

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SYNERGY PROJECT MANAGEMENT,
INC.,

Plaintiff,

v.

CITY AND COUNTY OF SAN
FRANCISCO, et al.,

Defendants.

Case No. 17-cv-06763-JST

**ORDER DENYING SYNERGY’S
MOTION FOR ADMINISTRATIVE
RELIEF**

Re: ECF No. 40

Plaintiff has filed a motion for leave to submit material post-briefing evidence, for leave to file a sur-reply, and, in the alternative, for leave to amend. ECF No. 40. The purpose of the motion is to place before the Court, one way or another, Plaintiff’s newly filed Government Claims Act claim against Defendants. Id. at 2. Defendants’ motion to dismiss, which is based in part on Plaintiff’s failure to satisfy the Government Claims Act, is currently pending before the Court. ECF No. 8. Plaintiff filed both the present motion and its Government Claims Act claim well after Defendants filed their motion to dismiss. Id.

The Court previously construed the present motion as an administrative motion under Local Rule 7-11, and ordered Defendants to file a response. ECF No. 42. Defendants oppose the motion on the ground that the Court may not consider new evidence in a pending motion to dismiss. ECF No. 43 (citing Harris v. Cty. of Orange, 682 F.3d 1126 (9th Cir. 2012)).

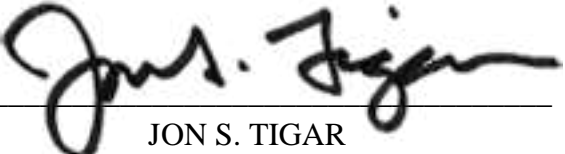
The motion is denied. The Court will not consider evidence of Plaintiff’s newly filed Government Claims Act claim in the pending motion to dismiss. See Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010) (“Courts may take judicial notice . . . to indicate what was in the public realm at the time . . .”) (citing Heliotrope Gen. Inc.

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v. Ford Motor Co., 189 F.3d 971, 981 n.118 (9th Cir. 1999)). The Court will consider whether and to what extent Plaintiff may amend its claims when it rules on Defendants' motion to dismiss. Fed. R. Civ. P. 15(a).

IT IS SO ORDERED.

Dated: April 25, 2018



JON S. TIGAR
United States District Judge