

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
191 N. First Street  
San Jose, CA 95113-1090

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Burke, Williams & Sorensen

TO: John R. Yeh  
Burke Williams & Sorensen LLP  
2440 West El Camino Real Suite 620  
Mountain View, CA 94040-1499

RE: Bullis Charter School vs Los Altos School District, et al  
Case Nbr: 1-12-CV-232187

PROOF OF SERVICE

Order Re: Motion for Judgment on the Pledings

was delivered to the parties listed below in the above entitled case as set forth in the sworn declaration below.

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Parties/Attorneys of Record:

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If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408)882-2700, or use the Court's TDD line, (408)882-2690 or the Voice/TDD California Relay Service, (800)735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 3-18-13. DAVID H. YAMASAKI, Chief Executive Officer/Clerk by Joseph E Paura, Deputy

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FILED

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DAVID H. YAMASAKI  
Chief Executive Officer/District  
Superior Court of CA County of Santa Clara  
BY J. Paura DEPUTY

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

BULLIS CHARTER SCHOOL,

Petitioner,

vs.

LOS ALTOS SCHOOL DISTRICT; BOARD OF  
TRUSTEES OF THE LOS ALTOS SCHOOL  
DISTRICT; JEFFREY BAIER, in his capacity as  
District Superintendent,

Respondents.

AND RELATED CROSS-ACTION.

Case No. 1-12-CV-232187

ORDER RE: MOTION FOR JUDGMENT  
ON THE PLEADINGS

The motion for judgment on the pleadings by petitioner and cross-defendant Bullis Charter School ("Bullis") came on for hearing before the Honorable Carol Overton on March 5, 2013, at 9:00 a.m. in Department 5. The matter having been submitted, the Court orders as follows:

Bullis has filed a motion for judgment on the pleadings regarding the first and third causes of action in the First Amended Cross-Complaint ("FACC") filed by respondents and

1 defendants Los Altos School District, Board of Trustees of the Los Altos School District, and  
2 Jeffrey Baier (collectively, "LASD").

3 Bullis requests that the Court take judicial notice of a number of documents. Although a  
4 court may judicially notice a variety of matters, only relevant material may be noticed. (*Mangini*  
5 *v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal. 4th 1057, 1063, overruled on other grounds.)  
6 Judicial notice is always confined to those matters which are relevant to the issue at hand. (*Ibid.*)  
7 None of the documents for which Bullis requests judicial notice are relevant to the instant motion  
8 for judgment on the pleadings. Accordingly, Bullis's request for judicial notice is DENIED.

9 Bullis's motion is made on the grounds that the court has no jurisdiction over the subject  
10 of the first and third causes of action. (Code Civ. Proc, § 438, subd. (c)(1)(B)(i).) Bullis argues  
11 that LASD has failed to exhaust administrative remedies. Bullis contends that the Legislature  
12 and State Board of Education have drafted detailed statutes and regulations that provide the  
13 Santa Clara County Office of Education (the "County"), as the chartering agency, with the  
14 authority to approve of Bullis's charter, monitor Bullis's ongoing operation, review its  
15 applications for renewal of its charter, and adjudicate any alleged violations.

16 In response, LASD argues that Bullis's motion is an improper motion for reconsideration  
17 because Bullis already brought an unsuccessful anti-SLAPP motion that sought the same result  
18 as the instant motion – dismissal – and an unsuccessful demurrer on the same grounds as the  
19 instant motion.

20 Code of Civil Procedure section 1008 generally requires that any motion for  
21 reconsideration be based "upon new or different facts, circumstances, or law . . . ." LASD  
22 provides no authority for the proposition that a motion for judgment on the pleadings can be  
23 considered a motion for reconsideration of a ruling on an anti-SLAPP motion. Each of these  
24 motions has a very different procedural posture.

25 With regard to a motion for judgment on the pleadings following a ruling on a demurrer,  
26 Code of Civil Procedure section 438, subd. (g)(2) provides that a motion for judgment on the  
27 pleadings may be made if the moving party did not demur on the same grounds as the basis for  
28 the motion for judgment on the pleadings. Bullis's prior demurrer was made on the grounds that

1 the FACC fails to state facts sufficient to constitute a cause of action (Code Civ. Proc., § 430.10,  
2 subd. (e)). Since the instant motion is made on the grounds that the Court lacks jurisdiction  
3 (Code Civ. Proc, § 438, subd. (c)(1)(B)(i)), it is not made on the same grounds as the prior  
4 demurrer and is specifically authorized by Code of Civil Procedure section 438, subd. (g)(2).

5 Bullis argues that this court lacks subject matter jurisdiction because LASD has not  
6 exhausted its administrative remedies with the County. As explained by one court:

7  
8 As a general rule where an administrative remedy is provided by statute, relief  
9 must be sought from the administrative body and this remedy exhausted before  
10 the courts will act. When the issue is properly pursued, jurisdiction of the court to  
11 entertain an action for judicial relief is conditional upon a completion of the  
12 administrative procedure. The rule applies as well when the administrative  
13 procedure is provided by regulation, resolution or ordinance. The rationale for the  
14 rule has been explained as follows: The administrative claim or “cause of action”  
15 is within the special jurisdiction of the administrative agency, and the courts may  
16 act only to review the final administrative determination. Allowing a suit prior to  
17 such a final determination would constitute interference with the subject matter  
18 jurisdiction of another tribunal. Accordingly, the exhaustion of an administrative  
19 remedy is a jurisdictional element in California.

20 (*Green v. City of Oceanside* (1987) 194 Cal. App. 3d 212, 219-220, internal citations, ellipses,  
21 and quotation marks omitted.)

22 As further explained by the *Green* court, “[t]he association of the exhaustion doctrine  
23 with the ‘jurisdiction’ of the superior court has led to some confusion.” (*Green v. City of*  
24 *Oceanside, supra*, 194 Cal. App. 3d at p. 220.) “[T]he exhaustion doctrine does *not* implicate  
25 subject matter jurisdiction but rather is a ‘procedural prerequisite’ originally devised for  
26 convenience and efficiency and now followed under the doctrine of *stare decisis* . . . .” (*Id.* at p.  
27 222, emphasis in original, quotation marks omitted; see also *Mokler v. County of Orange* (2007)  
28 157 Cal. App. 4th 121, 134-135; *Cummings v. Stanley* (2009) 177 Cal. App. 4th 493, 506 [“We  
choose to follow the influential trend of recent authority that exhaustion does not implicate  
subject matter jurisdiction . . . .”].) “It is ‘jurisdictional’ only in the sense that a court’s failure to  
apply the rule in a situation where the issue has been properly raised can be corrected by the


1 issuance of a writ of prohibition.” (*Green v. City of Oceanside, supra*, 194 Cal. App. 3d at p.  
2 222.)

3 Since Bullis moved for judgment on the pleadings solely on the grounds that the court  
4 lacks subject matter jurisdiction, and exhaustion of administrative remedies does not implicate  
5 subject matter jurisdiction, Bullis’s motion must be DENIED.

6 Even if Bullis had moved for judgment on the pleadings on grounds that did implicate  
7 exhaustion of administrative remedies, however, the motion would still be denied. Bullis has not  
8 shown that there is any administrative remedy that applies to the instant circumstances. In the  
9 first and third causes of action, which request declaratory relief, LASD seeks guidance as to its  
10 own duties under the law with regard to its obligation to share its facilities fairly. Such a request  
11 calls on the court to interpret the law as it relates to LASD, not to determine whether Bullis has  
12 violated its charter.

13 LASD’s request for an OSC why Bullis should not be sanctioned is DENIED.  
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17 Dated: 3 - 18 - 13

  
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Hon. Carol Overton  
Judge of the Superior Court