

**DEPT TWENTY-TWO - JUDGE MICHAEL BYRNE
TENTATIVE RULINGS SCHEDULED FOR
MONDAY, DECEMBER 20, 2010**

**TOLER v. PAULSON
Case No. FCS036461**

Demurrer, Motion to Strike

TENTATIVE RULING

Defendants' unopposed demurrer is sustained without leave to amend. The Court takes judicial notice of Exhibit A of Defendants' demurrer. This document indicates that on September 3, 2009, the Solano County Board of Supervisors (the Board) made a decision to indemnify Defendants with regard to the punitive damages judgment against them pursuant to Government Code § 825.

In his complaint, Plaintiff stated that he was bringing this suit under Code of Civil Procedure (CCP) § 526a and "on behalf of the tax payers of Solano County" to challenge the county's decision to pay for Defendants' punitive damages. While Plaintiff labels his causes of action as breach of contract, breach of implied contract, and breach of fiduciary duty, Plaintiff is clearly challenging the county's decision to indemnify Defendants under CCP § 526a. (*Embarcadero Mun. Improvement Dist. v. County of Santa Barbara* (2001) 88 Cal.App.4th 781, 789.)

As a claim that the Board's expenditure of funds was illegal under CCP § 526a, the sixty day statute of limitations contained in CCP § 860 is applicable. (See, e.g., *McLeod v. Vista Unified School Dist.* (2008) 158 Cal.App.4th 1156; *Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835.) CCP §§ 860 and 863 require that suits filed by interested individuals to determine the validity of a public agency's actions must be filed within sixty days of the agency's decision. The county decided to indemnify Defendants on September 3, 2009, thus the suit must have been brought by November 2, 2009. Plaintiff did not file his complaint until August 27, 2010, well after this limitations period had expired.