

1566 35th Avenue  
San Francisco, California 94122  
Tel: (510) 564-8552  
Email: [rgriffith@rgriffithlawpc.com](mailto:rgriffith@rgriffithlawpc.com)  
Attorney for Petitioner

1 The three items that mislead the public are quite blatant. First, the December 9, 2020 agenda  
2 item specifically stated there would be no fiscal impact. (Petition at “**Exhibit 1**”) However, on June  
3 16, 2021, FUSD voted 5-1-1 to spend \$456,000 to change the Fresno High School image. (See  
4 Declaration of Ryan Griffith “Griffith Dec.” at **Exhibit 1**.) Undoubtedly, \$456,000 of public funds  
5 spent on the Warrior is a fiscal impact. The December 9, 2020 vote should have discussed the money  
6 needed to change the Fresno Warrior. \$456,000 should not have been sprung on the public **six**  
7 **months after** the December 9, 2020 vote, which stated changing the Warrior would have no fiscal  
8 impact.  
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10 In addition to the misleading statement regarding costs, FUSD specifically stated that the  
11 Fresno Warrior would not be voted on until after school reopened. This Court likely does not need a  
12 reminder, but schools, courts, and numerous facilities throughout the nation were closed as a result of  
13 the COVID-19 pandemic. (Griffith Dec. at ¶ 4(b).) Therefore, when FUSD’s presentation said it  
14 would not vote until school reopened, people reasonably believed that no vote would take place until  
15 school reopened. However, this promise not to vote was another misleading statement by FUSD.  
16 This misleading statement chilled public comment and debate on a controversial issue.  
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19 FUSD further misled the public by stating that it had done all sorts of outreach on the Fresno  
20 Warrior issue. However, once public records requests were made, FUSD had no records of the  
21 alleged listening sessions with the community members, Native Americans groups, or other  
22 constituents it supposedly worked so tirelessly to contact. (Griffith Dec. at “**Exhibit 2**”) The actions  
23 described above are entirely misleading to the public. In fact, the insincerity of these statements is  
24 shown by FUSD President Valerie Davis’s actions. FUSD President Davis specifically told people to  
25 “**Move On,**” during public comment about the Warrior. (Griffith Dec. at “**Exhibit 3**”) Board  
26 President Davis’s statement shows a lack of listening and leadership, not a desire to listen to the  
27 public.  
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1 It should be noted that since individuals became aware of this issue in March 2021, hundreds  
2 of public comments have been submitted to FUSD public comments. (Griffith Dec. at **Exhibit 2.**)  
3 Furthermore, numerous news articles on the subject have been published in the past few months.  
4 (Griffith Dec. at **“Exhibit 4”**) These items show how controversial the topic has been and how  
5 uninformed the public was on December 9, 2020, when FUSD misled the public and voted without  
6 full participation on the issue.  
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8 FUSD’s demurrer does not dispute the above but relies on a statute of limitations argument,  
9 after FUSD mislead the public. FUSD relies on this argument despite the world being in a state of  
10 disarray due to a global pandemic that resulted in the deaths of hundreds of thousands of Americans.  
11 Furthermore, schools were closed, courts were closed, and school board meetings as well as other  
12 legislative meetings were difficult if not impossible to access for a large part of the population that  
13 had difficulty using new innovations such as Zoom. In short, the world has not seen anything like  
14 COVID-19, which is why Governor Newsom, the California Judicial Council, and almost every state  
15 agency in California issued special orders granting extensions and special accommodations for  
16 COVID-19.  
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19 As a refresher, the Brown Act simply requires government transparency. Therefore, to bar an  
20 action for filing a few days late, after FUSD misled the public during a global pandemic, goes  
21 directly against the Brown Act’s intent. In summary, when a government agency misleads the public  
22 during a global pandemic and its only justification for its action is that the public did not act fast  
23 enough, a major problem exists. However, this Court can fix the problem and ensure proper debate  
24 on this issue is held.  
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1 **II. THE BURDEN TO SUSTAIN A DEMURRER IS HIGH AND GRANTING LEAVE**  
2 **TO AMEND SHOULD BE LIBERALLY CONSTRUED**

3 For FUSD to sustain its demurrer it must prove no legal theory or fact exists to have its  
4 demurrer sustained without leave to amend. (*Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal. 4th  
5 992, 998.) In determining whether to overrule a demurrer, the rule is that if upon a consideration of  
6 all the facts pleaded, the plaintiff is entitled to any judicial relief against the defendant, regardless if  
7 procedural or technical defects exist. (*M.G. Chamberlain & Co. v. Simpson*, (1959) 173 Cal. App.  
8 2d. 263, 267.) The California Supreme Court further states, “*In passing upon the sufficiency of a*  
9 *pleading, its allegations must be liberally construed with a view to substantial justice between the*  
10 *parties.*” (*Id.*) Thus, a demurrer serves only to test the sufficiency of a pleading and not the other  
11 extrinsic matters and may only be granted where defects appear on the face of the pleading, itself.  
12 (*Blank v. Kirwan* (1985) 39 Cal. 3d. 311, 318.) Therefore, a demurrer only challenges the sufficiency  
13 of the causes of action and must not be overruled if a valid cause of action is pleaded. (*Grieves v.*  
14 *Superior Court* (1984) 157 Cal. App. 3d 159.)

17 California has adopted liberal pleading standards emphasizing notice to the defendant, rather  
18 than technical pleading requirements. For purposes of a demurrer, the allegations in plaintiff’s  
19 complaint must be accepted as true. (*Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal. 4th 962, 966-967.)  
20 The sole issue raised by a general demurrer is whether the facts pled state a valid cause of action, not  
21 whether they are true. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal. App. 3d. 593,  
22 604.) A general demurrer for failure to state a cause of action under California Code of Civil  
23 Procedure (“CCP”) § 430.10 must be overruled if a plaintiff meets these minimal burdens. (*Sheehan*  
24 *v. San Francisco 49ers, Ltd.* (2009) 45 Cal. 4th 992, 998.)

27 In the event the FUSD meets its tremendous burden under CCP § 430.10, then this Court  
28 should look to whether there is any reasonable possibility that any defect can be cured by

1 amendment. (*City of Dinuba v. County of Tulare* (2007) 41 Cal. 4th 859, 865.) Furthermore, courts  
2 must grant leave to amend if there is any reasonable probability a defect can be cured by an  
3 amendment. It is worth noting, leave to amend is liberally allowed as a matter of fairness. (*Apple Inc.*  
4 *v. Superior Court* (2017) 18 Cal. App. 5th 222, 259; CCP § 452.)

### 5 **III. THE BROWN ACT REQUIRES TRANSPARENCY AND DOES NOT ALLOW** 6 **MISLEADING AGENDAS**

7 The California legislature's intent when enacting the Brown Act was to ensure public  
8 participation and to allow public debate to have a voice in shaping policy. (*Gillespie v. San Francisco*  
9 *Pub. Library Com.* (1998) 67 Cal. App. 4th 1165, 1169.) For years California has fought a long and  
10 vigorous battle against government secrecy. (*Carlson v. Paradise Unified School Dist.* (1971) 18 Cal.  
11 App. 3d 196, 199). Furthermore, the process of educating children is a matter of great public  
12 concern. (*Greer v. Board of Education* (1975) 47 Cal. App. 4th 98, 120.)

13 With that introduction, FUSD misled the public in numerous ways. As discussed, on  
14 December 9, 2020, FUSD's agenda stated there would be no fiscal impact to retire the Fresno  
15 Warrior. (Petition at **Exhibit 1.**) However, six months later on June 16, 2021, the fiscal impact on  
16 FUSD and the public to change the Warrior became a fiscal impact of \$456,000. \$456,000 is a far  
17 cry from the **no** fiscal impact listed in the December 9, 2020, agenda. (Griffith Dec. at **Exhibit 2.**)

18 In addition to the misrepresentation regarding public funds, FUSD engaged in two material  
19 misrepresentations leading up to and during the meeting. These material misrepresentations included  
20 telling the public that no vote on the Fresno Warrior would occur until school reopened. (See Petition  
21 at **Exhibit 3.**) There is no factual dispute that on December 9, 2020, Fresno Schools had been closed  
22 and continued to be closed for months as a result of the COVID-19 pandemic. Therefore, FUSD  
23 saying no vote would occur until school reopened was a material misrepresentation. This is because  
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1 the public reasonably believed no vote would take place on the Warrior until FUSD figured out how  
2 to handle COVID-19 and reopen its schools.

3 In addition to misrepresenting when the vote would occur, FUSD also claimed to  
4 engage in numerous listening sessions with community members, students, alumni, Native  
5 Americans, and several other constituents. However, according to public records requests no records  
6 of these listening sessions exist. (Griffith Dec. at **Exhibit 3**.) For the FUSD board to tell the public  
7 that these listening sessions occurred, when it appears they did not, entirely misleads the public and  
8 violates the Brown Act. As California courts have held, even if a school board does not intentionally  
9 deceive the public, if it entirely misleads, or fails to properly inform the public a Brown Act violation  
10 can be found. (*Carlson v. Paradise Unified Sch. Dist* (1971) 18 Cal. App. 3d 196, 199-200.) Courts  
11 more recently in 2005, have again reiterated that agenda items cannot be misleading. (*Moreno v. King*  
12 (2005) 127 Cal. App. 4th 17, 25.) Moreover, the California Attorney General's Office issued an  
13 opinion requiring school boards to not mislead the public in the same way FUSD has done here. (67  
14 Ops.Cal.Atty.Gen. 84, 87 (1984).  
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18 In short, FUSD violated the Brown Act by misleading the public by failing to disclose how  
19 much changing the Warrior would cost, when the vote would occur, and giving the illusion that it  
20 talked to numerous groups. For all these reasons, the transparency required by the Brown Act was  
21 violated on December 9, 2020. Even worse, the public was actually misled by FUSD, which is  
22 supposed to represent the public. For these reasons the December 9, 2020 vote should be rescinded.  
23 That way, actual public debate and comment on this controversial issue can occur.  
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25 **IV. IT APPEARS THE MATTER WAS TIMELY AND IF NOT FUSD**  
26 **MISREPRESENTATIONS AND COVID-19 EXCUSES MISSING THE DEADLINE**  
27 **BY A FEW DAYS**

28 FUSD's demurrer does not deny misleading the public or engaging in Brown Act violations.  
Instead, FUSD relies solely on a statute of limitations defense, but it seems the statute of limitations

1 may **not** have even been violated. FUSD first cites the case of (*Bell v. Vista Unified School District*  
2 (*2000*) 82 Cal. App. 4th 672, 684.) For its argument that a timely demand must be made.  
3 (Respondent Demurrer at Pg. 5; Lines 12-15.) In *Bell*, the court specifically states the party making a  
4 Brown Act violation complaint has 90 days to alert the board. (*Bell* at 684.) In this case, the vote  
5 took place on December 9, 2020, and the demand to cure was submitted on March 5, 2021. (Petition  
6 at **Exhibit 4**.) This is a total of 85 days, which means a timely demand to request a cure was made  
7 within 90 days as required by *Bell*.  
8

9 Of course, there is an argument that Government Code § 54960.1 says an open session  
10 requires 30 days, not 90 days. However, if people cannot physically attend the meeting because of a  
11 global pandemic, making it physically impossible to attend the meeting, and are mislead about the  
12 contents of the meeting, was it really an open session? Or should it be subject to the ninety-day rules  
13 of a closed session under Government Code § 54960.1?  
14

15 Respondent then cites the case of *Boyle v. Redondo Beach* (1999) 70 Cal. App. 4th 1109,  
16 which had numerous issues including the trial court finding the entire litigation frivolous. (*Id.* at  
17 1113.) Although a statute of limitations issue existed in *Boyle* that was a side note to the case. (*Id.* at  
18 1119.) Instead, the appellate court primarily focused on the fact that the city took no action, no vote,  
19 nor did it do anything of substance that could be cured by Brown Act litigation. (*Boyle* at 1118.)  
20 Furthermore, there is no indication that *Boyle* was misled by the city, nor was there a global  
21 pandemic impacting the entire world when *Boyle's* case was pending. It should also be noted that  
22 even reading *Boyle* strictly to a 45 day rule, the notice to cure in this case was issued on March 4,  
23 2021, and the action filed on May 3, 2021. Therefore, a total of 60 days elapsed. This means during a  
24 global pandemic when the school board itself was not meeting in public, nor were most courts open,  
25 or operating at full capacity, the deadline was missed by 15 days, at most.  
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1       **V.       IN THE EVENT IT WAS NOT TIMELY, FUSD MISREPRESENTATIONS AND**  
2       **COVID-19 EXCUSES MISSING THE DEADLINE BY A FEW DAYS**

3       Courts have overruled the strict timelines for a speedy trial to deal with the COVID-19 crisis  
4       that has plagued this country for well over a year. (*Stanley v. Superior Court* (2020) 50 Cal. App. 5th  
5       164, 169.) Certainly, if the deadlines imposed by Penal Code § 1382 can be extended by 90 days as a  
6       result of this global pandemic, the timelines of Government Code § 54960.1 can be extended a few  
7       days. This is particularly true considering FUSD, which is supposed to be transparent, misled the  
8       public. Furthermore, California Rule of Court 8.66 allows a tolling of an additional 30 days to the  
9       statute of limitations on any issue during an emergency, and COVID-19 qualifies as an emergency.  
10      (*Rowan v. Kirkpatrick* (2020) 54 Cal. App. 5th 289, 294.) Finally, it is arguable that since this is a  
11      cause of action that the three-year statute of limitations found at California Code of Civil Procedure §  
12      338 should apply, not Government Code § 54954.2

13      In addition to the COVID-19 and legal exceptions listed above, courts have not read  
14      Government Code § 54954.2 as strictly as Respondent requests this Court to when a school board  
15      misleads the public. (*Carlson v. Paradise Unified Sch. Dist.* (1971) 18 Cal. App. 3d 196, 198-200.) In  
16      *Carlson*, a school board agenda simply stated “*continuation school site change*” in April 1970. (*Id.* at  
17      198) It turned out “*continuation school site change*” meant closing an elementary school. (*Id.* at 198).  
18      People tried for months to convince the school board to change its decision before finally filing an  
19      action in September. (*Id.* at 198.) Thereafter, the court held that while the agenda item may not have  
20      been deceitful, it was entirely misleading and inadequate to show the scope of the school boards  
21      intended plan. (*Id.* at 200.)

22      *Carlson* is no different than FUSD’s action with the Warrior. FUSD may not have been  
23      intentionally deceitful. Instead, the issue is whether the board properly informed the public of its  
24      intended plan. As it relates to FUSD, the answer is **no**. FUSD misrepresented the cost by saying the  
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1 cost of changing the Warrior was \$0, when the cost was \$456,000. (Griffith Dec. at **Exhibit 1**.)  
2 Furthermore, FUSD chilled public participation by stating that no vote on the Warrior would take  
3 place until school was reopened. Finally, FUSD represented to its constituents that numerous  
4 outreach efforts occurred, but public records show this is not true. Clearly, the board never fully  
5 informed the public of what it intended on December 9, 2020. Instead, FUSD acted piecemeal, as  
6 evidenced by its June 16, 2021 vote seeking to obtain \$456,000 to fund the Fresno Warrior change.  
7 This \$456,000 price tag should have been discussed on December 9, 2020. In *Carlson*, the statute of  
8 limitations did not prevent the board from being accountable. Therefore, FUSD's misleading actions  
9 should be treated the same.  
10

## 11 **VI. CONCLUSION**

12 FUSD does not deny it misled the public or violated the Brown Act. FUSD instead tries to  
13 escape responsibility during a global pandemic after misleading the public, because the very people  
14 that FUSD misled, allegedly responded a few days too late. This defense spits in the face of the  
15 intent of the Brown Act, which seeks to have public participation in shaping policy. Instead, FUSD  
16 is fighting tooth and nail to avoid public participation and has misrepresented costs, dates, and its  
17 actions. This sort of opaqueness in government should not be tolerated and a public discussion on  
18 this controversial issue should be held at FUSD to ensure a lively debate. The purpose of the Brown  
19 Act is to ensure transparency, not provide Government procedural excuses to hide in the shadows.  
20

21 For all the reasons above Respondent's demurrer should be overruled. However, if the  
22 demurrer is sustained it should be sustained with leave to amend.  
23

24 Executed this 28th day of June, 2021, in San Francisco, California.  
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28 Ryan C. Griffith, Esq.  
Attorney for Petitioner James Tuck