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UNITED STATES DISTRICT COURT
IN THE NORTHERN DISTRICT OF CALIFORNIA

SPRAWLDEF, et al, Petitioners, vs. CITY OF RICHMOND, et al, Respondents.	Case no. 18-cv-03918-YGR **PETITIONERS' CORRECTED NOTICE & MOTION FOR LEAVE TO AMEND PETITION AND MEMORANDUM OF POINTS & AUTHORITIES** Hearing: Date: November 3, 2020 Time: 2:00 p.m. Room: 1 **Before the Hon. Judge Yvonne Gonzalez Rogers**

NOTICE AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 3, 2020, at 2:00 p.m., or as soon thereafter as the matter may be heard before the Honorable Judge Yvonne Gonzalez Rogers, in Courtroom 1 of the United States District Court of the Northern District of California, located at the Ronald V. Dellums Federal Building, 1301 Clay Street, Oakland, California, petitioners SPRAWLDEF et. al. will move this Court for leave to file a Second Amended Petition pursuant to Federal Rules of Civil Procedure, Rule 15. Petitioners' motion is based on this Notice of Motion, the accompanying Memorandum of Points

and Authorities, the pleadings, the declaration of Norman La Force which has an exhibit the proposed Second Amended Petition, the administrative record, all records and files in this action, and such written or oral arguments as may be presented before the Court.

DATE: September 28, 2020

NORMAN LA FORCE
STUART M. FLASHMAN
Attorneys for Petitioners
SPRAWLDEF et al

_____/s/_____
NORMAN LA FORCE

MEMORANDUM OF POINT AND AUTHORITIES IN SUPPORT OF MOTION

I. NATURE OF RELIEF REQUESTED

Petitioners seek to amend their petition to ensure that the court has before it a clear statement of the claims for relief that they seek. Petitioners are making this motion following the Court's ruling on their motion for preliminary injunction because it appears that the gravamen of Petitioners' claims was not clear to the Court. This may be due to the conclusory nature of the original Petition. Therefore, Petitioners seek leave to amend their petition to provide the court with a clearer and more detailed statement of the facts and claims. The proposed Second Amended Petition is attached as an exhibit to the declaration of Norman La Force filed concurrently with this motion.

II. PROCEDURAL HISTORY

This case arises out of the Respondent City of Richmond's failure to comply with the procedural and substantive requirements of both the Ralph M. Brown Act, Gov't Code Section 54900 et. seq. ("Brown Act") and California Land Use and Planning Law in entering into stipulated judgment with the developer, Upstream Point Molate ("Upstream") and the Guidiville Rancheria of California, ("Tribe") to settle *Guidiville Rancheria of California et al v. United States of America et al*, federal Northern District of California case no. 4:12-cv-01326 ("*Guidiville*"). The Petitioners alleged that the City of Richmond entered into an illegal settlement agreement with Upstream and the Tribe that violated California's Brown Act and California Land Use and Planning Law. The most egregious violation of law was that the City agreed to that settlement in a closed-door meeting during the pendency of a lawsuit without holding a public hearing on that settlement.

Initially the City moved to dismiss the petition, but after the Court suggested that given the facts presented to the Court, the City withdraw its motion, the City did so and filed an answer. The Court also directed the parties to meet and confer as to whether non-parties Upstream Point Molate, LLC and/or the Guidiville Rancheria of California ought to be joined in these proceedings as a necessary party or a real party in interest. Without conceding any of Upstream's or the Tribe's contentions or that Upstream or

the Tribe are appropriate parties to the present writ, Petitioners and Respondents stipulated that the Petitioners could file an unopposed motion for leave to file a first amended petition naming Upstream and the Tribe as interested parties. The Court granted the unopposed motion and Petitioners thereafter filed a First Amended Petition naming Upstream and the Tribe as Respondents.

Thereafter, the Tribe moved for dismissal on the grounds that it had not waived its sovereign immunity and could not be sued because it was a necessary and indispensible party and therefore the Petitioners' case had to be dismissed. This Court denied that motion. The tribe then appealed. On September 22, 2020, the Ninth Circuit Court of Appeal denied that appeal and upheld the trial court's ruling.

While that appeal was pending, the City continued to proceed with actions it claimed were necessary under the settlement agreement/Judgment. In addition, the parties engaged in a mediation that did not resolve the case. Instead, separately, the City and Upstream and the Tribe entered into another settlement agreement to amend the judgment in an attempt to cure their Brown Act violations and, supposedly, their violations of California Land Use and Planning Law. The City and Upstream and Tribe filed a Stipulation for an Amended Judgment that they claimed resolved the issues in the case. A hearing before the Court on that Amended Judgment was held without including the *SPRAWLDEF et al.* Petitioners, and that Amended Judgment was entered in the original case of *Guideville v. City of Richmond.* The City asserts this Amended Judgment complied with the Brown Act and resolves their legal violations. It does not.

As the City continued to engage in decisions pursuant to the Amended Judgment with a date for final City Council approval of a Development Agreement with a developer from southern California sometime in September 2020, the Petitioners moved the court for a preliminary injunction and then a temporary restraining order to freeze the administrative process taking place without prejudice to the parties. The Court denied that motion, commenting that Petitioners were unlikely to succeed on the merits because the City had cured its Brown Act violation.

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III. FACTUAL MATTERS THAT ARE THE BASIS FOR THE SECOND AMENDED PETITION

Petitioners maintain that there are two areas of law that were violated: the Brown Act and the California Land Use and Planning Law. Regardless of whether the Amended Judgment, and the initial "Judgment" violated the Brown Act, both violated the requirements of California Land Use and Planning Law. While the First Amended Petition (FAP) was streamlined by having but one claim for relief, that claim included specific allegations that the City Council's abrupt approval of the settlement agreement bypassed the obligatory public notice and public participation requirements that are fundamental parts of California's Land Use and Planning Law process. (FAP ¶31). The settlement approved by the City Council included a requirement that at least 670 units of housing be approved and built at the site. (FAP ¶35)

The FAP also alleged that the settlement agreement is inconsistent with the City's land use zoning and general plan for Point Molate. The City designated Point Molate as a "Study Area" that required final zoning, amendments to the General Plan, and development approvals prior to moving forward with a specific project. (FAP¶36-38)

In addition, the settlement agreement set down a division between development and open space with 70% to be set aside as open space and 30% for development and specified that the entire square footage of the Winehaven historic area structures had to be preserved for adaptive reuse. This specification required amending the General Plan and zoning for Point Molate with the obligatory public process.

The settlement agreement further designated certain areas for development. But in making those designations, the City should have recognized that such designations require a public process to amend the general plan and the zoning through the Study Area process the City had set up. (FAP ¶44-50)

In sum, the Petitioners have alleged that by approving the settlement and stipulated judgment, the City essentially entered into a development agreement with the developers of the former casino project. That agreement included promises and entitlements that should have required a specific formal process

and adoption of an ordinance, subject to referendum, as set forth in the Government Code and as set forth in the FAP ¶46. Those promises, approvals and entitlements could not properly be granted through a settlement agreement resolving a lawsuit, even if that settlement were approved by the City Council in open session.

Despite the fact that Petitioners had pleaded facts stating a claim for relief for violation of Government Code provisions beyond the claim that the Respondent City had failed to hold a public hearing on the settlement agreement, the Court ruled on Petitioners' Motion for Preliminary Injunction that because the City had amended the settlement agreement and held a hearing on that amendment in open session, it had complied with California law and denied the Petitioners' motion. But that ruling does not dispose of this case. Petitioners have pled sufficient facts to form the basis of an amended petition. Petitioners make this motion for leave to file a Second Amended Petition to clarify and make explicit the additional claims factually pled in the FAP.

IV. LEGAL ARGUMENT-LEAVE TO AMEND IS FREELY GIVEN AND SHOULD BE GRANTED IN THIS ACTION

Leave to amend is almost always granted by the court. Federal Rules of Civil Procedure, Rule 15(a) expressly states that leave to amend "shall be freely given when justice so requires." *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir.2011) (standard for granting leave to amend is "generous.") Where a more carefully drafted complaint might state a claim, a plaintiff must be given at least one chance to amend the action before the district court dismisses the action with prejudice. *Silva v. Bieluch*, 351 F.3d 1045 (11th Cir. 2003). Dismissing an action after giving plaintiff only one opportunity to state his case "is ordinarily unjustified." *Davoodi v. Austin Independent School District*, 755 F3d 307, 310 (5th Cir. 2014); *citing, Jacquez v Procunier*, 801 F.2d 789, 792 (5th Cir. 2007).

Moreover, even if the court should determine that petitioners had asserted an erroneous legal theory, the test is whether the facts as alleged support any valid action entitling plaintiff to relief; not necessarily just the one initially intended by the plaintiff. *Alvarez v. Hill*, 518 F.3d 1152, 1158 (9th Cir. 2008). (A complaint should not be dismissed because plaintiff erroneously relies on the wrong legal theory if the

facts alleged support any valid theory). *Haddock v. Board of Dental Examiners of Calif.*, 777 F.3d 462, 464 (9th Cir. 1985). *Accord, McBeth v. Hines*, 598 F3d 708, 716 (10th Cir. 2010).

In the case at bar, the proposed Second Amended Petition pleads additional claims for relief beyond the Brown Act claims stated in the single claim for relief stated in the FAP. Leave should be granted to allow Petitioners to amend their pleading. Any issue regarding the sufficiency of the pleading can be tested by motions to dismiss, but only after the Petitioners have amended their pleading.

V. CONCLUSION

Therefore, the Court should grant Petitioners motion.

DATE: September 28, 2020

NORMAN LA FORCE
STUART M. FLASHMAN
Attorneys for Petitioners
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_____/s/_____
NORMAN LA FORCE