions**").

The hearing on P-I Madden's Motions to which this Reply and City's Opposition relate, is set for hearing April 27, 2021, the same day as Case Management Conference ("**CMC**"). The Parties submitted on April 16, 2021 (1) a joint CMC Statement; and (2) "**IDC Letters**" pertaining to discovery issues to be heard at the CMC.

The IDC Letter(s) had been requested by the court regarding P-I Madden's requests for informal discovery conference ("**IDC**"), originally set for April 20, 2021, but P-I, Defendant and Dept. 2 all agreed the discovery matters could be handled at the CMC.

Accordingly, this Reply addresses P-I Madden's Motions and City's Opposition thereto, as well as the discovery issue(s) for discussion at CMC April 27, 2021, which are:

1. Issues surrounding the recent uncovering, only at P-I Madden's deposition in April, that defendant and P-I Madden are operating under materially different positions respecting the operative CRAL and UD agreement.

(City contends a "Liveaboard License Agreement" signed by P-I Madden in June 2013, to enter into Docktown Marina in June 2013, which was not signed by Redwood City nor returned until well over a year later, in the August to November 2014 time frame ("**LLA**") is operative; However, Madden entered into a "Liveaboard Rental Agreement" ("**LRA**") in late 2014, after extensive negotiations between and among City and all Docktown residents. All Docktown residents signed the LRA, and P-I Madden contends the LRA is the operative agreement. Indeed, it never entered Madden's mind the LLA could, would or was being relied upon, as she never understood it to have ever even been signed by City or returned to her; and if it had been, it was superseded by the offer, acceptance, signature and performance under the 2014 LRA. Moreover, it was returned with a cover letter "Liveaboard Rental Agreement". Accordingly, P-I Madden is alleging *fraud and misrepresentation*. For the past 7 (seven) years, City has "always" referenced her LRA, not an LLA. Never. Ever.);

and

2. Whether P-I Madden propounding discovery on the final day of discovery, and thus falling within the court's (Dept. 2's) "discovery cut off" time frame, before 5 p.m. on April 16, 2021, is valid.

(City takes the position that somehow acting within a deadline is unfair or problematic. The Court's CMO setting discovery cutoff did not state 12:00:001 a.m. was the deadline, hence the inference is close of business April 16, 2021. This is the issue for the court to determine.)

In addition, P-I Madden has provided points and authority(ies) respecting the issues in the Motions, also in prior filings, including without limitation:

(a) P-I Madden's (then-"Petitioner" Madden's) Opposition to City's Demurrer (last April, 2020) in this action 17CIV05387;

and

(b) Reply MPA filed Apr. 9, 2019 in the administrative writ action 17CIV04680 & Supplement filed April 12, 2019 therein, after City objected to Madden's 4/9/19 Reply MPA.

[The Burke law firm attached the above referenced Reply and entire AR from the admin writ to its Opposition, thus conceding applicability of these authorities, so we agree there].

///

To avoid duplication, P-I Madden calls the court's attention to those filings and requests consideration of them in tandem with this Reply.

I. INTRODUCTION

As noted, P-I Madden is *in pro per* in this Action, as of March 17, 2020, representing herself for a variety of reasons, including without limitation to:

(a) Brief germane points and authorities in addition to other plaintiffs/intervenors, and

(b) Take writs and appeals from decisions as necessary, including, without limitation regarding:

1. The potentiality of being required to be displaced before City has been ordered to abide by all CRAL pre-displacement procedural and substantive requirements; and

2. The potentiality of being required to be displaced before City has been ordered to pay all applicable CRAL relocation benefit payments and/or IC just compensations.

Notwithstanding that P-I Madden is *pro per*, she is aligned as co-party, and agrees with and joins in each of the prior and contemporaneous filings made and filed to date by the others, represented by the San Diego-based Thorsnes *et al.* law firm ("**TBM**").

II. BACKGROUND

This is a CRAL Action, based on the Cal. Relocation Assistance Act, or Law (hence "**CRAL**"), pursuant to Cal. Gov. Code Sec. 7260 *et seq*. This action also alleges inverse condemnation ("**IC**"), and therefore state and federal constitutional violations if (as is occurring) City displaces P-I Madden without just compensation and without process due under both CRAL and the state and federal constitutions. The 42 U.S.C. Sec. 1983/1984 allegations stem from deprivation of due process and just compensation.

The Council of Redwood City ("**Council**") settled a lawsuit brought by politically-connected attorney Ted Hannig in early 2016 ("**Hannig/Settlement**"). That Settlement was entered into in response to a "Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief" filed by Hannig in late 2015 (San Mateo Co. Super. Ct., case #CIV 536168) ("**Hannig Complaint**").

The Hannig Complaint alleged (without any foundation) that Mr. Hannig was a "**Public Trust Expert**", a defined term he used as such, to refer to himself, throughout the Complaint. Despite including a "*Citizens*" putative plaintiff, Mr. Hannig was the sole individual petitioner and plaintiff, and only attorney in the matter.

The *Citizens* entity included solely two other people: Mr. Hannig's own life partner, and Mr. Hannig's law associate (an employee at his firm), Mr. Trevor Ross. Ironically, Mr. Hannig's partner, at the time, may not have "been" a citizen, on information and belief, but after marriage may now be (and P-I Madden wishes them well, being both a supporter of LGBTQ rights and being second-generation herself, and thus, immigration-friendly). The upshot is that solely 3 (three) very-closely related individuals benefitted from the Settlement.

The Council of Redwood City (so defined in its Charter, and herein "**Council**") assumed jurisdiction it did not have, also pursuant to the Charter, and illegally settled the Complaint and action without any responsive pleading. In the Settlement, Council agreed to pay Mr. Hannig $1.5 ***million*** and build an underpass for a developer.

Although the Port Department by Charter has sole and exclusive jurisdiction, and the Council had been advised as such by Port Special Counsel and City Attorney Francois Sorba in 2005, the Council nonetheless impinged on the Port's authority, apparently without even

socializing the potentiality with the Port Dept., which has recently complained of such over-reach. (By way of example, the Charter limits even interactions between Council and the Port Board to: (i) the Mayor or Council Members speaking at Port meetings in public comments; and (ii) as to the Port, giving an annual State of the Port update in a neutral location, such as a public library, to which the entire general public is invited; the Mayor and Council Members of course being distinguished members of the audience, but solely that).

These appear to be highly-valued "sunshine" provisions, not "Brown Act" as the 1DCA wrongly construed (because they are not the same voting entity, and indeed, the Council has no oversight whatever over any given action of the Port Board (only the highly blunt instrument, and very rare (if ever) removal of one or more Commissioners by a 5/7th vote of Council).

As to the Hannig Suit and Complaint, no Answer was ever filed, nor was any responsive pleading or motion(s) of any kind ever filed, unlike the scorched earth defenses of the CEQA action (17CIV00276), the administrative writ (17CIV04680), the jurisdiction suit (17CIV00316), and this CRAL action, all actions by multiple real "citizens" (as in, numerous individual voting taxpayers, who simply had the gall to want: (1) a charter observed and (2) basic decency in governance). These references to "citizen" are in the vein of "*Citizens United*" type filings, wherein the public interest, of the general public, is not the real "Citizen" on whose behalf justice is allegedly being sought.

The alleged basis for the City quickly folding to Mr. Hannig was to avoid protracted litigation and exposure of the General Fund, which has already paid well over $20 million in relocation services, buyouts, auctions, property damage and more, since the Settlement in

2016. Moreover, hundreds of thousands of dollars have gone to attorney fees.

The real basis of the prompt Settlement was to recoup the losses of Mr. Hannig and/or the developer and/or owner of the former Pete's Harbor, now "Blu", where the real "citizens" who undertook the 17CIV00316 jurisdiction lawsuit discovered applicability of the public trust and the applicability of *Illinois Central* federal public trust authority to require public access to the inner marina that remains there even now, as well as the federal ownership of the non-exclusive access easement, and who successfully advocated for a smaller footprint not encroaching thereon.

As to the "jurisdiction" issue, although the First DCA in Appeal #A156288 held that Judge Miram ruled that Public Resources Code ("**PRC**") Sec. 6009.1(c)(13) pre-empts local charters creating independent ports, Judge Miram did no such thing.

Judge Miram, in denying Gary Redenbacher's OSC for preliminary injunction ("**PI**"), included PRC Sec. 6009.1(c)(13) in a bucket list of reasons to not grant PI (in a tentative ruling Minute Order, which tentative was left unchanged whatsoever after challenge and personal appearance of Mr. Redenbacher). Judge Miram later expressly over-ruled himself on nearly every entry in said bucket list, including as to PRC 6009.1(c)(13), by denying the City's Demurrer to 2AC and ruling that who had jurisdiction was a triable issue of fact.

Unfortunately, in the pandemic and flurry of activity after P-I Madden's re-entry to being able to file documents, the 1DCA precluded P-I Madden from having a Reply to the three (3) Defendant Parties, and the 1DCA became confused and misled on this point.

The SLC and AG ***never*** took the position PRC Sec. 6009.1(c)(13) pre-empts local charters creating independent Ports. This was an argument advanced solely by City via the

Burke law firm and Mr. Hannig via his law partner and associate Mssrs. Warhurst & Ross.

The Burke law firm had taken the position the SLC was a necessary party, even though this court (Dept. 2) had ruled the SLC and AG "not necessary" in the CEQA suit, 17CIV00276, nor in any other suit involving Docktown. Nor did the SLC nor AG *desire* to intervene. Judge Miram ordered P-I Madden to sue and serve the SLC, and she did so.

However, on entry into the action (17CIV00316), ***neither*** the SLC ***nor*** AG *ever* took the position that PRC Sec. 6009.1(c)(13) pre-empts local charters that create independent Ports. Unfortunately, this nuance did not get fleshed out sufficiently for the 1DCA Justices nor the Supreme Court to realize ***the State of California does not advance, and indeed likely does not agree with, this position***.

Indeed, it is now incumbent on P-I Madden, other marina dwellers and people who care about Charter cities and independent Ports to obtain legislative clarification. Such undertaking has begun, and based on this nuance defenses still exist in cases other than 17CIV00316. This means "law of the case" *may* allow Mr. Hannig to keep his $1.5 *million*, but it does not mean this issue is not permissible as a UD defense.

P-I Madden shall raise this defense in her own UD, but is concerned for the others at Docktown, because P-I Madden may be able to have her own UD thrown out due to City's fraud and misrepresentation as to the fraudulent LLA vs. LRA. This leaves others solely defending UDs, unless and until City re-files and sues Madden again in UD on the only operative valid agreement, the 2014 LRA.

Although this issue is not directly applicable to the Motions at this decision point, it is incredibly important for the court, this Dept. 2, to understand the holdings and rulings in the

associated cases, as they bear on potential decisions, including UD if consolidated. And, in P-I Madden's view, this fraud is germane to both actions, and is a basis "to" consolidate.

III. **ARGUMENT**

A. Discovery.

P-I Madden addresses the discovery issues first.

Meet and Confer

First, Mr. Siegel of the Burke law firm, stated on Friday, April 16, 2021, that the parties had not "met and conferred" on whether P-I Madden had timely served her discovery April 16, 2021. P-I Madden propounded requests for production of documents and requests for admission ("**RFP**" and "**RFA**", respectively), before 5 p.m. on April 16, 2021.

Mr. Siegel objected that the documents were not timely, but they were e-served prior to 5 p.m., the typical close of business. P-I Madden does not see a time mentioned in the court's CMO or standing orders and Mr. Siegel did not cite one. As a result, it appears P-I Madden and Siegel have met and conferred as much as is possible, and that this is quite simply a matter for the court to advise upon.

As to the authority cited in Mr. Siegel's IDC Letter and CMC Statement, it is simply wildly inapposite. He pincites *Beverly Hosp. v. Super. Ct.* (1993) 19 Cal.App.4th 1289, 1294, but that case is about "initial trial date" vs. date for new trial after remand. Relying on this entirely inapposite case is actually sanctionable unless P-I Madden has missed something.

The *Beverly Hospital* case does not appear to have anything to do with timely serving discovery on the date of cutoff. In addition, the code itself applies to 30 (thirty) days before trial, and here trial is Phase 1 in August 2021. This Dept. 2 has set an earlier cutoff than the

generally applicable code section, apparently; and the practice guides were scatter-cited, without any quotes or explications, and they simply don't apply to the issue, which is:

If you meet a deadline, did you meet the deadline?

There is no basis for City to object to properly propounded RFPs and RFAs. P-I Madden and City "have" met and conferred.

RFAs

P-I Madden would like to ask the court to address RFAs at the CMC. Given that RFAs are targeted and specific in number, and most effectively used after review of all discovery, does the 4/16/2021 discovery cut off apply to the basic # of RFAs allowed? Or may the parties use RFAs up to the generally-applicable code deadline of 30 days ante?

Fraud

Finally, in his IDC Letter Mr. Siegel alleges that P-I Madden "has long been aware of the issue for which she apparently intends belatedly to propound discovery demands."

This is untrue.

First, as noted above, the RFPs and RFAs were not "belated".

Second, Madden included in the RFPs demands for all documents and information pertaining to the fraudulent LLA and the withheld LRA.

Third, P-I Madden responded to discovery with multiple documents, from City to Madden, ***ALL*** referencing an "LRA". ***NONE*** referenced a "LLA". Madden never, ever understood an LLA unique to her, among all Docktown liveaboards, was her "LRA".

Indeed, P-I Madden is specifically *now* alleging fraud and misrepresentation.

P-I Madden participated in the months-long negotiation of the LRAs in mid-2013 to

late-2014. Madden signed the LLA in June 2013 to come in to Docktown. Otherwise, she wouldn't be able to enter Docktown and buy Ken Pettus's vessel "Inferno". But City didn't sign it, in 2013. She signed, paid and performed; thus she had a right to be at Docktown. But City never signed it in 2013 and Madden entered into the LRA negotiations with City.

The other Docktown residents refused to sign the LLA, but they were already there. Madden signed it to come in, but it was never returned to her. Indeed, in early 2014, Mr. Bill Ekern deigned to advise Ms. Madden she had no agreement, even though she had signed the "LLA" in June 2013 and performed under it. She signed the 2014 LRA, and the LLA was returned to her, signed a year later in the Fall of 2014, with a cover letter "Your LRA". She did not notice this at the time, and only discovered it in the deposition by Mr. Tong.

The City knew exactly what it was doing. And discovery of Mr. Ekern, and every other person involved in this fraudulent ruse, is appropriate. Indeed, on information and belief, it is likely the City Attorney, with Mr. Ekern and others, who crafted this fraudulent approach, and this behavior waives the attorney-client privilege and is misconduct.

This is no small matter.

P-I Madden's UD may be prefaced on the erroneous LLA.

UD documents are not kept on Odyssey, at least not generally viewable to the public, and P-I Madden must now go to the UDL file in the Civil Clerk's office and request the filing. If the UDL is based on this fraud and misrepresentation, the UDL is subject to dismissal, and must be brought under the proper, operative non-fraudulent LRA. No fewer than a half dozen times over the past 7 years has the City sent notices and advisements pertaining to P-I's "LRA".

Accordingly, Mr. Siegel's comment that Madden has "long been aware" is wrong. It is way off base. P-I Madden became aware the City contends her operative agreement is an LLA solely in her deposition. Ms. Madden can try to obtain a declaration of Mr. Ekern, who actually as of late has been a friendly witness to other Plaintiffs. However, she should not be so limited, as the fraud and misrepresentation has been perpetrated by the City.

P-I Madden acknowledges that the RFP is out. She shall see what the City produces. However, P-I Madden maintains that it may be, and indeed likely will be, appropriate to conduct limited, additional discovery pertaining to this fraud and misrepresentation.

B. The Fraudulent LLA is a Basis for Consolidation.

P-I Madden has not yet been able to seek the advisement of the Civil Clerk whether UDLs shall also be direct-set to a particular judge or Dept. Many Superior Courts (i.e., Alameda and Los Angeles) have a specific courthouse and department that hears all UDs. San Mateo County Superior Court, to P-I Madden's knowledge, does not yet have any such direct-set or special-set mechanism for UDs, at least by Local Rule, but she is researching.

Before the "direct set" change of Jan. 1, 2021 in San Mateo County Superior Court, of general Civil Limited and Unlimited Actions, UDs were heard the same as all general Civil Limited and Unlimited Actions. That is, law and motion heard motions, "master calendar" referred out to trials, and the like.

As of Jan. 1, 2021, San Mateo County moved to direct-set, which is particular assignment for all purposes to a particular courtroom/Dept. Because the UDs are related to this CRAL action, and indeed to all the Docktown matters, almost all of which have been heard by Dept. 2, it seems that judicial efficiency, economy, convenience and the interests of

justice would militate to all the UDs being heard in tandem with this CRAL.

This is also true because the issues of "What steps need to be taken prior to displacement?", and "Does payment of benefits have to be made 'before' displacing a residential tenant?" (both under CRAL) are to be decided by this Dept. 2.

C. The City's Docktown Plan ("Plan") and its contrived Hearing Officer ("H.O.") were enacted specifically to deprive P-I Madden of statutory benefits and compensation due under the state and federal constitutions; accordingly due process and just compensation claims are stated under 42 U.S.C. Secs. 1983 and 1984

This Dept. 2, in its "Decision After Court Trial/Hearing" ("**Writ Decision**") wrote:

> "The duty and authority of the Hearing Officer was simply to implement the Docktown Plan relocation benefits, and the Hearing Officer had no authority to decide these other issues – because they are not part of the Docktown Plan."

Writ Decision, at 6 (summarizing City's position, and agreeing by quote above, and adding, *id.*, "The Docktown Plan itself states CRAL benefits will not be considered nor awarded").

By design, the City set up a structure to deny and deprive P-I Madden, and others, of constitutional rights to just compensation for a taking (inverse condemnation, or "**IC**"), in addition to CRAL as noted in the Writ Judgment. Indeed, the entire Writ Judgment is woven throughout with various restatements of the same point, including the ALL CAPS disclaimer that CRAL was not being decided by Dept. 2, nor had it been by the H.O.

The point was almost (or literally was) so express as to make the demurrer in the 4680 action sanctionable, in P-I Madden's view. Moreover, this Dept. 2 recognized that the Docktown Plan H.O. and Appeal process violated procedural Due Process. P-I Madden seeks to have this reflected in the Complaint, hence the Motion/Application for the Leave to Amend, so that she can establish this for any potential writ or Appeal, and also potentially

obtain pro per attorneys' fees.

D. In addition to the matters referenced in the Motion for Leave to File Amended Complaint, P-I Madden desires to confirm that "both" CRAL and IC have "just compensation standards – under CRAL it is for home comp value, or rental value, to be determined by this Dept. 2, and as to IC it is the current constitutional standard.

CRAL gives 3.5 years local rental value for displaced "renters", and full comparable market value for displaced "homeowners". Thus, the difference in benefits between the DT Plan and CRAL is like a bag of stadium peanuts versus a full truckload. P-I Madden desires to ensure the Complaint is understood and allowed to be clarified, that both CRAL and IC entitle P-I Madden (and/or others) to argue that Phase 1 applies to determination of CRAL and IC entitlements, and Phase 2 applies to both CRAL and IC "comp value" and/or just compensation using the current constitutional standard, both subject to expert testimony.

There is some potential lack of clarity on the operative Complaint, being that potentially only leasehold is stated with regard to IC and that only IC is the Phase 2 of this action. In reality, comp home value is a potential recovery metric for "both" CRAL and IC, and "both" CRAL and IC require expert testimony in Phase 2.

This is not small matter, and the recent Stipulation entered into to avoid in-home inspections, while it does not contain Burke "agreeing" with Plaintiffs and Intervenors on this point, "does" contain a statement by Burke acknowledging that this is Plaintiffs' and Intervenors' *position*. This is important, as while it is of course not a concession nor waiver, it is an acknowledgment that the Plaintiffs and Intervenors have taken this position, and the Complaint should and indeed, must, be allowed to be conformed to this position seeking this recovery.

E. Notwithstanding some prior rulings of the court, City "must" still comply with "all" pre-displacement requirements, including analysis and notice.

Finally, it bears noting that the court also, in the Writ Decision, made a notation regarding CRAL "benefits" being "triggered" as being payable and to be paid only *after* a "displaced person moves out". Judgment, at 5 (emphasis of after in original in the full quote).

This may yet remain for additional briefing, (the issue of "pre-moving" or "post-moving" "payment of benefits"); But regardless, it is manifest that CRAL "also" includes procedural requirements that *must* be undertaken before an entity/agency even *purports* to require persons to be displaced.

Here, the City has never undertaken the pre-CRAL displacement studies and analyses necessary to advise occupants that they may or shall be displaced.

Indeed, this same type of pre-displacement study is also required under the FHRL. As noted above, California liberal pleading amendment procedure permits amendment even after trial. Mr. Redenbacher always took the position FHRL applied to Docktown and a pre-displacement study was required under FHRL. This is true of CRAL and was not done.

There is no basis for any position that any person may be displaced before proper CRAL procedures are met. It should also be noted that the cases are not legion under CRAL, but they are diverse enough to support that there is a distinction between residential displacement and commercial or vacation home displacement.

There are CRAL cases in all categories of land-use scenarios, yet the court previously, on denial of "stay" applications, as well as the Writ Decision, focused solely on commercial instances, and even then in situations in which a commercial tenant "chose" to leave and/or

had *already* left (i.e., vacated on and of its own accord prior to filing for CRAL).

This court has only cited commercial authority, to wit, *Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 101 Cal.App.4th 1317, 1326 (donut shop); *Bi-Rite Meat & Provisions Co. v. City of Hawaiian Gardens Redevelopment Agency* (2007) 156 Cal.App.4th 1419, 1431 (specialty meat, fish, and poultry market); *Albright v. California* (1979) 101 Cal.App.3d 14, 21 (L.A. Athletic Club); and Gov. Code Sec. 7260(c)(1)(A)(i).

However, the most salient "residential" case is *McKeon v. Hastings College of Law* (1986) 185 Cal.App.3d 877, as noted in P-I Madden's opening briefing on these Motions.

While Madden is not moving (and cannot of course) for any kind of reconsideration of any prior order or ruling, had she been pro per at that time, she would have briefed this aspect, and taken a writ or appeal. It is too important not to recognize the distinctions between residential and commercial, and to also analyze who chose to move, or filed a late claim (*see* cases in Gov. Code, resolved on various factual situations that included late filings or voluntary vacation of premises). All these nuances matter, specifically in terms of whether any person is required to be displaced before "all" requirements are met, not just payment, whether the cases even really support "pre-move" or "post-move" on their facts.

IV. CONCLUSION

Based on the preceding, P-I Madden respectfully (a) requests the relief sought in her Motions; and (b) verifies this Reply as a Declaration, given she is pro per, the author and signatory hereof, and all the statements are in her own personal knowledge, and sworn under penalty of perjury under the laws of the State of California as true.

Dated: April 20, 2021

ALISON MADDEN
//esigned// ***hard copy drop box in wet ink***

By: Alison Madden, In Pro Per