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CITY OF TULELAKE, CALIFORNIA, and
CITY COUNCIL OF CITY OF TULELAKE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

TULE LAKE COMMITTEE,

Plaintiff,

v.

FEDERAL AVIATION ADMINISTRATION, CITY OF TULELAKE, CALIFORNIA, CITY COUNCIL OF CITY OF TULELAKE, BILL G. FOLLIS, JUDY COBB, PHIL FOLLIS, JACK SHADWICK, ROMONA ROSIERE, and MODOC NATION fka MODOC TRIBE OF OKLAHOMA,

Defendants.

Case No.: 2:20-CV-00688-WBS-DMC

DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS (ECF 13)

Date: **September 21, 2020**
Time: **1:30 p.m.**
Location: **Robert T. Matsui Courthouse**
501 I Street
Sacramento, CA 95814
Courtroom: **5 (14th Floor)**
Judge: **Hon. William B. Shubb**

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I. INTRODUCTION

In this action, the Tule Lake Committee ("Committee") seeks, among other things, to overturn the City of Tulelake's City Council Ordinance 2018-16-01. The Ordinance authorized the sale of the Tulelake Municipal Airport to the Modoc Nation. The Committee's Complaint in this action alleges numerous violations of state and federal laws and public policies. The Committee's claims lack merit. Accordingly, for the reasons outlined in the motion to dismiss (ECF 13) jointly submitted by the City of Tulelake and the City Council of the City of Tulelake (collectively the "City"), and for further reasons set forth herein in response to the Committee's opposition to the motion to dismiss (ECF 16), the City respectfully requests that the Committee's Complaint be dismissed. This saga, which has gone far too long, must finally end.

II. ARGUMENT

A. The Committee's Dismissal of Claims and Concessions.

In its Opposition to the City's motion to dismiss, the Committee prudently dismissed several clearly meritless, and arguably frivolous, claims. Specifically, the Committee voluntarily dismissed its Third Cause of action, which alleged violations of the California Surplus Lands Act.[1] Additionally, the Committee voluntarily dismissed its Sixth Cause of Action, which alleged civil rights violations under 28 U.S.C. §§ 1981 and 1983.[2]

In addition to formally dismissing some claims, the Committee's opposition failed to address or respond to several arguments the City raised in its motion to dismiss. In particular, the Committee's Fourth Cause of Action subsection C alleged a violation of California's

[1] The Committee correspondingly dismissed portions of its Fourth Cause of action that were predicated on violations of the Surplus Lands Act.

[2] Although, it is not relevant to the determination of this matter, it is worth noting that this is the second time the Committee has voluntarily dismissed its civil rights claims. The first dismissal occurred when it dismissed *Tule Lake Committee v. City of Tulelake, et al.*, (E.D. Cal. No. 18-cv-02280-KJM-DMC) (ECF 63, 64). Consequently, pursuant to Rule 41(1)(B) of the Federal Rules of Civil Procedure, the Committee's dismissal here "operates as an adjudication on the merits" and subjects the Committee to costs for all or part of the Committee's previously dismissed action. Fed. R. Civ. Proc. 41(d).

constitutional prohibition against "gifts" of public property. ECF 1, p. 19. In its motion to dismiss (ECF 13, p. 23), the City addressed this argument, pointing out that "it is bedrock California law that '[a] transfer of property by the state is not a 'gift' in violation of this constitutional provision if the transfer is supported by adequate consideration or if the transfer serves a valid public purpose.'" ECF 13, p. 23 (citing *Besig v. Friend*, 463 F. Supp. 1053 (N.D. Cal. 1979)). The City then presented argument and pointed to uncontroverted facts presented in the Complaint showing that the Airport transfer satisfied both criteria. ECF 13, pp. 23-27. In its Opposition, the Committee does not address, or even attempt to rebut, any of the City's arguments. Accordingly, the Committee, through its silence, has conceded these issues. *Tatum v. Schwartz,* 2007 WL 419463, *3 (E.D.Cal.2007) (finding that the plaintiff "tacitly concede[d][a] claim by failing to address defendants' argument in her opposition."); *Wilson v. FCA US, LLC*., 2020 WL 5036458, *2 (E.D. Cal. 2020) (citing *Ardente, Inc. v. Shanley*, 2010 WL 546485, *6 (N.D. Cal. 2010); *see also* E.D. Cal. L.R. 230(c).

Similarly, in its Fourth Cause of Action, the Committee alleged that City failed to obtain fair market value for the Airport and thereby violated a public policy of protecting the federal government's investment in airports. ECF 1, pp. 19-20. In its motion to dismiss, the City drew attention to the fact that no provision of federal law, federal regulation, or FAA guidance requires an airport owner to obtain fair market value for an airport property that is to be sold with the condition that it continue to be used for aeronautical purposes. ECF 13, pp. 19-20. Indeed, the City expressly pointed out that under FAA guidance: "[F]air Market Value is the Required Standard When an Airport Sells or Leases <u>*Non-Aeronautical*</u> Property" but that there was "no corresponding statement that fair market value is the required standard when an airport sells or leases aeronautical property." *Id.*

Again, in its Opposition, the Committee failed to offer any response to the City's argument. As it did on the "public gift" issue, the Committee has, through its silence, conceded this issue. *Wilson*, 2020 WL 5036458, *2. Although the Committee did not formally dismiss its Fourth Cause of Action, it has effectively abandoned that Cause of Action through its failure to respond to the City's arguments.

As a result of the Committee's voluntary dismissals and its silence as to arguments and authorities presented by the City, only the Committee's Fifth Cause of Action, which alleges violations of California's Brown Act, remains at issue for purposes of the City's motion to dismiss. Nonetheless, out of an abundance of caution and to the extent necessary, the City submits this comprehensive reply memorandum as to all salient points.

B. The Modoc Nation is a Public Agency for Purposes of the 1951 Land Patent.

The Committee alleged in its Second Cause of Action that the Modoc Nation is not eligible to own the Airport because it is not a public agency. ECF 1, pp. 15-16. In response, the City pointed the Court to the currently applicable provisions of federal law, which expressly provide that Indian tribes **are** public agencies for purposes of the ownership and operation of "public airports." ECF 13, p 12. Specifically, the City directed the Court's attention to 49 U.S.C. 47102(20), which defines "public agency" as: "(A) a State or political subdivision of a State; (B) a tax-supported organization; or (C) *an Indian tribe or Pueblo.*" *Id.*

In its opposition to the City's motion to dismiss, the Committee suggests that current federal law is of no importance and that the Court must cabin its focus on only those provisions of federal aeronautical laws in place in 1951 when the United States issued the Land patent. ECF 16, pp. 4-5. As the Committee puts it when considering "ambiguous passages in federal patents," courts must "limit[] their analysis to ascertaining what Congress originally intended in the grant." ECF 16, p. 5 (quoting *Idaho v. Hodel*, 814 F.2d 1288 (9th Cir. 1987). From this, the Committee seems to suggest that because the 1946 Federal Airport Act did not include Indian tribes in the definition of "public agency," Congress intended that Indian tribes could never own a public airport established by a federal patent issued before the time Congress took action to amend the outdated definition. *Id.*

With all due respect to the Committee, the principle that the Committee advances – that Indian tribes are not "public agencies" for purposes of the ownership of public airports established after 1994 but cannot be considered "public agencies" as to public airports

established before 1994 – is foolish. [3] So too is the Committee's interpretation of Congress's intent in the 1946 Federal Airport Act and the Committee's reliance on *Idaho v. Hodel* as support for its argument.

As clearly outlined in the Committee's Opposition, the Committee believes that it was Congress's intention in 1946 that the Modoc Nation could never be considered a "public agency" – and therefore could never own the Airport –because the 1951 Land Patent was issued at a time when federal law did not define "public agency" to include Indian tribes. At best, that is a strained reading of the 1951 Land Patent and an even more strained interpretation of Congressional intent.

In pertinent part, the 1951 Land Patent provides merely that the City must develop an airport on the lands subject to the Patent and that "[s]uch airport will be operated as a public airport upon fair and reasonable terms without unjust discrimination." ECF 1, Ex. A. Notably, however, the very next provision provides that "[a]ny subsequent transfer of the property interest conveyed hereby will be made subject to the covenants, conditions, and limitations contained in this instrument." *Id.*

The most accurate and rational interpretation of the Patent is that the intent was that the airport would continue to operate as a public airport – however that term may be defined by federal law then or in the future – and be open to the public "upon fair and reasonable terms and without unjust discrimination."[4] To be sure, the purpose of the Federal Airport Act was to expand the federal airport system to meet post-World War II airport needs. Accordingly, the Act brought about – for the first time – a federal responsibility and participation in the construction of airports through a newly established Federal Aid Airport Program. Federal Airport Act, Pub.

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[3] 1994 appears to be when Congress amended federal law to include Indian tribes and Pueblos within the definition of "public agency." *See* PL 103-272, 108 Stat. 745. (July 5, 1994).

[4] In its Opposition the Committee hints at a potential "ambiguity" in the Patent (ECF 16, p. 5). The City does not believe that the definition of "public agency" applicable to this action is ambiguous or that the definition can reasonably be frozen in time or ignore Congress's subsequent corrections. However, the City does note that the wording of the Patent may give rise to an ambiguity. As noted, the Patent says that the Airport "will be operated as a public airport upon fair and reasonable terms and without unjust discrimination." ECF 1, Ex. A.

L. 79-377, 60 Stat. 170. This interpretation is also supported by other provisions of the 1946 Federal Airport Act. Section 18 of the Act provides that:

> On or before the third day of January of each year, the Administrator shall make a report to Congress describing his operations under this Act during the preceding fiscal year, including detailed statements of the airport development accomplished, the status of each project undertaken, the allocation of appropriations, and itemized statements of expenditures and receipts *and setting forth his recommendations, if any, for legislation amending or supplementing this Act.*

Federal Airport Act, Pub. L. 79-377, 60 Stat. 170.

As the above passage reflects and in contradiction to the Committee's suggestion, Congress did not intend that the 1946 Federal Airport Act should remain static. Instead, by demanding recommendations for legislation amending or supplementing the Act, Congress intended the Act to be flexible and to keep up with reality. That is precisely what has happened. Over time, Congress has realized that Indian tribes and Pueblos not only serve important governmental and social purposes, but they also play an essential role in the continuation, maintenance, and even expansion of the United States aviation system. Today, Congress, in recognizing the need to be expansive and inclusive in terms of defining "public agencies," has expressed its unequivocal intention to include Indian tribes and Pueblos within the group of entities that may own and operate "public airports." [5]

Not only does the text of the Federal Airport Act belie the Committee's arguments, but the legal authorities cited by the Committees are equally unhelpful to the Committee's arguments. For instance, the Committee's primary authority, *Idaho v. Holdel,* ultimately undermines the Committee and the purposes it pursues with this litigation.

Hodel involved a situation where the United States' patented land that formerly comprised a portion of the Coeur d'Alene Indian Reservation. *Hodel*, 814 F.2d at 1290. The Patent required that Idaho "hold and maintain" the patented land "solely as a public park." *Id.*

[5] On this note, multiple Indian tribes in California alone currently own and operate "public airports." In addition to the Modoc Nation, the Chemehuevi Indian Tribe which owns and operates the Chemehuevi Valley Airport as a "public airport" and the Hoopa Valley Indian Tribe which owns and operates the Hoopa Airport as a public airport.

However, some twelve years after the receiving the Patent, Idaho began, among other things, leasing cottage sites within the patented land on Lake Chatcolet. *Id.* The leases were for up to ten-year periods and gave the lessees exclusive rights of possession of the leaseholds. *Id.* Idaho continued the leasing program for over fifty years when the Solicitor of the Department of Interior informed Idaho that the United States believed the leasing program did not comply with the conditions of the Patent. *Id.*

The case arose when the United States filed an action seeking forfeiture of the patented land and to quiet title of the land in the United States. *Id.* at 1291. The Coeur d'Alene Tribe intervened. *Id.* At issue in the case was the meaning of "public park," as set forth in the Patent, and was a term that the Court noted was subject to "a host of various interpretations" and thus is inherently ambiguous. *Id.* at 1293. Accordingly, to properly interpret the meaning of "public park," *Hodel* looked to extrinsic evidence such, "including evidence of the circumstances prevailing at the time of enactment." *Id.* The Court also looked to how other "public parks" were managed near the time when Idaho embarked on its leasing program. *Id.* at 1294-95. *Hodel* noted that although in recent times there generally were restrictions against leasing park property for private purposes, at the time the United States issued the Patent, or at least in the years shortly after it issued the Patent, private leasing of park property was relatively commonplace. *Id.*

Therefore, *Hodel* determined that because leasing public park property was commonplace at the time Congress issued the Patent, "it was obvious that Congress did not intend to prohibit the practice" through silence on the subject. *Id.* It was in this context and in connection with a clearly ambiguous term in the Patent itself that *Hodel s*tated that "[c]ourts that have been called on to construe *ambiguous passages in federal patents* have limited their analysis to ascertaining what Congress originally intended in the grant." *Id.* Put differently, and as the dissent in *Hodel* recognized, the need for the interpretation was because the Patent – "a document that is not subject to amendment in the future – was ambiguous.

This case is fundamentally different. Here, the Patent, which was issued by the Secretary of the Interior, not Congress, and the language at issue does not appear in the Patent. The Patent

demonstrably does not define, contain, or even reference "public agency." Nor does it seek to define "public airport" or provide that the Airport must be operated as a public airport *as defined by federal law only at the time of the conveyance.* Instead, the Patent merely says that the Airport must "be operated as a public airport upon fair and reasonable terms and without unjust discrimination." ECF 1, Ex. A.

Here, the language at issue is found in federal statutes. Federal statutes, unlike the language of federal patents, are subject to amendment and possibly broadening, or even narrowing over time. As noted above, broadening the definition of "public agency" and thereby broadening the scope of entities that can own and operate a "public airport" is precisely what Congress has chosen to do. This is consistent with Congress's anticipation that the Federal Airport Act of 1946 would be amended or supplemented by subsequent legislation. Federal Airport Act, Pub. L. 79-377, 60 Stat. 170.

Moreover, *Hodel* had noteworthy things to say about the Committee's attempt to force forfeiture of the Airport. At length, *Hodel* addressed forfeiture claims as follows:

> Forfeiture provisions are not favored in the law. *E.g. Humphrey v. C.G. Jung Educational Center*, 714 F.2d 477, 480-81 (5th Cir. 1983) (Texas law); *Bornholdt v. Southern Pacific Co.*, 327 F.2d 18, 20 (9th Cir. 1964) (California law; "general legislative and judicial hostility to divestiture of properties long held by grantees" (footnote omitted); *Schlegel v. Hansen*, 98 Idaho 614, 570 P.2d 292, 293 (1977). Such provisions are construed liberally in favor of the holder of the estate, and a construction which avoids forfeiture must be applied if at all possible." *See Humphrey*, 714 F.2d at 480-81; *Bornholdt*, 327 F.2d at 20; *Schlegel*, 570 P.2d at 293. These rules have been applied to attempts by the United States to enforce a forfeiture provision in a grant of public land. *see Oregon & California Railroad v. United States*, 238 U.S. 393, 420, 35 S.Ct. 908, 59 L. Ed. 1360 (1915) ("it is a general principle that a court of equity is reluctant to (some authorities say never will) lend its aid to enforce a forfeiture"); *New York Indians v. United States*, 170 U.S. 1, 25-26, 18 S.Ct. 531, 537, 42 L. Ed. 927 (1898) ('a condition when relied upon to work a forfeiture, is construed with great strictness … [A]ny ambiguity in [the grantor's] deed or defect in the evidence offered to show a breach will be taken most strongly against him, and in favor of the grantee.") …. Even a breach of a condition may not result in the forfeiture if the grantee has "substantially complied" with the terms of the conveyance. *See Bornholdt*, 327 F.2d at 20-21.

Holden, 814 F.2d at 1292-93.

As shown above, there is no ambiguity within the Land Patent. The Patent requires only that the Airport be operated as a public airport. Federal law provides that public airports are airports owned and operated by public agencies. 49 U.S.C. § 47102(21). And, while at the time that the Secretary of Interior conveyed the Airport property to the City, Congress had not included Indian tribes within the definition of "public agency," Congress has since expanded that definition. Thus, at the time City transferred the Airport to the Modoc Nation, the Modoc Nation unequivocally was, under federal law, a public agency. Therefore, the City's transfer to the Modoc Nation strictly or substantially complied with the covenants of the 1951 Patent.

Because the Modoc Nation is a "public agency" under federal law, the Committee's Second Cause of Action fails to state a legally cognizable claim. Consequently, the Committee's Second Cause of Action should be dismissed with prejudice.

C. The Committee's Remaining Public Policy Claim Fails to Allege a Legally Cognizable Claim.

1. The Committee Has Dismissed Or Waived the Bulk of Its Public Policy Claims.

As addressed above, the Committee formally dismissed the portion of its Fourth Cause of Action, which alleged a violation of California's "Open Space Policy." As addressed above, the Committee's Complaint alleged a violation of California's constitutional prohibition against making gifts of public property. ECF 1, pp. 20-21. In its motion to dismiss, the City argued and supported with authorities the fact that article XIII, section 25 of the California Constitution does not apply when either (1) the transfer serves a valid public purpose or (2) the transfer was supported by adequate consideration. ECF 13, p. 23-24.

Moreover, the City addressed the fact that the transfer of the Airport served a "public purpose" by, among other things requiring that the property be maintained as a "public" airport. ECF 13, p. 23-24. Moreover, the City presented substantive arguments showing that the consideration the City received for the Airport was, at a minimum, "adequate" under California law. ECF 13, p. 23-26-27.

2. There Was No Policy or Legal Requirement that the City Receive Fair Market Value for the Airport.

In its Opposition, the Committee did not respond to any of the City's arguments and authorities relating to the Committee's "public gift of property" claim. Accordingly, through its silence, the Committee has conceded these issues. Consequently, the Court need not address them, and dismissal is proper. *Tatum*, 2007 WL 419463, *3; *Wilson*, 2020 WL 5036458, *2 (E.D. Cal. 2020); *Ardente, Inc.*, 2010 WL 546485, *6; *San Diego Puppy, Inc. v. City of San Diego*, 2014 WL 4546390, *4 (S.D. Cal. 2014); *see also* E.D. Cal. L.R. 230(c).

In light of the Committee's dismissal and concessions, the Committee's only remaining claim is the Committee's speculative belief that the City sold the Airport for less than "market value" and that in doing so, the City violated the federal policy of protecting the federal government's investment in our Nation's airports. As to this issue, the Committee does at least attempt to respond to the City's motion to dismiss partially. However, to the extent, the Committee does respond, its response raises more questions about the viability of the Committee's claims and this Court's ability to resolve them.

First, it appears that the Committee either missed, or elected to ignore, a significant portion of the City's motion to dismiss. In its Opposition, the Committee chides the City claiming that "[m]ost of [the City's] arguments fail to address the allegations of sale with no relationship to fair market value, the unjust benefit to [the Modoc Nation], and the attendant harm to the Modoc County system and ultimately the United States." ECF 16, p. 6. What the Committee fails to perceive is that although the City did not engage in a tit-for-tat exchange on the Committee's claims, such a response was not warranted. As the City demonstrates in its motion to dismiss, the Committee's entire claim that there is a requirement or policy that obligates to obtain fair market value is wrong. ECF 13, pp. 19-20. Although there is a requirement that owners or sponsors obtain fair market value for airport land sold or leased for non-aeronautical purposes, there is no requirement that owners or sponsors obtain fair market value for sales or leases of airport land for aeronautical purposes. *Id.* If there is no requirement, or guidance suggesting that owners receive fair market value for land sold or leased for

aeronautical purposes, it follows that there is no "policy" mandating some "relationship to fair market value" for any such sale.

While chiding the City for failing to address the Committee's "fair market value" claims – which the City did – the Committee completely fails to address the City's argument that there is no "fair market value" policy or requirements. ECF 16, pp. 5-8. Accordingly, as it has concerning other arguments, the Committee, through its silence, has conceded the issue. *Tatum*, 2007 WL 419463, *3; *Wilson*, 2020 WL 5036458, *2; *Ardente, Inc.*, 2010 WL 546485, *6; *San Diego Puppy, Inc*, 2014 WL 4546390, *4; *see also* E.D. Cal. L.R. 230(c).

In addition to conceding though silence a critical point, the Committee's Opposition, and the new spin it places on the claims it asserted through it Fourth Cause of Action raises new and different questions about the need to add additional parties and this Court's general jurisdiction. For example, in its Opposition, the Committee now seeks to assert claims on behalf of Modoc County, arguing:

> The capital … costs of the airport … are borne, with about 90% reimbursement from the FAA, by Modoc County. The airport's FAA sponsor is Modoc County. The signatory on financial agreements with the FAA is Modoc County. The [Modoc Nation's] lease … is to Modoc County. Consequently, paying capital proceeds to the airport means paying them to Modoc County. And because of the resulting increment to Modoc County airport system's budgetary resources, had that been done, Modoc County would have been able to carry out its capital projects with less FAA reimbursement, saving money for the federal treasury.[6]

ECF 16, p. 6.

Similarly, in footnote 5 to the Opposition, the Committee assails the City claiming that "[t]he City's hypothesized rebate to MN of amounts of over $17,500 would have raised eyebrows with suspicion of a kick-back scheme to avoid payment to the County. In fact, the actual$17,500 deal raises suspicion of a scheme to avoid payment to the County." ECF 16, p. 6, fn. 5. And finally, in its Opposition, the Committee asserts that "[t]he City's scheme to give the

[6] Like so many of the allegations in the Committee's Complaint the bulk of this broadside is pure speculation on the part of the Committee.

MN a cheap price at the County's expense harmed the County without its consent." ECF 16, p. 7.

All the Committee's rumblings about the harm to the County begs two questions. First, if the County has been so significantly harmed by the City's decision to sell the Airport to the Modoc Nation, why hasn't the County brought any claims against the City, and why didn't the County object to the assignment of its lease to the Modoc Nation? Second, if the real harm here is to the County, does the Committee have standing to assert the County's claims?

These latter points are mainly academic. The Committee's claims concerning the purported harm to the County and the failure to protect the federal government's investment in the Nation's airports all stem from the Committee's continuing belief that the City was required to, but did not, obtain fair market value for the Airport. However, as the City showed, and the Committee did not counter, there is no such requirement.[7] Because there is no fair market value requirement, the Committee's entire contention crumbles.

D. The Committee Fails to State a Cognizable Claim for Violation of the Brown Act.

1. The Committee May Not Seek Nullification of the City Council's Action Because the Committee Had Actual Notice of the July 31, 2018, Special Meeting.

Concerning the Committee's Brown Act claims it's important to discuss one issue that is dispositive of the Committee's request for nullification under California Government Code § 54960.1(d)(5), provides any action taken that is alleged to have violated section 54654.5 "*shall not be determined to be null and void if any of the following conditions exist*:

> (5) Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with subdivision (a) of Section 54954.2, Section 54956, or Section 54956.5, because of any defect, error, irregularity, or omission in the notice given pursuant to those provisions, had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken, if the meeting was noticed pursuant to Section

[7] Just as there is no requirement under federal law that the City obtain fair market value for airport property it sells for aeronautical purposes, there is likewise no such requirement under California law. Government Code § 37442, which the Committee concedes governs the sale of municipal airports provides that: "The sale or lease [of a municipal airport] shall be made in such manner and upon such terms and conditions as the legislative body may specify.

> 54954.2, or 24 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant to Section 54956, or prior to the meeting at which the action was taken if the meeting is held pursuant to Section 54956.5.

Cal. Gov't Code § 54960.1(d)(5).

Here, the Committee claims that "action taken" on Jul. 31, 2018, in an "open session" of a regular meeting of the City Council should be nullified and voided because the notice to a special meeting of the City Council preceding the regular meeting was defective. ECF 1, pp; 23-24, ECF 16, p. 12. However, the Committee has admitted in a verified Complaint in *Tule Lake Committee v. City of Tulelake, et al*., United States District Court for the Eastern District of California, Case Number 2:18-cv-02280-KJM-DCM (filed Aug. 21, 2018) that the Committee had well more than 24 hours' notice of the item of business. Specifically, the Committee's verified Complaint alleged:

> 30. The Committee telephoned and sent the City a request form on Jul. 25 asking to be placed on the Jul. 31 Agenda to present and discuss its offer to purchase the airport. However, the Committee's request to be included on the 4:15 PM Agenda was described as "not … appropriate" by the City Hall Administrator, Jenny Coelho, who explained that the City would not discuss the airport sale before the 5:30 meeting. Her emailed response to the Committee is quoted below with emphasis added:
>
> > "It will **not be necessary or appropriate to separately agendize your proposal** for that sale. You will have opportunity to speak in the hearing. If you have a proposal to present, you may wish to submit it in writing to our attorney, Mr. Colantuono, in advance of the meeting to ensure the Council and its legal counsel are able to review it fully.
> >
> > "**There will be a special meeting at 4:15 pm** before the regular meeting at 5:30 pm for which the possible sale is noticed. If so, **that meeting will be limited to a closed session**. While public comment before the closed session will of course be welcome **no public discussion of the airport sale by the City Council will be appropriate** earlier than the time of which the City has given published notice of 5:30 pm."
>
> 31. The 4:15 PM Agenda contained an item 5: "Conference with Real Property Negotiator(s) for the possible transfer of the Tulelake Airport." The negotiating

> parties were listed as "Modoc Tribe of Oklahoma; Tule Lake Committee; County of Modoc." The administrator's communication chilled the Committee from participating in this closed meeting where the City Council was to discuss the "terms and price" of the airport sale.

Tule Lake Committee v. City of Tulelake, et al., United States District Court for the Eastern District of California, Case Number 2:18-cv-02280-KJM-DCM, ECF 1, pp. 6-7. (Robinson Decl., Ex. A). Because the Committee's allegations in its prior federal complaint, which were verified and sworn under the penalty of perjury under the laws of the State of California, show that the Committee had at least 24 hours' notice of the Jul. 31, 2018 meeting, and the business items relating to the Airport sale, California Government Code § 54960.1(d)(5) precludes the Committee's present nullification claim.

Even if the Committee had not admitted through a verified pleading that it was disqualified from seeking nullification of City of Tulelake Ordinance Number 2018-16-01, authorizing and approving the Airport sale, the Committee's Brown Act Claims, including the nullification claim, are not legally cognizable for other reasons.

The Committee's "theory is that defective notices, and overbroad discussion conforming to them, tainted the ultimate City Council action of Jul. 31, 2019, in violation of the command of 54954.5, limiting closed session discussion with its real property negotiators to price and terms of payment." ECF 16, p.8.

2. Discussions Beyond the Scope Allowed by Section 54956.8 do not Provide a Basis for Nullification Under Section 54954.5.

Because the Committee cannot rely on section 54956.8 for its nullification request, the Committee repeatedly conflates Government Code sections 54956.8 and 54954.5, which does provide grounds for nullification. Thus, the Committee repeatedly asserts that the City violated section 54954.5 by engaging in speculative and theoretical closed session discussions of matter exceeding the price and terms of payment the City would accept relating to the Airport sale. For example, the Committee opens its argument concerning the Brown Act by explaining that its "theory is that defective notices, and overbroad discussion conforming to them, tainted the ultimate City Council action of Jul. 31, 2019, in violation of the command of 54954.5, limiting

closed session discussion with its real property negotiators to price and terms of payment." ECF 16, p. 8. The Committee follows up with an apparent assertion that section 54954.5 "expressly limits the subject matter that the City Council may discuss in closed conference with its property negotiator." *Id*. at 9.

The Committee's claims that section 54954.5 places express limits on the matters that may be discussed in closed session is manifestly mistaken. There is no question that the Brown Act limits topics that may be discussed in closed sessions. However, section 54954.5 is not the section that imposed the restrictions. Instead, it is section 54956.8 that in pertinent part "expressly" provides:

> Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.
>
> However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its negotiators, the real property or properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate.

Cal. Gov't. Code § 54956.8. Section 54954.5, in contrast, an example of the content the local legislative body "may" use to describe closed session discussions "expressly" authorized (or limited depending on your vantage point) by *other enumerated* provisions. Cal. Gov't. Code § 54954.5(a)-(k).[8] authorized by sets forth the public notice requirements.

Which provision of the Brown Act provides for limited "closed session" discussion is critically important to the Committee's nullification claim. As the City addressed in its motion to dismiss, Government Code Section 54960.1(a) – the provision allowing for nullification – has a very limited application. ECF 13, p. 33. Specifically, section 54960.1(a) provides that:

> The district attorney or any interested party may commence an action by mandamus or injunction for the purpose of obtaining a judicial

[8] The specific provisions of the Government Code that authorize "closed session" discussion are sections (1) 54956.7; (2) *54956.8*; (3) 54956.9; (4) 54956.95; (5) 54957; (6) 54957.6; (7) 54957.8; (8) 37606; (9) 37624.3; (10) 54956.86; (11) 54956.96; 54956.75; and Health and Safety Code sections 1461, 32106, and 32155. Cal. Gov't. Code § 54954.5.

> determination that an action taken by a legislative body of a local agency *in violation of Section* ***54953, 54954.2, 54954.6, 54956, or 54956.5*** is null and void under this section.

Cal. Gov't Code § 54960.1(a). Notably, section 54956.8, the section that provides the limits of closed session discussions a legislative body of a local agency may have with property negotiators, is not among the sections for which the California Legislature authorized nullification actions.[9] *See Olsen v. Hornbrook Cmty. Servs. Dist.*, 33 Cal. App. 5th 502, 518 (2019) ([Section 54960.1(a)] only allows for nullification of an action if the legislative body violated the open and public meeting provisions (§§ 54953, 54656, 54956.5) or the notice requirements (§§ 54954.2, 54954.5, 54954.6) of the Act.")

The Committee asserts that the limitations the Brown Act imposes on "closed session" conference with property negotiators are mandatory. ECF 16, p. 9. There is little dispute on that general proposition. To the extent there is a dispute, the disagreement concerns what remedy is available to the Committee for those alleged violations. The Committee, for its part, does not seem to want to engage in that dispute. Presumably, that is because the Committee knows the answer, and that answer establishes that the nullification provisions of section 54960.1(a) expressly do not apply to alleged violations of section 54956.8. Cal.Gov't.Code § 54960.1(a).

3. Substantial Compliance Means Substantial Compliance, Not Strict Compliance.

In its Opposition, the Committee obliquely recognizes that section 554960.1(d)(2) provides that the remedy of nullification is not available in any action-based section 54954.5 if "the action taken was in substantial compliance with Section[] … 54954.5." Cal. Gov't. Code § 54954.5. ECF 16, pp. 10-11. However, immediately upon doing so, the Committee asserts that despite the California Legislature's command, "substantial compliance" does not mean "substantial compliance," but instead somehow means "actual" compliance, which the

[9] In what seems to be a pattern of the Committee, because the Committee cannot offer a countering argument on this point, the Committee, in its Opposition, ignores the real issue and tries to circumvent it by conflating hypothetical discussions beyond the scope of section 54956.8 with violations of the public notice provisions of section 54954.5. With regard to numerous other arguments the Committee avoided, the Committee's silence has the consequence of conceding the issue. *Tatum v. Schwartz*, 2007 WL 419463, *3; *Wilson v. FCA US, LLC.*, 2020 WL 5036458, *2; *see also* E.D. Cal. L.R. 230(c).

Committee seems to interpret to mean "strict" compliance. ECF 16, p. 10 (citing *Olson v. Hornbrook* Cmty. Servs. Dist., 33 Cal. App. 5th 502, 519 (Cal. Ct. App. 2019) and *Castaic Lake Water Agency v. Newhall Cty. Water Dist.*, 238 Cal. App. 4th 1196, 190 Cal. Rptr. 3d 151 (2015), as modified (July 22, 2015).

Contrary to the Committee's suggestion, "substantial compliance" means what the Legislature said – "substantial compliance."

It is a fundamental canon of statutory interpretation that words in statutes are given their ordinary meaning. *Kavanaugh v. W. Sonoma County Union High Sch. Dist.*, 29 Cal.4th 911, 919 (2003). *Castaic*, one of the Committee's principal authorities for interpreting section 54954.5 and 549560.1, provides:

> We are guided by *North Pacifica LLC v. California Coastal Com.* (2008) 166 Cal.App.4th 1416, 83 Cal.Rptr.3d 636 (*Pacifica*) involving a similar statutory scheme, the Bagley-Keene Open Meeting Act (§ 11120 et seq.), which requires advance notice to the public and all interested persons of public meetings held by state bodies. (*Pacifica, supra*, at p. 1430, 83 Cal. Rptr. 3d 636.) In determining whether a state body has substantially complied with statutory requirements'[t]he paramount consideration is the objective of the statute.' [Citation.] 'Unless the intent of a statute can only be served by demanding strict compliance with its terms, substantial compliance is the governing test. [Citation] 'Substantial compliance means actual compliance *in respect to the substance essential to every reasonable objective of the statute*.' [Citation.]' [Citation.] ¶

Castaic, 238 Cal.App.4th at 1205-06. *Castaic* then continued saying:

> The stated objectives of the Bagley-Keene Act are to assure that 'actions of state agencies be taken openly and that their deliberations be conducted openly.' (Gov. Code § 11120.) Because Government Code section 11130.3, subdivision (b)(3) allows substantial compliance with the Bagely-Keene Act's notice requirements, ***the objectives of that act can be served without demanding strict compliance with those requirements.*** Thus, state actions in violations of those requirements ***should not be nullified,*** *so long as the state agency's reasonably effective efforts to notify interested persons of a public meeting serve the statutory objectives* of ensuring that state actions taken and deliberation made at such meetings are open to the public." (*Pacifica, supra*, 166 Cal.App.4th at pp. 1431-1432, 83 Cal.Rprt.3d 636, italics added)

Castaic, 238 Cal.App.4th at 1206-07 (bold emphasis added.) What *Olsen* and *Castaic* stand for is that an agenda notice must apprise the public "of the essential nature of the matter an agency will

consider." *See San Diegans for Open Gov't v. City of Oceanside, 4* Cal. App. 5th 637, 644–45 (2016), as modified (Nov. 7, 2016) (discussing *Castaic*). If the notice meets this standard, "technical errors or immaterial omissions will not prevent an agency from acting." *San Diegans for Open Gov't*, 4.Cal.App.5th at 644-45.

Put differently, what the law requires for adequate notice is that members of the public be given enough information to determine whether their interests might be affected by an item to be discussed or acted upon at a meeting. And, if so, whether they need to attend the meeting and speak out on behalf of their interests. *See Olsen*, 33 Cal.App.5th at 519 ("To fulfill the Act's objective, 'agenda drafters must give the public a fair chance to participate in matters of particular or general concern by providing the public with more than mere clues from which they must then guess or surmise the essential nature of the business to be considered by a local agency." (quoting *San Diegans for Open Government*, 4 Cal. App. 5th at 643)); *see also* 67 Ops. Cal. Atty. Gen. 84, *2 (1984) (discussing notice requirements of Bagley-Keene Open Meeting Act and stating that purpose of the notice is to provide advance notice to interested members of the public concerning anticipated business of a state body so that the public knows whether attend meetings and speak on behalf of their interests.)

In this instance, the Committee's protestation that a notice using the word "terms" instead of "terms of payment" kept the Committee "guessing with 'a mere clue'" as to the City's intentions concerning the Airport is irrational. As addressed in the City's motion to dismiss, the City's interest in selling the Airport appeared as an item in 12 between Nov. 7, 207, and Jul. 31, 2018. ECF 13, p. 7. Moreover, nearly every one of the relevant indicated that the City was considering selling the Airport the Modoc Nation, and that is was meeting with negotiators to discuss relating to that potential sale. RJN, Exs. 1-12. Considering the number of times, the items appeared on City Council Meeting agendas, there is no rational argument that the Committee was left "guessing with only a mere clue" that its interests could be affected. Nor, considering the apparent importance of the Airport to the Committee, is there any rational argument that should not have known that it needed to get representatives to those meetings to take whatever action the Committee deemed appropriate under the circumstances. The

Committee did not need to be "clairvoyant or have had collateral information" to know that the City was considering matters related to selling the Airport. *See* 67 Ops. Cal. Atty. Gen. 84, *3.

The fact is that if the Committee had "only a mere clue" it was because the Committee was willfully clueless. But the twelve relevant meeting agendas show this statement to be untrue. As required, the agenda entries gave a general description of the items to be discussed. RJN, Exs. 1-12. Each of the meetings was timely noticed – a fact that the Committee does not contest. And each meeting held an open session before any closed session in which the interested members of the public had the opportunity to address the City Council concerning any concerns they had. *Id.* However, as the Committee's Complaint confirms, the Committee never attended a single meeting until Jul. 31, 2018. *See, e.g.*, ECF 1. Nor did the Committee register a single complaint with the City concerning the conduct of its meetings over the seven (7) months before the Jul. 31, 2018, meeting. *Id.*

Under the circumstances, there is no legitimate claim by the Committee that a notice that indicated that during a closed session, the City Council would discuss "terms" and "price" of the Airport sale did not substantially comply with section 54954.5. Likewise, there is no legitimate argument that the notice given did not satisfy the objectives of the notice provisions of the Brown Act. Consequently, because the City substantially complied with Section 54954.5, the Committee's request for nullification fails to state a cognizable legal claim.

4. The City Did Not Take Action in Any Meeting as to Which the Committee Raises a Complaint.

As the City discussed in its motion to dismiss, to allege a claim for nullification under section 54960.1, a plaintiff is required to allege "that there was action taken by the local legislative body in connection with the violation." ECF 13, p. 33 (citing *Olson*, 33 Cal.App.5th at 517, quoting *Bell v. Vista Unified School Dist.*, 82 Cal.App.4th 672, 684); *see also Boyle v. City of Redondo Beach*, 70 Cal.App.4th 1109, 1116-17 (1999) (plaintiff must allege there was "action taken" in connection to the violation.) The Brown Act expressly defines "action taken" as:

> [A]a collective decision made by the majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of the legislative body when sitting as a body or entity upon a motion, proposal, resolution, order or ordinance.

Cal. Gov't Code § 54952.6; *Boyle*, 70 Cal.App.4th at 1118. As the City also noted, the Committee claims that the purported violation of the Brown Act was an insufficient agenda item description for the City Council's Jul. 31, 2018, Special Meeting in violation of section 54954.5, and discussions beyond the scope authorized by section 54956.8. ECF 13, pp. 38-39; ECF 1, pp. 23-24, ¶¶ 169, 173. However, the City noted, the Committee's Complaint did not allege there was any "action taken," as defined by the section 54952.6, during the Jul. 31, 2018. ECF 16, p. 38. Instead, as the City pointed out, the Committee explicitly alleged that the City Council only took action during the "open session" of a Jul. 31, 2018, Regular Meeting *after* holding a public hearing on the proposal to sell the Airport to the Modoc Nation – a meeting in which the Committee participated. ECF 16, p. 38; ECF 1, p. 11-13, ¶¶ 62-70; Ex. G, p.3. Moreover, the City provided evidence (referenced in but not attached to the Committee's Complaint) showing that the City took no action in the July. 31, 2018, Special Meeting, including the closed session portion of that meeting, or any other closed session meeting other than one in which the City took action to hire a property negotiator. RJN, Exs. 13-24.)

In its Opposition the Committee does not contest any of these facts. Instead, the Committee attempts to combine every meeting the City Council ever had concerning the Airport Property and tie them together as one to claim that "action taken" in the undisputedly properly noticed and agendized Jul. 31, 2018, Regular Meeting. ECF 16, p. 11-12.[10] The Committee then goes to assert that alleged violations as to any prior actions attach to the "action taken" at the Jul.

[10] Somewhat oddly, the Committee makes this argument in a section addressing the timeliness of the Committee's "Cure-Or-Correct Letter." ECF 16, p. 11-12. Notably, there was never an issue raised as to whether the Committee's "Cure-Or-Correct" letter was timely as to the July 31, 2018, meeting. The question of timeliness related to every meeting that occurred 90 days or more before the Committee's August 30, 2018. The issue concerning the July 31, 2018, Special Meeting, as to which the Committee alleges a violation of the Brown Action, was and remains that there was no "action taken" in that meeting.

31, 2018, Regular Meeting irrespective of whether there any violations associated with that meeting. Thus, the Committee claims – without attribution or citation to a single authority – that "under governing law the violative closed session must merely be connected to the ultimate action; the ultimate action need not occur in the same meeting." ECF 16, p. 15.

Contrary to the Committee's claim, the "governing law" does not support the Committee's theory that "action taken" can be daisy-chained to different meetings for purposes of a nullification action under section 54960.1(a).

Centinela Hospital Assn. v. City of Inglewood, 225 Cal. App. 3d 1586 (1990), is an example of "governing law" that not only does not support the Committee's claim but directly refutes it. In *Centinela*, the plaintiff alleged a violation of the Brown Act and sought nullification under section 54960.1(a) based on a series of "spoke-and-wheel" discussions between the City Attorney and individual City Council members. *Centinela*, 225 Cal.App.3d at 1597. The "spoke-and-wheel" meetings, which admitted involved discussion of matters, agendized for a public hearing on the following day. *Id.* After the subsequent public hearing, the City Council acted on, among other things, the matter that was the subject of the previous day's "spoke-and-wheel" discussions. *Id.*

Plaintiff's alleged that the private "spoke-and-wheel" discussions tainted the "action taken" by the City Council at the close of the subsequent public hearing. *Id.* at 1597-98. In addressing the issue, California's Second District Court of Appeal recited the Brown Act's definition of "action taken" and then explained:

> When the pleading herein alleges there were *discussions*, the petition does not allege that in such discussion any action was taken within the meaning of 549601.1. It is without dispute that all "actions taken" by the City Council herein were at duly noticed public hearings. The petition fails to state grounds for relief under Government Code Section 54960.1, and summary judgement was properly granted ….

Id. at 1599. *Centinela* presents almost a carbon copy of this situation. Here, like there, the Committee complains of *discussions* of topics at a meeting, or in meetings, that the Committee alleges violated the Brown Act. ECF 1, pp. 22-24, ¶¶ 154, 155, 157, 158, 160, 161, 163, 164, 166, 168, and 173. However, the Committee admits that there was no "action taken" during any

of those meetings. ECF 1, pp. 11-13, ¶¶ 62-70; Ex. G, p. 3; *see also* City's RJN, Exs. 13-24. Instead, just as in *Centinela,* "it is without dispute that all "actions taken" by the City herein were at duly noticed public hearings." *Centinela,* 225 Cal.App.3d at 1599. Accordingly, just as in *Centinela,* the Committee's Complaint "fails to state grounds for relief under Government Code section 54960.1," and dismissal of that claim is properly granted. *Id.*; *see also Boyle,* 70 Cal.App.4th at 1118 (citing *Centinela* for the same proposition.)

5. The Committee's Complaint Does Not Allege Facts Providing "Good Reason Support[ing] the Recordings Prayer."

The Committee's Complaint contained a prayer that the City "keep audio or video recordings of its closed session. In its motion to dismiss, the City explained there was "no good reason" for the Committee's recordings prayer because the City has not engaged in a pattern of violating the Brown Act and did not violate the Brown Act at all. In opposition, the Committee offers an untethered response. Specifically, as the only support for its request, the Committee asserts: "There is good reason [for the recordings prayer]. The promised recordings have not been produced despite having been promised on Sept. 10, 2018. *Should the need appear from the City's behavior,* the Brown Act itself, Cal. Gov't Code § 54960(b), authorizes such a remedy."

There is a lot to unpack from the brief and bizarre response. First, there is no allegation in the Complaint that the City ever "promised" to provide recordings of its "closed session meetings" on September 10, 2018, or at any other time.[11] Moreover, even if there was a "promise" to provide tapes or recordings of past City Council meeting "open sessions" that went unfulfilled, that is not a basis under the Brown Act to order the City to keep audio or video recordings of "closed session meetings" in the future.

[11] As best as counsel for the City can recall, there was a discussion in relation to the Committee's prior federal action, *Tule Lake Committee v. City of Tulelake, et al*. (United States District Court for the Eastern District of California, Case Number 2:18-cv-02280-KJM-DCM (filed August 21, 2018), concerning recordings of the City of Tulelake's City Council meetings, which were identified in the City's "initial disclosures" in that case. However, as the Committee well knows, that case – including discovery and disclosures – the parties in that action agreed to a stipulated stay order on September 27, 2018, signed on November 13, 2018 (ECF 39). The case remained stayed until March 20, 2020, when the Court lifted the stay and dismissed the action. (ECF 64.)

Additionally, the Committee's assertion that "[s]hould the need appear from the City's behavior," the Brown Act authorizes such a remedy, while an indisputable truism, is odd. The assertion seems to display a lack of grasp of basic pleading requirements and burdens of proof. The Committee must allege facts sufficient to support a request for relief requiring the recording of closed session meetings. Put differently, the need for the recording prayer must "appear" from the Committee's Complaint. Here, as explained in the motion to dismiss and as expanded on in this reply, there is no legitimate basis for the request.

6. The Committee's Complaint Does Not Allege Cognizable Facts Showing That the City Council Engaged in Improper Discussions During Closed Sessions of City Council Meetings.

In its opposition, the Committee claims that "there is reason to believe" the City Council members engaged in improper discussions during "closed session" conferences with the City's property negotiator." ECF 16, p. 9. As support the Committee questions:

> "If the City Council never discussed hazmat responsibilities, title deficiencies, or indemnity in its closed sessions, then when did it discuss them?" ECF 16, pp. 10-11.

The Committee contends that this is because "[t]hese three items do not appear in the minutes, nor do they appear in the Ordinance to be read on Jul. 3, 2018. *Id.* The Committee then suggests that "conferences between the City Councilmembers and their negotiator-attorney are a plausible setting for the negotiator-attorney to advise them on these material items." *Id.* The Committee then claims that its Complaint is sufficient because "the allegations from ¶ 152 to ¶ 173 are well-pleaded factual allegations entitled to the assumption of veracity and allow the Court to draw a reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Accordingly, the Committee asserts that paragraphs 152 to 173 of its complaint satisfy *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).

The Committee has it partially right. The Committee is correct that to determine whether its claims that the City Council violated certain portions of the Brown Act and is liable under section 54960 allowing declaratory and injunctive relief depends on the allegations contained in paragraphs 152 to 173 of the Committee's Complaint. The Committee, however, is mistaken in its belief that those allegations are sufficient.

First, the Committee's reference to discussions concerning hazmat responsibilities, title deficiencies, and indemnity are not identified anywhere in the Committee's complaint. The Committee only raises these issues or questions in its Opposition to the City's motion to dismiss and appear to stem from the City's arguments regarding the consideration it received for the Airport. ECF 13, p. 26. The Committee now seizes on these examples of consideration and conclusion that because terms related to these issues appear in the Standard Offer and Agreement for Purchase of Real Estate (Non-Residential), and not the "terms of payment," must be the "terms" identified in the City's meeting agendas. *See* ECF 16, p. 8-9.

What the Committee fails to recognize here is that to have any meaningful discussion of "price," the City Council must be able to discuss with its negotiator the things that potentially impact "price." These necessarily include things like title deficiencies, potential hazmat issues, the need for indemnification, the requirement that the Airport continue to be used for airport purposes, the reverter provisions of the 1951 Land Patent. These are all issued that affect the "price" of the Airport. To suggest, as the Committee seems to, that the City could simply determine the price it would accept for the Airport in a vacuum is wrong.[12] Moreover, it would be entirely appropriate of the City to ask questions of its negotiator-attorney regarding these matters and for the negotiator-attorney to advise the City on such matters during closed session conferences. Accordingly, if the City did discuss these things, it would not be violative of the Brown Act.

Second, of the allegations in paragraphs 152 through 173, the allegations relating to actual discussions of the City Council appear in paragraphs 154, 155, 157, 158, 160, 161, 163, 164, 166, 168, and 173. However, those paragraphs allege any non-conclusory facts. Instead, except for the allegations in paragraphs 168 and 173, each of the Committee's allegations alleges merely conclusions "couched as factual allegations" and "threadbare recitals of the elements of a

[12] To be clear, because the Committee has demonstrated a pattern of taking examples used in pleadings and other documents and designating them as admissions, the list of examples of things affecting "price" does not confirm, admit or suggest that the City discussed these things. It is merely an example of things that would be reasonable to discuss to determine the amount the City would accept for the Airport.

cause of action, supported by mere conclusory statements." Paragraphs 168 and 173, which are allegations made "on information and belief," are functionally no different. They are merely recitals of the elements of the Committee's claims under section 54960. They are not "factual" allegations. Accordingly, contrary to the Committee's contention, these allegations – which only speculate as to and conclude the scope of discussions – do not satisfy the standard of *Iqbal*, 556 U.S. at 678. Therefore, the Committee's claims seeking relief under section 54960 of the California Government Code should be dismissed.

III. CONCLUSION

For the reasons set forth in the City Defendant's motion to dismiss (ECF 13) and as expanded upon in this Reply, the City Defendants' respectfully request that the Court dismiss the Tule Lake Committee's Complaint (ECF 1) in its entirety and with prejudice.

Dated: September 14, 2020

Respectfully Submitted,

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CITY OF TULELAKE, CALIFORNIA, and
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