

Paul Nicholas Boylan, Esq.

**P.O. Box 719
Davis, CA 95617
Phone: 530 400 1653
Fax: 877 400 1693
Email: pnboylan@gmail.com**

January 3, 2021

Hon. Peter J. Siggins, Presiding Justice
Hon. Ioana Petrou, Associate Justice
Hon. Teri L. Jackson, Associate Justice
1st District Court of Appeal
350 McAllister Street
San Francisco, CA 94102

RE: *New Livable California et al. v. Association of Bay Area Governments*,
Case No. A159235

Request to Publish Opinion per Cal. Rules of Court, Rule 8.1120

Honorable Justices:

New Livable California and Community Venture Partners (“Appellants”) respectfully request, pursuant to California Rules of Court (“CRC”) Rule 8.1120, that this Court order its recent unpublished opinion in *New Livable California et al. v. Association of Bay Area Governments*, Case No. A159235 (the “Opinion”) be certified for publication in the Official Reports. A copy of the Opinion is attached as Exhibit A.

Summary of the Opinion:

The Opinion’s Analysis section addresses two primary issues. First, the trial court found that Appellants had not and could not allege facts demonstrating legally cognizable prejudice as a consequence of any alleged violation of section 54953(c)(2). This Court reversed, holding that there is no requirement that a Brown Act complaint affirmatively allege prejudice.

Second, the trial court found that Appellant’s Brown Act violation complaint is moot because there isn’t a live controversy between the parties. This Court reversed, holding (1)

California Court of Appeal

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the trial court improperly took judicial notice of an ABAG statement; and (2) there was insufficient evidence to support a finding of mootness.

Appellants' Interest:

Appellants share an interest in promoting and defending the principles of open government. As this case demonstrates, there are serious uncertainties about which agency acts render a Brown Act dispute moot and whether or not there is a requirement to plead and prove prejudice. These uncertainties are barriers to the public's ability to fully enjoying their rights to observe and participate in the operation of the public's business.

This Court's Opinion significantly resolves these uncertainties. However, unless the Opinion is published, it is not controlling case law that can be cited to guide trial courts. A published opinion would help avoid and prevent public agencies from "gaming" the Brown Act to promote secrecy and lack of transparency. Appellants are convinced that publication is necessary to refresh public agency memory as to what kind of actions resolve Brown Act disputes as a matter of law and which do not.

Reasons to Publish the Opinion:

As demonstrated below, the Opinion should be certified for publication in the Official Reports because the opinion satisfies six of the reasons described in CRC Rule 8.1105, subd. (c).

- *The Opinion applies an existing rule of law to a set of facts significantly different from those stated in published opinions.* (CRC Rule 8.1105, subd. (c)(2).)

The facts of this dispute, as summarized in the Opinion, are different from any appellate decision. The Opinion is the first – published or unpublished – that pertains to the Brown Act's mandate to report votes (Section 54953(c)(2)).¹ The Opinion should be certified for

¹ Government Code § 54953(c)(2)'s mandate to report out votes is preceded by and is corollary to Government Code § 54953(c)(1), prohibiting public agencies subject to the Brown Act taking "action by secret ballot," with the failure to report out being, essentially, a secret ballot. There are no published or unpublished opinions that mention, describe or discuss Government Code § 54953(c)(1).

publication because the Opinion applies existing rules of law pertaining to demurrers - including the rules pertaining to a trial court's judicial notice of evidence when adjudicating a demurrer - to a set of facts unique to reported and unreported case law.

- *The Opinion makes a significant contribution to legal literature by reviewing the judicial history of a statute.* (CRC Rule 8.1105, subd. (c)(7).)

The Opinion is the first appellate opinion – published or unpublished – to describe Section 54953(c)(2)'s legislative history. (*See* Opinion, fn. 2.) Doing so is a significant contribution to legal literature that justifies, if not requires, certification for publication in the Official Reports.

- *The Opinion addresses an apparent conflict in the law.* (CRC Rule 8.1105, subd. (c)(5).)

The Opinion addressed the apparent conflict between *Olson v. Hornbrook Community Services Dist.* (*Olson*) (2019) 33 Cal.App.5th 502 and *Galbiso v. Orosi Public Utility Dist.* (*Galbiso*) (2010) 182 Cal.App.4th 652, pertaining to whether or not a Brown Act enforcement complaint must allege prejudice.

Galbiso upheld a trial court's granting of a demurrer to a Brown Act enforcement complaint on the grounds that the complaint did not allege prejudice. However, nine years later, *Olson* held that there is no requirement for a Brown Act complaint to allege prejudice.

The Opinion addressed and resolved the conflict between *Olson* and *Galbiso* by distinguishing *Galbiso*.² Addressing this conflict satisfies CRC Rule 8.1105, subd. (c)(8) and should be certified for publication.

Unless otherwise indicated, all statutory references are to the Government Code.

² The Opinion does more than merely choose between *Olson* and *Galbiso*. The Opinion analogized to non-Brown Act case law discussing the requirement to plead/prove prejudice in complaints based in environmental statutes – *i.e.*, *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 887) – to further support this Court's conclusion that it is not necessary for Brown Act complainants to plead prejudice. No published opinion, including *Olson*, made this supporting analogy.

■ *The Opinion explains an existing rule of law.* (CRC Rule 8.1105, subd. (c)(3).)

The Opinion concisely and clearly explains a number of existing rules of law that can easily be misunderstood and/or misapplied. For example, for the first time in any appellate opinion, this Court’s Opinion explains Section 54953(c)(2)’s purpose and operation – *e.g.*, the meaning of the term “report.” (*See* Opinion, fn. 2.)

The Opinion explains that, when adjudicating a demurrer, a trial court cannot take judicial notice of the proper interpretation of a document submitted in support of the demurrer, and that even an inartful objection during the hearing on a demurrer is sufficient to effectively dispute the facts within/interpretation of an “official” record – *i.e.*, ABAG’s “public commitment.” This explanation is critical to assist trial courts adjudicating Brown Act disputes to avoid improperly granted demurrers based on contested interpretations of judicially noticed documents.³

The Opinion clarifies and reinforces what evidence does and does cure/correct a Brown Act violation or satisfy a Cease and Desist demand so as to render a Brown Act dispute moot.

³ The Opinion cites *Fremont Indemnity Co. v. Fremont General Corp.* (*Fremont*) (2007 2DCA) 148 Cal.App.4th 97, 114 -115 to support the proposition that a court cannot by means of judicial notice convert a demurrer into an incomplete evidentiary hearing (the “Fremont Rule”). The Fremont Rule is clearly the rule of this court, and has been applied by this Court once before in *Paez v. Seiu, Local 1021 (Paez)* (Jan. 15, 2009, No. A120676) ___ Cal.App.4th ___ [2009 Cal. App. Unpub. LEXIS 380, at *17].) But *Paez* is unpublished, and, consequently, apparently discounted by ABAG, and likely by other public agencies when they appear before this Court.

The Opinion cites to *Joslin v. H.A.S. Ins. Brokerage (Joslin)* (1986 4DCA) 184 Cal.App.3d 369, 374 to support the Court’s conclusion that a trial court cannot take judicial notice of the proper interpretation of a document submitted in support of the demurrer. However, the Opinion is the only appellate decision that has applied *Joslin* in the context of a Brown Act demurrer.

In order to encourage those practicing before this Court to consider *Fremont* and *Joslin* in order to assist public agency counsel to advise their clients within the First District, the Opinion must be published.

The Opinion explains that a Brown Act complainant does not have to allege prejudice to state a cause of action under Sections 54960 and 54960.1.

- *The Opinion advances a clarification of a provision of a statute.* (CRC Rule 8.1105, subd. (c)(4).)

The Opinion's citation to Section 54953(c)(2)'s legislative history clarifies the section's intent and further clarifies what "report" means as used in Section 54953(c)(2). These are powerful insights absent from any published opinion.

The Opinion clarifies that, based on that application of facts to this dispute, the allegations in Appellants' complaint were sufficient to allege a Brown Act enforcement cause of action based on an alleged violation of Section 54953(c)(2) – an important and useful insight absent from any published opinion.

- *The Opinion involves a legal issue of continuing public interest and likely to recur.* (CRC Rule 8.1105, subd. (c)(6).)

The public's right to rely on Section 54953(c)(2)'s mandate that votes be reported is a constitutionally protected right. (*See Cal. Const.*, art. I, § 3, subd. (a) - (b)(1), (2) and (7).) The Opinion allows a Brown Act enforcement action seeking to protect this right to be adjudicated. The potential denial of a constitutional right is a matter in which the public is always interested. (*Memphis Planned Parenthood, Inc. v. Sundquist* (6th Cir. 1999) 184 F.3d 600, 604; citing to *Planned Parenthood Asso. v. Cincinnati* (6th Cir. 1987) 822 F.2d 1390, 1400.)

This issue is likely to occur again because it has happened before. This dispute is the result of persistent agency game playing. It was ABAG's persistent attempts to obscure how its board members vote that motivated the Legislature to amend the Brown Act to include Section 54954(c)(2). (*See Opinion*, fn. 2.). Certifying the Opinion for publication will reinforce the Legislature's instructions and make it more likely ABAG will not repeat the same error and provide clear, concise instruction to other public agencies to do the same.

Conclusion:

Only one of CRC Rule 8.1105's criteria is enough to justify if not require publication. In this case, the Opinion satisfies six of these criteria.

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Publication will help avoiding future disputes and preventing repeated litigation of the identical issue. The Court's Opinion, if published, will afford substantial guidance. Publication will help citizens understand their rights and local agencies fulfill their obligations to the public, avoiding the need to seek a judicial remedy.

Finally – and perhaps most importantly - the Opinion reaffirms and applies the principles of law that favor public participation in local government and disapproves of procrustean statutory and case law interpretations that serve to limit rights guaranteed by the Brown Act.

No other appellate decision had analyzed or ruled upon the issues special to this case. For the foregoing reasons, the Applicants request the Court certify the Opinion for publication.

Sincerely,

PAUL NICHOLAS BOYLAN

A handwritten signature in black ink, appearing to read "Paul N. Boylan". The signature is fluid and cursive, with a large initial "P" and a stylized "N" and "B".

Paul Nicholas Boylan

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PROOF OF SERVICE

I, Paul Nicholas Boylan declare:

I am over 18 years of age. I am employed in Yolo County. My business address is POB 719, Davis CA. 95617. On January 3, 2021, I served a copy of a letter entitled:

New Livable California et al. v. Association of Bay Area Governments,
Case No. A159235;
Request to Publish Opinion per Cal. Rules of Court, Rule 8.1120

to each of the following persons below:

BY EMAIL OR ELECTRONIC DELIVERY:

David C. Casarrubias
Hanson Bridgett LLP
425 Market Street - 26th
Floor San Francisco, CA 94105

COURT CLERK
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

BY UNITED STATES MAIL: I placed the envelope for collection and mailing, following my ordinary business practices. I am readily familiar with the business practice for collecting and processing correspondence for mailing. On the next day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

San Francisco County Superior Court – Main
400 McAllister St,
San Francisco, CA 94102

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this proof of service was executed on January 3, 2021, in Davis, California.



Paul Nicholas Boylan

Filed 12/18/2020

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

NEW LIVABLE
CALIFORNIA, dba LIVABLE
CALIFORNIA, et al.,

Plaintiffs and Appellants,

v.

ASSOCIATION OF BAY
AREA GOVERNMENTS,

Defendant and
Respondent.

A159235

(City and County of San Francisco
Super. Ct. No. CPF516690)

Plaintiffs brought a complaint for declaratory and injunctive relief and a petition for writ of mandate (collectively, “pleading”) for an alleged violation of the vote reporting requirement of the Ralph M. Brown Act (“Brown Act” or “Act”; Govt. Code §§ 54950 et seq.¹) by the governing board of defendant Association of Bay Area Governments (ABAG). Defendant successfully demurred and a judgment of dismissal was entered. As the pleading contains

¹ All further statutory references are to the Government Code unless otherwise specified.

sufficient factual allegations to withstand demurrer, we reverse the judgment of dismissal and remand for further proceedings.

We dismiss as abandoned plaintiffs' appeal from a post-judgment order striking their request for costs as appellate " 'review is limited to issues which have been adequately raised and briefed.' " (*Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1519.)

FACTS

A. Background

Plaintiff New Livable California dba as Livable California ("Livable California") is a not for profit, public benefit corporation focused on land use, zoning, housing, and transportation issues; it is comprised of a statewide coalition of elected officials and community leaders. Plaintiff Community Venture Partners, Inc. ("Community Venture Partners") is a not for profit, public benefit corporation whose mission is to promote and defend the principles of open government.

Defendant ABAG is a joint power authority of nine San Francisco Bay Area counties - Alameda, Contra Costa, Marin, Napa, Sonoma, San Mateo, San Francisco, Santa Clara, and Solano - as well as the 101 cities located therein. (§ 66536.1, subd. (b).) ABAG's objectives include (1) increasing the housing supply according to the region's needs; (2) maintaining and improving existing housing to better fill the region's needs; and (3) expanding and conserving housing opportunities for lower income individuals. (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 376.) ABAG's governing Board of Directors ("Board"), comprised of county supervisors, mayors, and city councilmembers, is subject to the Brown Act.

Plaintiffs contend the Board violated the Brown Act's vote reporting requirement (§54953, subd. (c)(2)) ("§54953(c)(2)")² during the January 17-18, 2019 meeting³ convened to consider a motion to authorize the Board President to sign a regional housing and transportation development proposal known as the CASA Compact ("CASA Motion"). In relevant part, the Board:

(1) rejected a motion to postpone a vote ("Substitute Motion") on the CASA motion by "a show of hands," that was reported as a "voice vote" in the minutes of the meeting;

² Section 54953(c)(2) reads: "The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action." Section 54952.6 defines an "action taken" as "a collective decision made by a 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 a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance."

Subdivision (c)(2) of section 54953 was added by Senate Bill No. 751 (Stats. 2013, ch. 257) effective January 1, 2014. At the time the amendment was proposed, the Brown Act already provided that for meetings conducted by teleconferencing local agencies' legislative bodies were required to report the votes of individual officers (§54953, subd. (b)(2) [votes to be conducted by "rollcall"]). (Sen. Gov. & Fin. Comm., Analysis of Sen. Bill No. 751 (2013-2014 Reg. Sess.), May 1, 2013, at p. 1.) The amendment required local agencies' legislative bodies to report individual officials' votes cast during opening meetings, enacted in apparent response to concerns that "for local agencies with large legislative bodies, it can be difficult to determine who voted for or against a measure when actions are taken in the absence of either a roll call vote or a specific tally and report of the votes of each member of the board. (*Ibid.*) "For example, the minutes of a May 17, 2012 meeting of the Association of Bay Area Governments report that a motion received 27 ayes and 5 nays, without listing the votes of individual members." (*Id.* at pp. 1-2.)

³ The meeting was video recorded and there was a simultaneous webcast of the meeting which is officially published online.

(2) approved a motion to call the question (to close discussion on the CASA Motion) (“Motion to Call the Question”) by “a show of hands,” that was not reported in the minutes;

(3) adopted an amended CASA motion (“Amended CASA Motion”) by a “roll call vote,” that was reported in the minutes as a “vote” that listed the name and vote (for or against) of each member present with no abstentions and the names of absent members.⁴

B. Trial Court Proceedings

On May 31, 2019, plaintiffs filed a combined complaint and petition for writ of mandate alleging one cause of action based on the overarching claim that the Board violated section 54953(c)(2) in reporting the votes on the motions concerning the CASA Compact. The pleading sought various declaratory, injunctive, and writ relief allowed under sections 54960 and 54960.1.

The pleading alleged, in pertinent part, that the vote procedures for the Substitute Motion and the Motion to Call the Question were not in compliance or substantial compliance with section 54953(c)(2) because there was neither a verbal nor written announcement “publicly” reporting the vote or abstention of each individual member. Plaintiffs further alleged the improper vote reporting of the Substitute Motion rendered the later vote on the Amended CASA Motion null and void because if the Substitute Motion

⁴ On June 16, 2020, plaintiffs filed a request for judicial notice of the minutes of ABAG’s January 17, 2019 executive meeting, the agenda for ABAG’s March 21, 2019 executive meeting, the agenda for ABAG’s May 16, 2019 executive meeting held at 5:30 p.m., the agenda for ABAG’s May 16, 2019 executive meeting held at 7:00 p.m., and an excerpt from “Robert’s Rules of Order Newly Revised (11th ed. 2011) p. 202.” In the absence of any opposition by ABAG, we grant plaintiffs’ request for judicial notice and have considered the documents only to the extent necessary to resolve this appeal.

had been successful no vote would have been held on the Amended CASA motion.

Plaintiffs claimed prejudice by the Board’s “failure to publicly report the votes or abstentions of each member present for the [Substitute Motion] and [its] subsequent adoption of the [Amended CASA Motion] that was supportive of the CASA Compact”. According to plaintiffs, the “anonymous” and “secretive” voting undermined their ability and that of the public to monitor how members voted on “an important, controversial issue concerning regional housing policy”. Livable California further alleged prejudice because its leadership preferred the Substitute Motion and opposed the Amended CASA Motion, but their representatives were unable to timely object to the vote taken on the Substitute Motion because the public comment period had ended. If the Substitute Motion had passed, then Livable California would have used the additional time to organize more opposition to the CASA Compact. Community Venture Partners alleged prejudice because ABAG’s conduct “concealed information about regional planning and growth and reduced . . . [the] ability to hold elected officials accountable for their actions.”

The trial court sustained ABAG’s demurrer without leave to amend on the ground that plaintiff had not and could not allege facts sufficient to support any relief for a Brown Act violation.

DISCUSSION

A. Legal Framework

“In our de novo review of an order sustaining a demurrer, we assume the truth of all facts properly pleaded . . . or reasonably inferred from the pleading, but not mere contentions, deductions, or conclusions of law. [Citation.]” (*Intengan v. BAC Home Loans Servicing LP* (2013) 214 Cal.App.4th 1047, 1052 (*Intengan*)). Where the demurrer is based on the

pleading not stating “ ‘facts sufficient to constitute a cause of action, the rule is that if, upon a consideration of all the facts stated, it appears that the plaintiff is entitled to any relief at the hands of the court against the defendants, the complaint will be held good, although the facts may not be clearly stated or may be intermingled with a statement of other facts irrelevant to the cause of action shown, or although the plaintiff may demand relief to which he is not entitled under the facts alleged.’ [Citation.] In other words, ‘plaintiff need only plead facts showing that he may be entitled to some relief (citation).’ [Citation.] Furthermore, we are not concerned with plaintiff’s possible inability or difficulty in proving the allegations of the complaint. [Citation.]” (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572.)

B. Analysis

The pleading states causes of action under sections 54960 and 54960.1 for declaratory and injunctive relief and mandamus based on allegations that the Board violated the Brown Act (§ 54953(c)(2)) by the procedure it used to report the vote taken on the Substitute Motion. The trial court found the pleading was deficient for two reasons, both of which we find unavailing.

One, the trial court found no cause of action would lie based on the Board’s report of the vote taken on the Substitute Motion because plaintiffs had not and could not allege facts demonstrating legally cognizable prejudice as a consequence of any alleged violation of section 54953(c)(2). However, a demurrer “tests only whether, as a matter of law, the properly pleaded facts in the complaint state a cause of action *under any legal theory.*” (*Olson v. Hornbrook Community Services Dist.* (2019) 33 Cal.App.5th 502, 522 (*Olson*); italics added.) Thus, the pleading “satisfies the purpose of our inquiry on appeal following a demurrer” because a plaintiff does not have to allege

prejudice to state causes of action under sections 54960 and 54960.1 for declaratory and injunctive relief and mandamus. (*Olson, supra*, at p. 522 [prejudice allegation is not necessary to state a cause of action under section 54960.1]; see also *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 887-888 [plaintiff seeking declaration of proper interpretation of environmental statutes “did not have to prove prejudice, substantial injury, and probability of a different result” before trial court could grant declaratory relief].) ABAG’s citation to *Galbiso v. Orosi Public Utility Dist.* (2010) 182 Cal.App.4th 652 (*Galbiso*), on which the trial court also relied, is not persuasive as, unlike in *Galbiso*, plaintiffs’ pleading contains factual allegations showing how the Board’s reporting of the vote on the Substitute Motion violated section 54953(c)(2). Because we are concerned only with a demurrer, we do not address and express no opinion on the parties’ contentions as to whether plaintiffs will be required to show prejudice before the trial court can declare any Board action null and void under section 54960.1.

Two, the trial court found no cause of action would lie because there was no live controversy between the parties. (*TransparentGov Novato v. City of Novato* (2019) 34 Cal.App.5th 140, 150 (*TransparentGov Novato*) [pleading had to allege an “actual, non-moot controversy” in the context of the request for declaratory relief and mandamus].) The court reached this conclusion based on the judicially noticed (Code Civ. Proc., § 452, subd. (c)) “transcribed portion” of the May 16, 2019 meeting during which the ABAG Executive Board Vice-President stated:

“First I want to reiterate the process for voting on actions at our Executive Board meetings where support for, or against, a given action is less than unanimous. Under those circumstances, the Clerk will conduct a roll-call vote to report the vote or abstention

of each member present, and to determine whether there are a sufficient number of votes to approve an action. So, I just want to let everyone know, I will ask to see if there is unanimous consent to a particular item; if not, we will proceed to roll-call vote on those items.”⁵

Without allowing the parties an opportunity to present extrinsic evidence regarding the meaning of the public announcement, the trial court ruled the lawsuit moot as the announcement “neutralizes [the parties’] controversy moving forward and renders the request for mandate and declaratory relief superfluous.” This it could not do. “A court ruling on a demurrer . . . cannot take judicial notice of the proper interpretation of a document submitted in support of the demurrer. [(*StorMedia, Inc. v. Superior Court* (1999) 20 Cal.4th 449, 457, fn. 9; *Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374.)] In short, a court cannot by means of judicial notice convert a demurrer into an incomplete evidentiary hearing in which the demurring party can present documentary evidence and the opposing party is bound by what that evidence appears to show.” (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 114-115; see *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 605 “[t]he hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take

⁵ In opposing the demurrer plaintiffs objected to ABAG's request for judicial notice of the transcribed portion of the May 16, 2019 meeting. Even though plaintiffs’ written objection did not use the phrase “inadmissible hearsay,” it was sufficiently specific to preserve the issue for appellate review. On September 14, 2020 ABAG filed in this court an identical request for judicial notice of the transcribed portion of the May 16, 2019 meeting. Although the request was unnecessary because the transcription was already part of the record on appeal, we granted the request for judicial notice on September 16, 2020.

judicial notice of . . . material which was filed on behalf of the adverse party and which purports to contradict the allegations and contentions of the plaintiff”].)

We reject ABAG’s argument that we can now determine, as a matter of law, that the case is moot based on its expressed concession in its response to plaintiffs’ cease and desist letter (attached to complaint) that during the January 2019 meeting the reporting of votes on procedural motions was not Brown Act compliant, and its later public announcement “committing to take roll-call votes for all non-unanimous votes in the future.” We see nothing in ABAG’s cease and desist letter, even coupled with the public announcement, that would allow us to determine as a matter of law that there is no longer an actual controversy between the parties rendering the action moot.

The case law cited by ABAG concerning consideration of matters judicially noticed on demurrers is not to the contrary, and does not support an affirmance.⁶ Nor is an affirmance supported by the cases cited by the trial court and ABAG in which the appellate courts either set aside a grant, or upheld the denial, of mandamus or declaratory relief on mootness grounds after a hearing or trial where the parties were permitted to submit evidence on the mootness issue. (See *TransparentGov Novato*, *supra*, 34 Cal.App.5th

⁶ For example, in those relevant cases considering demurrers, cited by ABAG, either there was no objection to the request for judicial notice of the document (*Intengan*, *supra*, 214 Cal.App.4th at p. 1055), or the appellate courts recognized that “[w]hen judicial notice is taken of a document . . . the truthfulness and proper interpretation of the document are disputable.” (*Trinity Park, L.P. v. City of Sunnyvale* (2011) 193 Cal.App.4th 1014, 1027], disapproved on other grounds in *Sterling Park, L.P. v. City of Palo Alto* (2013) 57 Cal.4th 1193, 1210; *Childs v. State of California* (1983) 144 Cal.App.3d 155, 162-163 [even if declaration describing mailing practices of the State Board of Control was an “official act” judicial notice could not be taken of the truth of the matter at issue].)

at pp. 146, 151, 152; *California High-Speed Rail Authority v. Superior Court* (2014) 228 Cal.App.4th 676, 693; *County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 590-591.)

In light of the above, we conclude that the demurrer should have been overruled as plaintiffs' allegations directed at the reporting of the vote on the Substitute Motion state causes of action under sections 54960 and 54960.1 for declaratory and injunctive relief and mandamus. We need not and do not address plaintiffs' contentions that the pleading currently alleges or can be amended to state causes of actions under section 54960 and 54960.1 for declaratory and injunctive relief and mandamus based on challenges to the reporting of the votes taken on the Motion to Call the Question or the Amended CASA Motion.

III. Conclusion

The pleading alleges facts stating causes of action under sections 54960 and 54960.1 sufficient to withstand demurrer. Accordingly, we reverse the judgment of dismissal and remand the matter for further proceedings. Given the procedural posture of the case, our opinion should not be read as deciding any other issues, including whether plaintiffs will be able to demonstrate their entitlement to relief in further proceedings.⁷

DISPOSITION

Plaintiffs New Livable California dba Livable California and Community Venture Partners, Inc.'s appeal from a post-judgment order striking their request for costs is dismissed.

The judgment of dismissal is reversed. On remand the trial court shall vacate its order sustaining defendant Association of Bay Area Governments'

⁷ We deny ABAG's motion to strike portions of the reply brief or, in the alternative, for leave to file a sur-reply brief as unnecessary to the resolution of this appeal.

demurrer without leave to amend and enter a new order overruling the demurrer. Plaintiffs New Livable California dba Livable California and Community Venture Partners, Inc. are awarded costs on appeal.

Petrou, J.

WE CONCUR:

Siggins, P.J.

Jackson, J.