


**FILE**  
San Francisco County Superior Court

FEB 17 2015

CLERK OF THE COURT  
BY:   
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

PEOPLE OF THE STATE OF CALIFORNIA  
ex rel. DENNIS HERRERA, SAN  
FRANCISCO CITY ATTORNEY,

Plaintiff,

vs.

ACCREDITING COMMISSION FOR  
COMMUNITY AND JUNIOR COLLEGES,  
and DOES 1-50, inclusive,

Defendant.

Case No. CGC-13-533693

ORDER ON REMAINING POST  
TRIAL ISSUES

On this date I will file my statement of decision. A few post trial issues not addressed there are treated in this order.

**Motion to Strike Ex. B.**

ACCJC asks me to strike Ex. B which accompanied plaintiff's response to my proposed statement of decision. That exhibit is a letter which includes the thoughts of the Chancellor of City College as to injunctive relief and related matters. It is not part of the record and I may not consider it. The motion to strike is granted, and I will ignore arguments based on it.

**Application for Leave to File Amicus**

The American Federation of Teachers, Local 2121 has requested leave to file an amicus brief. Leave is denied. Among other reasons, at this stage of the proceedings the court is concerned with the

congruence of the factual findings with the record and other matters generally at issue under CRC 3.1590, for which the parties are far better suited than non-parties. Further, the plaintiff here purports to represent the interests of affected entities and people, such as faculty at the College, and there is no evident interest of purported amicus separate from those represented by the plaintiff. Nor do I find the parties were unable to raise pertinent issues. Nor may I turn to amicus for information outside the record. Accordingly the brief is not useful. Compare, *Cnty. Ass'n for Restoration of Env't (CARE) v. DeRuyter Bros. Dairy*, 54 F.Supp.2d 974, 975 (E.D. Wash. 1999); Fed.R.App.P. 29 Advisory Committee Notes, quoting Sup.Ct.R. 37.1 (amicus brief “should treat only matter not adequately addressed by a party”).

### **Evidentiary Objections**

The rulings here track the “Parties’ Joint Stipulation re: Admission of Exhibits” dated December 4, 2014 and resolve the evidentiary disputes presented there.

#### *ACCJC’s Objections*

Many of the ACCJC’s objections impliedly invoke E.C. § 352, in that they suggest the probative value of an item is “outweighed by confusion.” In each case, there is at least a modicum of relevance. It is generally pointless to object in a bench trial when the central asserted problem is prejudice under Evid. C. § 352, because judges usually can be relied on avoid the prejudice, and, more practically, because the same judge will be viewing the evidence to evaluate it under the § 352 analysis anyway.<sup>1</sup> Objections to the following exhibits are accordingly overruled: 7, 10, 11, 15, 16, 18, 21, 22, 34, 229, 230, 231, 232, 233, 234, 235, 236, 307.

As to other objections, plaintiff only sought to use information that was provided in e.g., discovery responses despite the objections, in which case the objections are moot. Objections to these are moot: 211, 212, 214, 222, 227.

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<sup>1</sup> For similar reasons § 352 objections should generally not be made in connection with motions for summary judgment. *People ex rel. City of Dana Point v. Holistic Health*, 213 Cal.App.4th 1016, 1029 (2013).

*People's Objections*

45, Overruled. Admissible as non-hearsay notice (notice).

60, Overruled, notice (receipt of self-study report).

62, 83, Overruled.

78, 85, 87, Overruled , notice.

86, 137, Sustained. It is not clear what this was notice of, as suggested by ACCJC. It is not the subject of a formal request for judicial notice. (Subsequent ACCJC suggestions of judicial notice are not further mentioned here but all are denied as not having been made in any formal way which would allow the plaintiff to fairly respond).

91, Overruled, notice to College of issues mentioned.

92, Overruled, notice to College of issues mentioned in first paragraph.

95, Sustained. This was sought to be used for the truth of the statements (see paragraphs commencing "Over the coming days..." and "The anticipated...").

96, 102, 134, 141, Sustained. It is not clear what this was notice of, as suggested by ACCJC.

97, 98, 146, Overruled, notice to College of issues mentioned.

99, Overruled, notice to College of issues mentioned in p.2 top paragraph.

117, Sustained. This contains undescribed handwriting and there is insufficient foundation to determine this was notice to anyone in particular.

150, Overruled as to notice of issues mentioned in site evaluation team reports.

186, Sustained. If, as ACCJC suggests, these items are only offered to show materials relied on by expert they need not be admissible in any event.

204, 205, Overruled.

238, Sustained/moot: item not presented as admissible evidence.

240, Sustained. ACCJC has not indicated which parts of this exceedingly long document might be


useful including for the purposes to deferring to agency decisions.

301, 302, 303, 304, 305, 306, Sustained. These items are offered post trial without the consent of the other party and not in time to be taken account of in post-trial briefing.

**ACCJC request for further hearing**

In ACCJC's response to the proposed statement of decision it asked for a further hearing if I were "inclined" to disagree with any of its objections. After careful review of the objections I conclude no further hearing would be useful and the request is denied.

Dated: February 17, 2015

  
Curtis E.A. Karnow  
Judge Of The Superior Court

**CERTIFICATE OF ELECTRONIC SERVICE**  
(CCP 1010.6(6) & CRC 2.260(g))

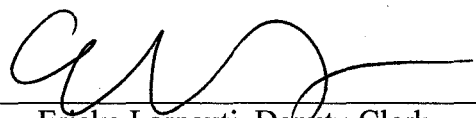
I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On February 17, 2015, I electronically served the attached ORDER ON REMAINING POST TRIAL ISSUES via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: February 17, 2015

T. Michael Yuen, Clerk

By: \_\_\_\_\_

  
Ericka Larnauti, Deputy Clerk