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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

16  
17 SPRAWLDEF, et al.,  
Petitioners,  
18 v.  
19 CITY OF RICHMOND, et al.,  
20 Respondents.  
21  
22  
23

Case No.: 18-cv-03918-YGR

**RESPONDENTS' NOTICE OF MOTION  
AND MOTION FOR JUDGMENT ON  
THE PLEADINGS**

Date: November 24, 2020  
Time: 2:00 p.m.  
Place: Oakland Federal District Courthouse  
1301 Clay Street  
Courtroom 1, Fourth Floor  
Oakland, CA 94612

Judge: Hon. Yvonne Gonzalez Rogers

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**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on November 24, 2020, at 2:00 p.m., or as soon as the matter may be heard by the Honorable Yvonne Gonzalez Rogers in Courtroom 1 of the United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612, Respondents City of Richmond, Mayor Tom Butt, and Richmond City Council will and hereby do move this Court for an order pursuant to Federal Rule of Civil Procedure 12(c) granting judgment on the pleadings as to Petitioners' First Amended Petition for Writ of Mandate.

Respondents base their motion on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the pleadings on file with the Court, documents subject to judicial notice, and oral arguments that may be presented.

**STATEMENT OF RELIEF REQUESTED**

Pursuant to Federal Rule of Civil Procedure 12(c) and Civil Local Rule 7-2, Respondents City of Richmond, Mayor Tom Butt, and Richmond City Council respectfully request that this Court enter an order granting judgment on the pleadings in favor of Respondents and dismissing the First Amended Petition for Writ of Mandate with prejudice.

Dated: October 16, 2020

ARTURO J. GONZÁLEZ  
ALEXIS A. AMEZCUA  
MORRISON & FOERSTER LLP

By: /s/ Arturo J. González  
Arturo J. González

Attorneys for Respondents  
THE CITY OF RICHMOND, MAYOR TOM  
BUTT, and RICHMOND CITY COUNCIL

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This matter has been moot for nearly a year. Resolution of this case was stalled pending determination of an appeal by the Guidiville Rancheria of California (“the Tribe”) to the Ninth Circuit on a question of tribal sovereign immunity. (See Dkts. 97, 127.) The Tribe’s appeal has now been decided. (Dkt. 128; Memorandum, *SPRAWLDEF v. Guidiville Rancheria of Cal.*, No. 19-16278 (9th Cir. Sept. 17, 2020), Dkt. 42-1.) This development means that this Court may now consider the City’s Motion for Judgment on the Pleadings (“Motion”) and dispose of this matter as moot.

Petitioners Sustainability, Parks, Recycling, and Wildlife Legal Defense (SPRAWLDEF), Citizens for East Shore Parks (CESP), James Hanson, Tony Sustak, Paul Carman, and Pamela Stello (collectively, “Petitioners”) have spent the past two and a half years pursuing a Brown Act claim against respondents City of Richmond, Mayor Tom Butt, Richmond City Council, Upstream Point Molate LLC (“Upstream”), and the Tribe (collectively, “Respondents”). Last November, the City<sup>1</sup> took action to address the alleged violation. This action mooted Petitioners’ claim and, under a statutory safe harbor in the Brown Act, requires that the Brown Act claim “shall be dismissed with prejudice.” See Cal. Gov’t Code § 54960.1(e). Indeed, in denying Petitioners’ motion for preliminary injunction and request for a temporary restraining order, this Court recognized that “the Brown Act specifically permits the legislative agency to cure defects in the open government process. The record here indicates that the City did so.” (Dkt. 127 at 7.)

Petitioners’ pending motion for leave to amend their petition changes nothing. (Dkts. 129, 130 (“Motion to Amend”).) If anything, the Motion to Amend only further highlights the fatal defects in Petitioners’ case against Respondents—both in Petitioners’ Brown Act claim and their proposed new California Land Use and Planning Law claim. (See Dkt. 131.) As elaborated in the City’s opposition to the Motion to Amend, amendment would be futile and leave to amend

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<sup>1</sup> “City” is used throughout this brief to refer collectively to respondents City of Richmond, Mayor Tom Butt, and Richmond City Council.

1 should be denied. (Dkt. 131.) Instead of allowing Petitioners to further delay resolution of this  
 2 case by amending their petition, the Court should dispose of the case as moot and deny any  
 3 opportunity to further amend the petition.

4 In short, pursuant to the Brown Act’s explicit statutory language and Federal Rule of Civil  
 5 Procedure 12(c), the City is entitled to judgment as a matter of law. Petitioners’ writ petition  
 6 should be dismissed with prejudice.

## 7 **II. STATEMENT OF ISSUES TO BE DECIDED**

8 There is just one issue to be decided in the present motion: are Respondents entitled to  
 9 judgment as a matter of law under Federal Rule of Civil Procedure 12(c), where the City  
 10 approved an amended judgment with a vote following a public hearing?

## 11 **III. FACTUAL BACKGROUND**

### 12 **A. The *Guidiville* Litigation and Initial Settlement**

13 This litigation arises out of a settlement agreement among the City, Upstream, and the  
 14 Tribe resolving six years of litigation regarding the outcome of a Land Disposition Agreement  
 15 related to Point Molate. (*See Guidiville Rancheria of Cal. v. United States of Am.*, Northern  
 16 District of California Case No. 12-cv-1326 YGR (“*Guidiville*”), Dkt. 361 (“Original Judgment”)  
 17 at 1, ¶ 4.)

### 18 **B. Procedural History**

19 In May 2018, Petitioners filed a petition in California Superior Court to challenge the  
 20 *Guidiville* settlement. (Dkt. 1 at Ex. A (“Petition”).) The Petition set forth a single cause of  
 21 action, alleging that the Richmond City Council approved the *Guidiville* settlement in violation of  
 22 the Brown Act. (Petition ¶¶ 30–49; *see* Dkt. 32 ¶¶ 32–51.) The City removed the action to  
 23 federal court, and the case was assigned to this Court as related to the previous *Guidiville*  
 24 litigation. (Dkts. 1, 5.)

25 The City filed a motion to dismiss the Petition on July 20, 2018. (Dkt. 12-1.) At the  
 26 hearing on the City’s motion to dismiss, the Court asked the City directly, “[W]ouldn’t it just be  
 27 easier to have public hearings on the Judgment?” (Sept. 11, 2018, Hr’g on Resp’ts’ Mot. to  
 28

Dismiss Tr. at 24:7–9.) Thereafter, the City withdrew its motion to dismiss, and the parties submitted a joint administrative record. (Dkts. 17, 37.)

On October 23, 2018, following the Court’s request that the parties meet and confer regarding whether Upstream and the Tribe should be joined as necessary parties, Petitioners amended their original Petition to include Upstream and the Tribe.<sup>2</sup> (Dkt. 32.) Petitioners and the City thereafter briefed the amended Petition. (See Dkts. 38, 43, 51.) The Tribe specially appeared and moved to dismiss on the ground that the Tribe is entitled to sovereign immunity from Petitioners’ claims, further arguing that, because the Tribe is a proper party that cannot be joined, the action should be dismissed. (Dkt. 45.) On June 19, 2019, the Court denied the Tribe’s motion to dismiss but “conclude[d] that the Tribe is a necessary party and its joinder was proper in this action under Rule 19(a).” (Dkt. 58 at 7:18–19.) The Tribe appealed this order. (Dkt. 60.)

More than a month after the Tribe filed its notice of appeal, Petitioners filed their first motion for preliminary injunction, seeking to enjoin Respondents “from making, planning or enacting any administrative approvals, hearings, environmental analyses, studies, expenditures, contracts, agreements, negotiations and any other action in furtherance of the *Guidiville* settlement.” (Dkt. 68 at 4.) At the hearing on Petitioners’ motion for preliminary injunction, the Court stated that whether “there are entitlements” granted by the Judgment is “the fundamental issue in terms of whether or not the [Brown Act’s] litigation exception applies.” (Sept. 10, 2019 Hr’g on Pet’rs’ Mot. for Prelim. Inj. Tr. (“MPI Tr.”) at 16:19–24.)

At the Court’s suggestion, the parties agreed to return to Chief Magistrate Judge Spero for further settlement discussions. (MPI Tr. at 19:25–21:2.) Petitioners withdrew their motion without prejudice. (Dkt. 78.) The parties participated in a settlement conference on October 23, 2019, but did not settle. (Dkt. 86.) Following the settlement conference, the City, Tribe, and Upstream agreed to an amended settlement agreement, which adds language confirming that the agreement does not grant any entitlements and that the City retains its discretion in considering whether to grant any entitlements in connection with Point Molate. (See Amended Judgment ¶ 16

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<sup>2</sup> The single cause of action remained the same. (Dkt. 32.)



1 (“Within 6 months from the Effective Date, in accordance with CEQA and other applicable law,  
 2 City shall *consider* Discretionary City Approvals, as defined in Paragraph 8 of this Judgment.”),  
 3 ¶ 38 (“The Parties agree that the Judgment *does not grant any entitlements* for development at  
 4 Point Molate, and that the City acknowledges it is *required to comply with all laws, statutes, or*  
 5 *regulations, including compliance with CEQA*, applicable to any future specific entitlements or  
 6 development at Point Molate that the City may consider.”) (emphases added).)

7 Richmond City Council held a noticed, agendized public hearing during its November 5,  
 8 2019, meeting to consider approval of the amended agreement. (Request for Judicial Notice  
 9 (“RJN”), Ex. A at 5.) During this meeting, over 25 members of the public provided comments on  
 10 this agenda item, including petitioners Pamela Stello and Tony Sustak. (*Id.*) The City Council  
 11 then held an open session vote, in which it approved the amended agreement. (*Id.*)

12 The *Guidiville* parties submitted the revised agreement to the Court in the form of a  
 13 proposed judgment in the *Guidiville* matter. On November 21, 2019, the Court entered the  
 14 revised agreement and proposed judgment without any changes. (*See Guidiville* Dkt. 410  
 15 (“Amended Judgment”).) The City subsequently filed a motion for judgment on the pleadings  
 16 arguing that Petitioners’ claim is now moot. (Dkt. 87.) Upstream joined that motion. (Dkts. 89,  
 17 90.) Following briefing from the parties, on December 11, 2019, the Court entered an order  
 18 finding that “it is without jurisdiction to consider th[e] motion due to the pendency of the Tribe’s  
 19 appeal,” and declining to reach the issues raised in the motion “until such time as the Ninth  
 20 Circuit decides the pending appeal.” (Dkt. 97.)

21 While the Tribe’s appeal was pending, Petitioners filed a second motion for preliminary  
 22 injunction, which was nearly identical to the previous motion for preliminary injunction. (Dkts.  
 23 103, 107.) At the hearing on Petitioners’ second motion for preliminary injunction, the Court  
 24 asked Petitioners to clarify “the relief that [they] are requesting” if the Court were to find a Brown  
 25 Act violation. (May 19, 2020, Hr’g on Pet’rs’ Mot. for Prelim. Inj. Tr. (“Second MPI Tr.”) at  
 26 48:8-16.) Petitioners requested “additional time to provide a further response” to the Court’s  
 27 question (*id.* at 48:17-20); the Court allowed supplemental briefing from both parties on this issue  
 28 (*see* Dkts. 119, 121, 122, 124).

1 With both the Tribe's appeal and Petitioners' second motion for preliminary injunction  
 2 still pending, on August 10, 2020, Petitioners filed a motion for a temporary restraining order.  
 3 (Dkt. 126.) On August 14, 2020, the Court denied Petitioners' motion for preliminary injunction  
 4 and motion for a temporary restraining order. (Dkt. 127.) The Court denied Petitioners' motion  
 5 for preliminary injunction for failure to establish a likelihood of success on the merits, stating:  
 6 "[T]he Brown Act specifically permits the legislative agency to cure defects in the open  
 7 government process. The record here indicates that the City did so. Thus, [P]etitioners have not  
 8 met their burden to show that their Brown Act claim is likely to be viable in light of the City's  
 9 action to cure the defects alleged in the petition." (*Id.* at 7.) In light of this denial, the Court also  
 10 denied Petitioners' motion for a temporary restraining order as moot. (*Id.* at 8.)

11 On September 17, 2020, the Ninth Circuit denied the Tribe's appeal. (Dkt. 128;  
 12 Memorandum, *SPRAWLDEF v. Guidiville Rancheria of Cal.*, No. 19-16278 (9th Cir. Sept. 17,  
 13 2020), Dkt. 42-1.) With respect to the Tribe's argument that the underlying matter is moot, the  
 14 Ninth Circuit panel stated that they "are unable to decide on the limited record before us whether  
 15 SPRAWLDEF's suit is moot," and that the Tribe "is free to make this argument to the district  
 16 court in the first instance." (*Id.* at 4.)

17 Petitioners filed a Motion to Amend their petition on September 28, 2020, and a  
 18 "corrected" version of the Motion the following day. (Dkts. 129, 130.) The City filed an  
 19 opposition to the Motion to Amend on October 13, 2020. (Dkts. 131, 132.) Oral argument is  
 20 scheduled for November 3, 2020.

21 The City received notice on October 6, 2020, of Petitioners' intent to sue the City to  
 22 challenge the City Council's September 8, 2020, approvals under CEQA as well as on "other  
 23 grounds." (RJN, Ex. G.) The suit was filed on October 9, 2020. (Pet. for Writ of Mandate, *Point*  
 24 *Molate Alliance v. City of Richmond*, No. CIVMSN20-1474 (Contra Costa Super. Ct., Oct. 9,  
 25 2020).)

**C. City's Efforts to Comply with the *Guidiville* Judgment and California Law**

The City has undertaken a rigorous and transparent process as it acts to comply with the terms of the Judgment<sup>3</sup> and California law. (*See Guidiville* Dkts. 400, 403, 408, 409, 411, 412, 413.) The City has provided notice to the public and opportunity for public comment for each milestone in its consideration of development at Point Molate. In the two and a half years since the Original Judgment was entered, the City has held numerous public hearings and open meetings, received hours of spoken comments as well as voluminous written commentary, and considered additional public input as it examined proposals for development of the Point Molate site. (*Id.*) When the COVID-19 pandemic struck, the City moved quickly to implement alternative means by which the public could submit comments and participate in meetings and hearings via teleconference and interactive Zoom webinars, and the City extended deadlines for public comment where necessary. (*See, e.g.*, RJN, Ex. B at 1-2, Ex. C at 1-4.)

This process culminated in additional public testimony and vote by the City Council on September 8, 2020, at a public hearing which lasted approximately six hours. (RJN, Ex. D at 1, 6.) Prior to the vote, several City representatives presented to the public about the review and consideration process to date. (*Id.* at 4-5.) These presentations included, among others: an overview of Winehaven Legacy LLC's proposed project and the proposed development agreement (Winehaven Legacy LLC is the developer selected for the project); a summary of the City's financial impact analysis for the proposed project; an overview of the project recommendations made by the City's Design Review Board, Historic Preservation Commission, and Planning Commission after noticed public meetings for those boards and commissions; and a summary of the Final Subsequent Environmental Impact Report ("SEIR") and California Environmental Quality Act ("CEQA") process for the project. (*Id.*) Forty-four members of the public provided spoken comments at the hearing, including petitioners James Hanson, Paul Carman, and Pamela Stello, and counsel to Petitioners, Norman LaForce. (*Id.* at 5.) Following

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<sup>3</sup> For ease of reference, unless stated otherwise, the City refers to the "Judgment" to include both the Original and Amended Judgments.

the various presentations by City officials, public comments, and discussion among the City Council members, the City Council voted to adopt a resolution to, among other things: (1) certify the Final SEIR for the Point Molate Mixed-Use Development Project; (2) adopt Findings of Fact and Statement of Overriding Considerations under CEQA; (3) approve a General Plan Amendment, Vesting Tentative Tract Map, Major Design Review, Design Guidelines with a Historic Conservation Plan and Master Planned Area District Plan, and a Condition Use Permit; and (4) approve a Disposition and Development Agreement with Winehaven Legacy LLC. (*Id.*) The City Council also voted to introduce two City Ordinances, including one rezoning the Project Site to a Point Molate Planned Area District and another approving a statutory Development Agreement between the City and Winehaven Legacy LLC. (*Id.*) The two ordinances were subsequently approved by the City Council at a noticed public meeting on September 15, 2020. (RJN, Ex. E at 4-5.) Again, Petitioners attended the meeting and offered public comments in opposition to the development of Point Molate. (*Id.* at 5.)

#### IV. LEGAL STANDARD

A motion for judgment on the pleadings may be filed after the pleadings are closed, as long as the motion is filed “early enough not to delay trial.” Fed. R. Civ. P. 12(c). “Judgment on the pleadings is properly granted when, accepting all factual allegations in the [nonmoving party’s pleadings] as true, there is no issue of material fact in dispute, and the moving party is entitled to judgment as a matter of law.” *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012) (citation omitted). The standard is “substantially identical” to the standard for a motion to dismiss under Rule 12(b)(6). *Id.* “Thus, although the Court must accept well-pleaded facts as true, it is not required to accept mere conclusory allegations or conclusions of law.” *Lofton v. Verizon Wireless (VAW) LLC*, No. 13-CV-05665-YGR, 2015 WL 1254681, at \*3 (N.D. Cal. Mar. 18, 2015) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009)).

In ruling on such a motion, a court generally considers the pleadings, any written documents attached to them, and any matter of which the court can take judicial notice. *Moore v. Kroger Co.*, No. C-13-04171 DMR, 2014 WL 825428, at \*2 (N.D. Cal. Feb. 28, 2014). A court may take judicial notice of city council meeting materials, such as agendas, meeting minutes, and

video recordings of public hearings. *See, e.g., Nev. Rest. Servs., Inc. v. Clark Cnty.*, 638 F. App'x 590, 593 n.3 (9th Cir. 2016) (granting judicial notice of county legislative materials and video recordings of county hearings); *Hotop v. City of San Jose*, No. 18-CV-02024-LHK, 2018 WL 4850405, at \*4 (N.D. Cal. Oct. 4, 2018) (taking judicial notice of city council meeting minutes to show outcome of particular vote); *Law v. City of Berkeley*, No. 15-CV-05343-JSC, 2016 WL 4191645, at \*4 (N.D. Cal. Aug. 9, 2016) (same). “The court need not . . . accept as true allegations that contradict matters properly subject to judicial notice. . . . Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Spewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.), *opinion amended on denial of reh'g*, 275 F.3d 1187 (9th Cir. 2001) (citations omitted).

## V. LEGAL ARGUMENT

### A. Petitioners' Claim Should Be Dismissed Because the City Has Cured the Alleged Brown Act Violation

As this Court has already opined, the Brown Act permits a “cure and correct” of any alleged violation, which the City has done. (Dkt. 127 at 7.) The Brown Act calls for dismissal with prejudice if the “action alleged to have been taken in violation of [the Brown Act] has been cured or corrected by a subsequent action of the legislative body.” Cal. Gov't Code § 54960.1(e). Further, “[t]he fact that a legislative body takes a subsequent action to cure or correct . . . shall not be construed or admissible as evidence of a violation of [the Brown Act].” Cal. Gov't Code § 54960.1(f).

Petitioners have raised a single claim against the City in this action: an alleged violation of the Brown Act premised on the theory that the Judgment provides entitlements and was not voted upon in open session. (Dkt. 32 ¶¶ 1, 32-33, 43-50.)<sup>4</sup> The Amended Judgment and the

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<sup>4</sup> The City continues to dispute that there was ever any Brown Act violation: both the Original Judgment itself and the City's subsequent actions show the Original Judgment did not grant any entitlements to any party in connection with Point Molate, and the Brown Act contains an express exception permitting the City to approve of litigation settlements in closed session. (*See* Dkt. 108 at 13-15.) However, in an attempt to bring this costly and lengthy litigation to a close, the City took action to address the alleged Brown Act violation. (*Id.*)

1 City's public vote on the Amended Judgment disposes of Petitioners' claim entirely. The  
 2 Amended Judgment provides:

3           Within 6 months from the Effective Date, in accordance with  
 4           CEQA and other applicable law, City shall *consider* Discretionary  
           City Approvals[.]

5 (Amended Judgment ¶ 16 (emphasis added).)

6           The Amended Judgment provides further:

7           The Parties agree that the Judgment does not grant any entitlements  
 8           for development at Point Molate, and that the City acknowledges it is  
 9           required to comply with all laws, statutes, or regulations, including  
           compliance with CEQA, applicable to any future specific entitlements  
           or development at Point Molate that the City may consider.

10 (*Id.* ¶ 38.)

11           In other words, to assuage any doubt whatsoever, the Amended Judgment further clarifies  
 12 that "Discretionary City Approvals" must be "*considered*"; the Amended Judgment does not  
 13 require that they shall be provided. Moreover, the parties memorialized what they represented to  
 14 the Court at the hearing on Petitioners' motion for preliminary injunction: "the Judgment does  
 15 not grant any entitlements for development at Point Molate." (*Id.*) These amendments moot  
 16 Petitioners' Brown Act claim.

17           The City also went one step further and held a noticed and agendized public hearing to  
 18 consider, hear public comments, and vote on approval of the Amended Judgment. (RJN, Ex. A at  
 19 5.) The hearing included a report from City staff, comments and questions for City staff by  
 20 members of City Council, and public comment by 25 members of the public. (*Id.*) The City  
 21 Council ultimately approved the Amended Judgment in a public vote. (*Id.*) As this Court has  
 22 noted, despite being given the opportunity to do so, Petitioners have never disputed that the  
 23 noticed and agendized process for voting on the Amended Judgment complied with the Brown  
 24 Act. (*See* Dkt. 127 at 7; Second MPI Tr. at 6:11-18 (Counsel for Petitioners: "We didn't have any  
 25 objection to that noticed hearing [at which the City Council voted to adopt the Amended  
 26 Judgment].").)

1 The Brown Act’s litigation exemption permits the City to have voted on a litigation  
 2 settlement in closed session. *See* Cal. Gov’t Code § 54956.9(a); *Trancas Prop. Owners Ass’n v.*  
 3 *City of Malibu*, 138 Cal. App. 4th 172, 184 (2006). But, to put an end to this costly litigation, the  
 4 City chose to vote publicly on the Amended Judgment, thus addressing Petitioners’ second  
 5 premise of their Brown Act claim.

6 Either of these actions—agreeing to the Amended Judgment with the *Guidiville* parties or  
 7 holding an open session vote—defeats Petitioners’ claim. Petitioners’ request for writ of mandate  
 8 must be dismissed with prejudice under Section 54960.1(e) of the Brown Act and Rule 12(c).

9 **B. Petitioners’ Claim Should Be Dismissed with Prejudice Because**  
 10 **Amendment of Their Petition Would Be Futile**

11 The parties need not speculate how Petitioners might attempt to amend the Petition, as  
 12 they have already disclosed their proposed amendments in connection with their pending Motion  
 13 to Amend. As elaborated further in the City’s opposition to Petitioners’ Motion to Amend,  
 14 Petitioners should not be granted leave to amend the Petition, as amendment would be futile.

15 With respect to Petitioners’ Brown Act claim, as this Court has observed: “Whatever  
 16 claim [P]etitioners might have brought concerning the substance of the *Amended* Judgment and  
 17 the land use entitlements they allege it contains, the approval of the Amended Judgment in an  
 18 open, noticed meeting appears to preclude [P]etitioners’ claim under the Brown Act.” (Dkt. 127  
 19 at 7 (emphasis in original).) The proposed amended Petition which Petitioners attached to their  
 20 Motion to Amend does not even *reference* the Amended Judgment. In any event, the window for  
 21 Petitioners to send the required “cure and correct” letter prior to commencing a Brown Act action  
 22 against the City in connection with the Amended Judgment has long since passed. (*See* Dkt. 131  
 23 at 10 n.7; Gov’t Code § 54960.1(b), (c)(1).) Thus, even if Petitioners proposed amending their  
 24 Petition to address the Amended Judgment, and even if Petitioners did otherwise have a colorable  
 25 Brown Act claim with respect to the Amended Judgment (which they do not), amendment would  
 26 still be futile.

27 Separately, Petitioners attempt in their Motion to Amend to raise a California Land Use  
 28 and Planning Law claim. As explained further in the City’s opposition to the Motion to Amend,



1 amendment of the Petition to add this claim is also futile, as it is both time-barred and moot. *See*  
 2 Cal. Gov't Code § 65009(c); *Finkelstein v. AXA Equitable Life Ins. Co.*, 325 F. Supp. 3d 1061,  
 3 1068 (N.D. Cal. Mar. 5, 2018) ("Leave to amend would be futile because Plaintiff's claims are  
 4 barred by the statute of limitations.") (citation omitted); *Obregon v. Sessions*, No. 17-cv-01463-  
 5 WHO, 2017 WL 3478774, at \*6 (N.D. Cal. Aug. 14, 2017) (denying as futile motion for leave to  
 6 file supplemental habeas petition where petitioner's claim "[wa]s moot, and would be moot, even  
 7 if she were to supplement [the petition]").

8 Although the Court can deny Petitioners' Motion on the grounds of futility alone, other  
 9 factors, including undue delay and prejudice to the City, also counsel against granting Petitioners'  
 10 Motion to Amend or allowing Petitioners leave to amend if their suit is dismissed. *See Foman v.*  
 11 *Davis*, 371 U.S. 178, 182 (1962) (listing factors for courts to consider in deciding whether to  
 12 grant leave to amend, including futility, prejudice to the non-moving party, and undue delay).

## 13 VI. CONCLUSION

14 For these reasons, the City respectfully requests that the Court grant this motion for  
 15 judgment on the pleadings under Federal Rule of Civil Procedure 12(c) and dismiss Petitioners'  
 16 First Amended Petition for Writ of Mandate with prejudice.

17  
 18 Dated: October 16, 2020

ARTURO J. GONZÁLEZ  
 ALEXIS A. AMEZCUA  
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 24 BUTT, and RICHMOND CITY COUNCIL



**CERTIFICATE OF SERVICE**

I hereby certify that, on October 16, 2020, a copy of the foregoing document was filed electronically with the Clerk of the Court using the Court's CM/ECF electronic filing system, which will send an electronic copy of this filing to all counsel of record.

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