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7 Coalition of Anaheim Taxpayers for
8 Economic Responsibility ("CATER")
9 and
10 Cynthia Ward

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ORANGE**

13 COALITION OF ANAHEIM TAXPAYERS)
14 FOR ECONOMIC RESPONSIBILITY)

15 Plaintiff and Petitioner, and)

16 CYNTHIA WARD)

17 Plaintiff and Petitioner,)

18 v.)

19 CITY OF ANAHEIM and DOES 1-100,)

20 Defendants and Respondents)

Case No: 30-2-13-00695342

**PETITIONERS' EX PARTE MOTION
FOR CONTINUANCE OF HEARING ON
DEFENDANTS' DEMURRER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT; EXTEND BRIEFING
SCHEDULE ACCORDINGLY; ALLOW
REVISION OF OPPOSITION TO
DEMURRER AND DEFENDANTS
REPLY; AND ALLOW SURREPLY.**

Assigned for All Purposes to:
Hon. James J. Di Cesare

**[Filed Concurrently with Plaintiff's
Proposed Order]**

Ex Parte Hearing:
Date: Sept. 15, 2014
Time: 1:30 p.m.
Dept: C16

Scheduled Hearing on Demurrer:
Date: September 18, 2014
Time: 1:30 p.m.
Dept: C16

Hearing Reservation No.: 72005566

Date Action Filed: December 26, 2013
Trial Date: April 6, 2015
Time: 9:00 a.m.
Dept: C16

1 Plaintiffs and Petitioners Coalition of Anaheim Taxpayers for Economic Responsibility
2 (“CATER”) beseeches this court to employ its equitable powers, both inherent and recognized
3 by statute, to offer the following requested relief.

4 The present motion is a renewal and extension of Plaintiff’s request to continue the
5 motion for the hearing on Defendant City of Anaheim’s Demurrer. Plaintiff’s Counsel had tried
6 to submit this request the day after Labor Day, but Defendant’s schedule at the court’s schedule
7 did not permit it to be heard until Sept. 5. Plaintiff’s Counsel and Defendant’s agreed that the
8 best day to hear an ex parte motion this week as on Sept. 12, but the Court’s schedule required
9 that that be postponed to Sept. 15.

10 As expressed in the portion of that demurrer reproduced and submitted below, Plaintiff’s
11 request was due to the fact that Plaintiff’s attorney was running ragged from trying to prepare for
12 both a demurrer hearing and against a motion to motion to Intervene, both scheduled for the
13 same day. To inadvertently underline the degree of stress that Plaintiff’s Counsel was under at
14 the time, in his haste Plaintiff’s Counsel made a fatal error in submitting the application, due to
15 an error in proofreading the caption page, one that was not identified and rejected by the Clerk
16 until after the deadline for cure had already passed. Plaintiff’s Counsel thus had to complete
17 both Oppositions by Sept. 5 after all. The Opposition to the Motion to Intervene had relatively
18 minor and mostly technical errors for which Plaintiff has decided not to try to bring that
19 Defendant into Court. The Opposition to the Demurrer, which it contained most of the
20 substance that Plaintiff had wished, contained more serious technical errors and – as Defendant
21 tartly points out in its reply – an almost total absence of cited authority, because with the press
22 of events described below Plaintiff’s Counsel simply ran out of time.

23 Plaintiff is even more seriously prejudiced by the needless time demands of defending
24 two hearings on the same day now – especially given the continuing demands of a separate case
25 against Defendant City of Anaheim – than it was when the following report was submitted and
26 rejected eight days ago. Because this initial filing contains most of the background facts and
27 arguments that Plaintiff would prefer to make, it is reproduced in full here.

28 **CIRCUMSTANCES AS OF SEPTEMBER 4**

1 “CATER’s General Counsel is Greg Diamond. He has previously participated in
2 administrative hearings (immigration, assessment, labor standards), has served as a junior
3 associate in Manhattan (which did not involve him setting foot in court except in one motion as
4 a second chair), trained and clerked in appellate law, and in 2013 participated in his first trial
5 (taking over from other Counsel in the first discovery phase.) He is a solo practitioner working
6 from home – without a paralegal, litigation assistant, secretarial services, separately walled-off
7 office, or even paid legal research services. (Given what was then his concentration on
8 plaintiff’s employment law, which cases rarely go to trial and which has a professional
9 organization, CELA, that can provide some logistical support, these limited resources did not as
10 substantially impede his practice since his admission to the California Bar in 2008 until now.)

11 “Given his limited resources and relative inexperience in trial procedure, CATER’s
12 General Counsel sought out experienced trial counsel to handle the present case. While various
13 trial counsel expressed interest in the claims made, to a one they said that they could not afford
14 to take on such a case against an entity with resources that could be, in effect, as unlimited as it
15 wished. This was especially true given the inability of CATER to raise funds for a suitable
16 retainer. This difficulty is itself a function of CATER’s status as a watchdog organization taking
17 on powerful entrenched interests; as a new organization, it initially chose not to offer donors the
18 ability to make tax-deductible donations because several potential donors expressed that they
19 required anonymity if they feel secure contributing to a group taking on such interests.

20 “CATER was thus faced with the choice of either dropping its potential claims, one that
21 represented as much as more than \$100,000,000 of lost income to the City of Anaheim and
22 possible conversion of the benefits of much of those resources to the benefit of political allies
23 and donors to the majority of the City Council, or proceeding with its General Counsel as Trial
24 Counsel. Despite its General Counsel’s inexperience with trial practice, CATER chose the latter
25 course. CATER’s General Counsel initiated the case without requiring any retainer and agreed
26 that if he could be paid costs promptly, he could defer fees until funds could be raised.

27 “Because of the demands of this case and another case of CATER against the City of
28 Anaheim, described below, CATER’s General Counsel has been paid less than \$5,000 by

1 CATER for over 500 hours of work on this case over the past year. (CATER’s first anniversary
2 of existence comes next week.) As a result, CATER’s General Counsel has had to continue with
3 other work where possible – but because CATER, as a watchdog group, also unexpectedly had
4 to file a separate case against the City of Anaheim, a bond reverse validation action in which
5 almost \$500,000,000 of city funds (including interest due) are at stake, his time available to
6 spend on this other work has been substantially limited. His income for the past year aside from
7 clients aside from CATER has thus been limited to under \$20,000, requiring removing a
8 substantial proportion of money from his retirement accounts as well as other financial hardships
9 best addressed in a confidential sidebar. CATER’s Counsel presents these facts not as a bid for
10 the Court’s sympathy – he knew (or thought he knew) that this government watchdog business
11 would put a dramatic strain on himself and his family – but to note that his doing such work
12 leaves him close to a financial breaking point where he simply cannot continue it. At some
13 point, that difficulty becomes acute – and, with his schedule this month, that has come to pass.

14 “Regardless of the merits of CATER’s claims in the case at bar or in the other case,
15 CATER submits that its ability to raise such issues in court are an important check within our
16 political process. If CATER’s donors are willing to contribute to a new nonprofit organization
17 without receiving tax write-offs, and if CATER’s President is willing to forego much of her own
18 outside income to put in countless research hours towards that end, and if CATER’s Counsel is
19 willing to in effect front most of the costs of litigating the case himself at substantial personal
20 expense to himself and his family – then CATER submits that this court is perfectly justified in
21 exercising its inherent powers to allow them to help CATER fulfill its role without completely
22 destroying themselves. In this motion, the sole concession that CATER seeks is to be provided
23 with the extra time for its Counsel to serve it adequately.

24 “Lead Counsel for the City of Anaheim in that bond validation case is the same person as
25 the Lead Counsel for the case at bar. Because that case is granted extremely high priority by
26 law, it has ended up with its hearings and filing dates substantially overlapping those for the
27 present case. After meeting and conferring, Anaheim’s Counsel has been unwilling to agree to
28 move the timing of that (bonds) case back to a date where it did not substantially overlap with

1 this (CRPA/Brown Act) case. (A date of Oct. 9 would suffice to that end depending on CATER
2 Counsel’s medical condition, which is discussed below; the Court’s next open date for hearings
3 is currently Oct. 23.) A later date would not prejudice the City of Anaheim except to the extent
4 that it benefits from the schedule overlap making it nearly impossible for CATER’s Counsel to
5 provide it with an appropriate quality of legal services.

6 “Counsel for Angels Baseball LP and Pacific Coast Investors LLC, who wish to
7 intervene in the present case on the basis of their asserted rights in contracts that were described
8 as “not even agreements to agree,” have refused to move their hearing set for Friday, Sept. 18,
9 which requires CATER’s counsel to file an opposition by 11:59 on Sept. 5. CATER’s Counsel
10 has decided that, if the Demurrer hearing is continued, it would take about as much effort to
11 fight to move that hearing as it would to acquiesce to its timing, so after seeking agreement for a
12 continuance it has decided not seek to move the Sept. 18 date and the according filing schedule.

13 “This leaves CATER’s Counsel (who is doing his best to ramp up his still modest
14 practical understanding of California trial procedure) with the following September schedule:

15 “Sept. 5 (1:30 p.m.) – the present ex parte motion

16 “Sept. 5 (11:59 p.m.) – filing deadline for opposition to Moreno Entities’ Motion to
17 Intervene (excluding dates of reply and sur-reply, if leave for such is granted)

18 “Sept. 9 – due date of Opposition to Opening Trial Brief in Bonds case

19 “Sept. 12 – proposed date of Rule 317 Issues Conference

20 “Sept. 16 – receipt of reply brief to Opposition to Trial Brief

21 “Sept. 17 – sur-reply deadline (at noon) in Bonds case

22 “Sept. 18 – hearing on Moreno Entities’ Motion to Intervene

23 “Sept. 22 – hearing on Demurrer in bonds case

24 “Sept. 25 (or earlier) – City of Anaheim’s deadline for filing Motion to Compel Further
25 Responses in continuing discovery dispute

26 “Sept. 30 or so – approximate expected date of elective surgery for umbilical hernia
27 diagnosed in July (which has not yet been scheduled due to the present cases),
28 which may instead require emergency surgery beforehand

1 “Anaheim Counsel would prefer to add to the above:

2 “Sept. 5 (11:59) – opposition to Demurrer of City of Anaheim (excluding date of reply
3 and any sur-reply, if leave for such is granted)

4 “Sept. 18 – hearing on Demurrer of City of Anaheim

5 “Adding those tasks to the schedule of CATER’s Counsel, especially given his medical
6 condition (see Sept. 30 entry), leaves him with serious doubts as to his ability to provide his
7 Client with adequate legal representation. It leads to the prospect that the matters before this
8 Court will be adjudicated not on the basis of their merits, but on the basis of their attorneys’
9 resources.

10 **“Lack of Prejudice to Defendants**

11 “It bears special note that the City of Anaheim in particular suffers no prejudice from
12 delay. At this point, this case contains three causes of action: (1) a constitutional claim that
13 serves to buttress its two statutory claims; (2) a CPRA claim that requires revision and
14 monitoring of the City of Anaheim’s public records procedures, delay in the resolution of which
15 prejudices only CATER (which has continued to receive documents belatedly and in incomplete
16 form) rather than the City; and (3) a Brown Act case.

17 “Critically, while for its Brown Act Claim Plaintiff seeks rescission of various
18 documents enacted by the City Council, nothing prevents the City from re-enacting these
19 documents at its next meeting, while following proper procedures. This is the normal cure for a
20 Brown Act violation. The City has no legal interest in failing to follow these procedures; nor
21 does the Angels. Their response to suggestions that they cure the defects in the documents has,
22 in effect, been that they don’t have to and they don’t want to. (Either they or the Moreno
23 Entities have also argued that the problem is that the Moreno Entities are the ones who simply
24 don’t want to have to sign the same documents over again. CATER submits that this is entirely
25 implausible and, if true, does not warrant this court’s respect.

26 “While the City is entitled to resist a judgment in Plaintiff’s favor, and even to spend
27 more money in legal fees avoiding it than they might pay to Plaintiff if they conceded the point,
28 it has no cognizable interest in seeing that matter settled quickly. With approval of new

1 documents, based (one would hope) on a new and properly noticed and distributed Staff Report,
2 the City of Anaheim can continue to negotiate with either or both of the Moreno Entities as
3 quickly as it wants. That may lead Plaintiffs (or others) to raise other claims going beyond the
4 CPRA and the Brown Act, but those are not now (and may never be) before this Court.

5 “Plaintiff CATER believes that the City of Anaheim’s actual interest is to punish
6 CATER for bringing this lawsuit at all – and for stepping voluntarily into a watchdog role that
7 the City would rather did not exist. Making pursuit of this case financially and logistically
8 unbearable to CATER’s Counsel would, from its perspective, serve it well – but the Court
9 should not allow itself to be used for such ends, especially if it agrees that giving outgunned
10 citizen watchdog organizations a fighting chance is a worthy goal of the judicial system.

11 **“Requested Relief**

12 “CATER requests that the hearing on Defendants’ Demurrer be continued to the Court’s
13 October 23 Calendar, and a commensurate extension of the filing schedule. CATER does not
14 seek to capitalize on this delay, which it hopes will allow time for its Counsel to have and
15 recover from his hernia surgery; as a result CATER would not object to this court setting its
16 deadline for its Opposition to the Demurrer for Oct. 2, fully three weeks before that date.

17 “Should the Court deny this relief, CATER seeks leave from the Court to file a pro forma
18 Opposition to the Demurrer on Sept. 5 and then a supplementary Reply to the Opposition by five
19 court days before the hearing, which it calculates as being Sept. 11.

20
21 “DATED: Sept. 4, 2014

22 “ Respectfully submitted,

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24 “ LAW OFFICE OF GREGORY A. DIAMOND

25 “ *Greg Diamond* [original on file]

26 “ By: _____
27 “ Gregory A. Diamond
28 “ Attorney for Plaintiff/Petitioner CATER”

1 **STATUS AS OF SEPTEMBER 12**

2 To the above, Plaintiff now adds the following requests for relief and justifications for its
3 motion.

4 First, it is looking less likely that Plaintiff’s Counsel will last without surgery before
5 Sept. 18. Plaintiff’s Counsel was instructed by his surgeon to go to the emergency room if he
6 experiences pain or redness in the area of his hernia. Plaintiff’s Counsel has been feeling
7 increased pain and some non-red discoloration in this area, but holds out hope that it is not so
8 much as to prevent him from attending the ex parte – and, ideally, a hearing against the Motion
9 to Intervene on Sept. 18 and the trial in the other case against Defendant City of Anaheim on
10 Sept. 22. Plaintiff’s Counsel has a doctor’s appointment with his Primary Care Physician
11 scheduled for the afternoon on which this motion is submitted – the earliest one available when
12 he sought to schedule an appointment earlier this week – but that will unfortunately come after
13 the filing deadline for this motion (and may well not end until after 5:00.)

14 Second, Plaintiff continues to seek continuance of the hearing to a later date. Plaintiff
15 suggests that **November 13** would likely accommodate both Plaintiff’s needs and the Court’s
16 availability. Plaintiff’s Counsel has been told that he should not expect to work (he hopes with
17 the exception of using a laptop while recuperating) for two weeks after surgery. He has also
18 been informed that certain of his health problems – diabetes and obesity – could lead him to take
19 longer to heal than the average. Plaintiff’s Counsel would like to fix the technical deficiencies
20 and lack of references in the Opposition he filed on Friday Sept. 5 after his error cancelled the ex
21 parte. He would also like the opportunity to consider and include additional arguments, as
22 would have been possible had the extension to the briefing schedule been granted. Plaintiff
23 recognizes that Defendant should have the opportunity to revise its reply accordingly. Plaintiff
24 therefore seeks a new briefing schedule – according to code if the continuance is for a long
25 enough time or by what equity determines if not – commensurate on the date of a new trial.

26 Third, Plaintiff seeks the ability to submit a sur-reply – by Tuesday, Sept. 16 at 3:00, if
27 he remains unhospitalized and if no continuance is granted, and a day or two after the reply brief
28 if the hearing is continued and the briefing schedule proceeds according to code.

1 Finally, Plaintiff seeks that the Court grant whatever additional relief is both possible and
2 appropriate regarding accommodating Plaintiff's Counsel's continuing medical condition
3 (limited solely to his hernia.) If Plaintiff's Counsel is able to appear on Monday, he hopes and
4 expects to have additional suggestions from his doctor and/or surgeon in that regard.
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6 DATED: Sept. 12, 2014

7 Respectfully submitted,

8
9 LAW OFFICE OF GREGORY A. DIAMOND

10 *Greg Diamond* [original on file]

11 By: _____
12 Gregory A. Diamond
13 Attorney for Plaintiff/Petitioner CATER”
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