

1 three issues: (1) whether Plaintiffs' claim for damages in connection with a petition for writ of
2 mandate remains viable even though the equitable aspect of the mandamus claim is moot, (2)
3 whether Plaintiffs' evidence is sufficient to show that Defendants' actions were arbitrary and
4 capricious, and (3) whether Plaintiffs' constitutional rights were violated at the time of the initial
5 recordation of the notice of violation. The order is clarified below. Leave to file a motion for
6 reconsideration will be granted in part and denied in part.

7 At the hearing on Defendants' motion for summary judgment, while conceding that the
8 equitable aspects of their mandamus claim are moot, Plaintiffs contended that their claim for
9 damages in connection with the mandamus claim remains viable. Plaintiffs directed the Court's
10 attention to *Poschman v. Dumke*, 31 Cal. Appl. 3d 932, 943-44 (1973), *overruled on other*
11 *grounds by Armistead v. State Personnel Board*, 22 Cal. 3d 198, 204 n.3 (Cal. 1978), in which
12 the appellant claimed that he wrongfully had been denied tenure. Although the plaintiff
13 eventually was granted tenure, the court concluded that "the grant of tenure some 20 months
14 after it should have been granted does not cure loss of additional salary, consideration for
15 promotion, and service benefits that depend upon length of tenure and will be operative
16 throughout appellant's academic career. Appellant's claim for damages in that regard is not
17 moot." At the same hearing, this Court stated that while "the mandamus claims are moot," this
18 "[does not] necessarily dispose[] of Plaintiffs' entitlement to fees and damages." (Tr. 3:10-12.)
19 The Court hereby clarifies its order of May 4, 2010 and notes that Plaintiffs claim for damages
20 in connection with their mandamus claim is not moot. Accordingly, reconsideration of this
21 issue is unnecessary.

22 Plaintiffs' motion for leave otherwise will be granted. Defendants' opposition, which
23 shall not exceed fifteen (15) pages in length, shall be filed on or before September 8, 2010.
24 Plaintiffs' may file a reply on or before September 15, 2010. The Court will notify counsel if it
25 wishes to hear oral argument.
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1 **IT IS SO ORDERED**

2 DATED: 9/1/10

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4 JEREMY FOCHE
5 United States District Judge

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