SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

SUCCESSOR AGENCY TO THE FORMER WEST COVINA COMMUNITY DEVELOPMENT COMMISSION, a California successor agency, and CITY OF WEST COVINA, a California municipal corporation,

Plaintiffs and Petitioners,

v.

ANA J. MATOSANTOS, in her official capacity as Director of the State of California Department of Finance, et al.,

Defendants and Respondents.

COUNTY OF LOS ANGELES, et al.,

Real Parties in Interest.

Case No. 34-2013-80001479-CU-WM-GDS

RULING ON SUBMITTED MATTER: PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. Introduction and Summary of Ruling

The long and complicated process of winding down the affairs of redevelopment agencies continues. This case presents the issue of whether certain payments related to agreements between a city and its former redevelopment agency should be recognized as enforceable obligations under the

redevelopment dissolution laws.[1]

Petitioners in this case are the City of West Covina ("City") and the Successor Agency to the former West Covina Community Development Commission (the former redevelopment agency). The petition names several respondents: the Department of Finance ("DOF"); the State Controller; the Los Angeles County Auditor-Controller; and the West Covina Oversight Board. DOF opposes the petition, while the other respondents have filed no substantive opposition.[2] The petitioner also names several local taxing entities, including the County of Los Angeles, as real parties in interest. None of the real parties in interest have filed any substantive opposition to the petition.

The Court heard oral argument in this matter on December 6, 2013, without previously issuing a tentative ruling. At the close of the hearing, the Court took the matter under submission for issuance of a written ruling.

Having considered the oral and written arguments submitted by the parties, as well as the documentary evidence, the Court now issues its final ruling. The Court concludes that DOF correctly determined that the agreements and payments at issue in this case were not for "enforceable obligations" as defined in the redevelopment dissolution laws. The Court accordingly denies petitioners' requests for relief challenging those determinations. The Court does conclude, however, that the sales and use tax offset provisions of the redevelopment dissolution laws are unconstitutional, and grants petitioner's requests for relief to the limited extent of directing DOF not to utilize, or threaten to utilize, those provisions against petitioners in this case.

II. Standard of Review

Petitioners seek a writ of mandate pursuant to Code of Civil Procedure section 1085 to review administrative orders and determinations of respondent DOF, described in detail below, under the redevelopment dissolution laws. In ordinary mandamus actions the Court applies an abuse of discretion

[1] The redevelopment dissolution laws are codified in the Health and Safety Code. Thus, all statutory references are to that Code unless otherwise stated.

[2] The State Controller has filed an Answer stating that he takes no position on the claims raised in this action regarding petitioners' claims for relief, and has not filed a brief in opposition to the petition.

standard, reviewing the challenged administrative decision to determine if it was arbitrary, capricious, or entirely lacking in evidentiary support, or whether the agency failed to follow the procedure and give the notices the law requires. (*Shelden v. Marin County Employees' Retirement Association.* (2010) 189 Cal.App.4th 458, 463; see also, *Ridgecrest Charter School v. Sierra Sands Unified School District* (2005) 130 Cal.App.4th 986, 1003.)

The Court's review necessarily extends to the question of whether the respondents properly applied the law. Issues involving the agency's interpretation of statutes raise questions of law, upon which the Court exercises its independent judgment. (*California Correctional Peace Officers' Association. v. State of California* (2010) 181 Cal.App.4th 1454, 1460.)

Under well-established principles of law, there is a presumption that the agency's action was valid, and petitioners have the burden of demonstrating that it was not. (See, e.g., *MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal. App. 4th 359, 368.)

In this case, because declaratory and injunctive relief are essentially ancillary remedies to issuance of a writ of mandate, the standard of review to be applied by the Court is identical.

This proceeding arises out of an administrative determination that did not involve an evidentiary hearing or other formal fact-finding procedure. The Court therefore must find the relevant facts based on the evidence submitted by the parties. Petitioners have lodged an administrative record consisting of relevant documents, and also have filed a request for judicial notice and three declarations.[3] Respondents also filed a request for judicial notice in opposition to the petition. No objections have been made to these two requests for judicial notice. The requests are granted.[4]

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[3] The administrative record consists of two volumes of documents, with tab numbers 1-91 and consecutive page numbers. In this ruling, references to the administrative record will be in the format A.R.:Volume/Tab/Page (e.g., A.R., 1/1/001.)

[4] On January 29, 2014, after the Court had taken the case under submission, respondents filed a Supplemental Request for Judicial Notice of the ruling issued by Judge Timothy M. Frawley on January 23, 2014 in *City of Watsonville, et al., v. California Department of Finance, et al.*, Case No. 34-2013-80001523. Petitioners object to the request on the ground that it was untimely and was not filed with leave of court. The objection is overruled. Given the number of redevelopment dissolution cases before the writ of mandate departments of this Court, and the existence of similar issues in many of these cases, each department generally takes notice of rulings issued by other departments as provided by Evidence Code section 452(d)(1). The Court notes, however, that decisions of other departments are not binding and are not treated as such.

Because this case involves several separate agreements and two separate administrative actions, the Court will set forth its determination of the relevant facts for each of those agreements and administrative actions, based on the preponderance of the evidence, under separate headings below.

III. Facts

A. 1972 Funding Agreement / 1992 Cooperation and Financing Agreement

On August 9, 1971, the West Covina City Council enacted Ordinance No. 1173, in which the City Council declared itself to be the Redevelopment Agency to function in the City of West Covina.[5]

On the same day that it created the Agency, the City Council adopted Resolution No. 4424, which created a special fund in the City's Treasury to be known as the "Community Redevelopment Agency Administrative Fund". The Resolution provided that the City could, by resolution, appropriate money to the Fund as it deemed necessary for the administrative expenses and overhead of the Agency.[6]

On February 28, 1972, the City and the Agency entered into a contract entitled the "Funding Agreement".[7]

Paragraph 1 of the Funding Agreement provided that "[t]o the extent that funds are available in appropriations in the City budget and when authorized by the City Council, the City Finance Officer may transfer funds to the Agency for deposit in the Community Redevelopment Agency Administrative Fund for use in defraying the administrative expenses and overhead of the Agency."

Paragraph 2 of the Funding Agreement provided that "...any City funds transferred to the Administrative Fund of the Agency shall constitute a loan from the City to the Agency and not a grant. Agency agrees that any City funds loaned to the Agency shall be repaid to the City on demand out of the first funds accruing to it which are available for use in the payment of administrative expenses and overhead."

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[5] See, A.R., 2/84/0743. Subsequently, on December 16, 2003, the City Council created the West Covina Community Redevelopment Commission and vested the Commission with all of the duties, powers and responsibilities of the Agency. (See, A.R., 2/85/0746-0747.) The former redevelopment agency/commission is referred to in this ruling as "the Agency".

[6] See, A.R., 1/1/0001.

[7] See, A.R., 1/3/0003-0004.

A handwritten notation at the bottom of the first page of the Funding Agreement stated: "7% Feb 72 to Sept 74 [¶] 8% thereon". However, there is no evidence in the record that the City loaned any funds to the Agency at this time.

On July 1, 1976, the City expanded a policy (in existence since August, 1971) of loaning the Agency funds to cover its personnel costs to include loans for specific capital improvement projects that were approved in the City's Capital Improvement Budget. This policy was continued on a project by project approval basis. Loans for capital improvement projects under this policy did not have an established interest rate, and the Agency was to repay the loans as funds became available, with no specified payback schedule.[8]

On December 16, 1985, the City Council adopted resolutions authorizing the establishment of a redevelopment revolving fund "to be kept in the treasury of the community" and appropriated $815,500 for deposit in the redevelopment revolving fund. The establishment of the redevelopment revolving fund was connected with plans by the Agency to purchase property for the proposed expansion of the Fashion Plaza shopping center.[9]

At various times thereafter, the City Council approved the appropriation of funds to the Agency from the redevelopment revolving fund. For example, on May 12, 1986, the City Council approved a resolution appropriating $3 million from the redevelopment revolving fund to the Agency, with the Agency to repay the appropriation in equal amounts of $300,000 plus interest every six months for five years commencing on July 1, 1990.[10]

On July 14, 1986, the City Council adopted Resolution No. 7726, which was entitled "A Resolution of the City Council of the City of West Covina Establishing Terms and Conditions Relative to

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[8] See, A.R. 1/9/0012: Memorandum dated July 14, 1986 from Assistant Executive Director Leonard Eliot to "City Council and City Manager".

[9] See, A.R. 1/4/0005-0006. The resolution establishing the redevelopment revolving fund is not in the administrative record. The document cited here is a memorandum from Redevelopment Agency Staff recommending adoption of the resolution. There is no dispute that the resolution was adopted. The resolution appropriating $815,500 to the fund is in the record at A.R. 1/5/0007.

[10] See, A.R. 1/8/0011.

the Appropriations to the City of West Covina Redevelopment Agency."[11] It did so based on concerns that state requirements had changed regarding the definition of Agency indebtedness, and that "open ended" loans, such as those previously made for capital improvement projects, would no longer be considered a legitimate indebtedness when calculating tax increment eligibility.[12]

The Resolution established such terms and conditions for appropriations from the redevelopment revolving fund to two Agency accounts: the Agency capital improvement account (referred to as the "112 Account"); and the Agency administration 110 account (referred to as the "110 Account"). The Resolution provided that all funds appropriated to those accounts shall be deemed part of any annual loan made by the City to the Agency for capital improvements and administration of such capital improvements. The Resolution also provided that simple interest would be charged on accumulated funds appropriated to each account at a rate that was equal to Bank of America's base/prime rate, with the interest rate to be adjusted annually to reflect the prime rate in effect on December 31. Finally, the Resolution provided that repayment of accumulated funds in each account would commence on July 1, 1991 and continue annually thereafter in the amount of $300,000 plus interest for each account, with the repayment schedule to be reviewed on July 1, 1991 "for possible adjustment contingent on the financial status of the Agency."[13]

At various times over the following years, the City and the Agency revised the repayment schedule as the amount owed by the Agency to the City increased.[14] By June of 1992, that amount had reached $26,477,791.00.[15]

On June 30, 1992, the City and the Agency entered into a contract entitled the "Cooperation and Financing Agreement Between the West Covina Redevelopment Agency and the City of West Covina

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[11] See, A.R. 1/10/0013-0015.

[12] See, A.R. 1/9/0012.

[13] The Agency adopted a parallel resolution. See, A.R. 1/11/0016-0017.

[14] See, A.R. 1/14/0023-0024 (City Council resolution adopted December 10, 1990 increasing Agency repayment by $130,000); A.R. 1/17/0029-0031 (City Council resolution adopted January 7, 1992 establishing annual Agency repayment of $1,652,500 for a minimum of 10 years and a repayment period of a minimum of 27 years).

[15] See, A.R. 1/21/0042-0045 (City Council resolution adopted June 16, 1992 with attached Promissory Note and amortization schedule).

Pertaining to the Provision of Financial, Personnel and Other Assistance".[16]

Section 1 of the agreement provided that the City "...has agreed and shall continue to cooperate with the Agency by providing the Agency with access to the services of City personnel, departments and offices of the City and use of City facilities. The City shall maintain an account showing the direct and indirect cost of providing such personnel and facilities to the City. Such cost to the City, whether direct or indirect, shall be deemed a loan to, and an indebtedness of, the Agency, unless otherwise provided by the City Council by resolution."

Section 2(a) of the agreement provided that "[a]nnually, the City Council may budget and appropriate an amount of money restricted to providing ongoing financial assistance to the Agency." Section 2(b) stated: "The City hereby loans to Agency such funds from that restricted budgeted amount as may be necessary for the operation of the Agency, including but not limited to for the purposes of Agency administrative and overhead expense, operational costs, and acquisition costs. Such City financial assistance shall be in a form as mutually agreed to by City and Agency, including but not limited to loans, advances, and grants."

Section 3 of the agreement provided that any loans provided to the Agency by the City would accrue interest as set forth in Exhibit A to the agreement, which is a promissory note and amortization schedule.[17] It further provided that loans shall be repaid "out of tax increment funds allocated to and received by Agency", with such repayment to be made by the Agency "as a first lien and charge" on tax increment when received, after other Agency indebtedness such as tax allocation bonds or other direct long-term indebtedness, pledges by the Agency of tax increments for tax allocation bonds or other direct long-term indebtedness, and prior Agency financial agreements and other contractual obligations of the Agency.

The attached promissory note stated that the amount due from the Agency to the City was

[16] See, A.R. 1/24/0052-0056 (City Council resolution adopting Cooperation and Financing Agreement, with the agreement attached as an exhibit).

[17] See, A.R. 1/25/0057-0064 (Redevelopment Agency resolution adopting the Cooperation and Financing Agreement, dated June 30, 1992, Exhibit A).

$28,212,940.97. The accompanying amortization schedule called for annual payments to be made in increasing amounts over approximately 27 years. The promissory note authorized extensions, renewals and amendments in writing.

In subsequent years, the City and the Agency adjusted the repayment terms. For example, in June 2008, annual payments were set at $2.3 million beginning in 2011.[18]

B. Sales Tax Reimbursement Agreement

In June of 1989, the Agency established the West Covina Fashion Plaza Community Facilities District. It did so to facilitate the upgrading and expansion of the West Covina Fashion Plaza, a large shopping center, as a redevelopment project.[19]

The Agency adopted an ordinance on July 10, 1989 levying a sales tax of 1% upon all retailers located in the District. The ordinance provided that the proceeds of the tax would be used by the Agency to pay principal and interest on obligations issued by the Agency, to finance redevelopment projects within the Central Business District Redevelopment Project Area, and "for other general purposes determined at the Agency's discretion."[20]

On the same date, the City adopted an ordinance giving retailers located in the District, and therefore subject to the Agency's sales tax, credit against City sales taxes for amounts paid to the Agency.[21]

On August 21, 1989, the Agency adopted a resolution authorizing the issuance of special tax bonds known as the "Redevelopment Agency of the City of West Covina Community Facilities District 1989-1 Special Tax Bonds" in an amount not to exceed $45 million.[22] The bonds were issued on March 1, 1990, and the Agency pledged sales tax revenues as security for the bonds.[23]

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[18] See, A.R. 1/28/0080-0084 (Community Development Commission staff report dated June 17, 2008).

[19] See, A.R., 1/33/0097-0098 (Redevelopment Agency resolution of intention to establish the Community Facilities District, adopted June 26, 1989).

[20] See, A.R., 1/36/0113-0117.

[21] See, A.R. 1/35/0110-0112.

[22] See, A.R. 1/44/0150-0153.

[23] See, A.R. 1/46/0184-0185 (Official Statement for bonds).

On June 1, 1989, prior to the actions described above, the City and the Agency entered into a contract entitled "Agreement Regarding Reimbursement of Sales and Use Taxes and Transfer of Appropriations Limit" (referred to in this ruling as the "1989 reimbursement agreement").[24]

The 1989 reimbursement agreement recited that the Agency had adopted a sales and use tax ordinance "and intends to use the proceeds thereof to pay principal and interest on obligations of the Agency...to finance redevelopment projects of the agency within the Central Business District Redevelopment Project Area of the Agency". The 1989 reimbursement agreement further recited that the City had adopted an ordinance providing for a sales tax credit for amounts paid to the Agency.

Section 1 of the 1989 reimbursement agreement provided: "The Agency hereby agrees to reimburse the City, each fiscal year, any amounts received by the Agency under the [sales and use tax ordinance], which amounts are not needed to pay, or are otherwise pledged to secure, any obligations incurred by the Agency under the Owner Participation Agreement by and between the Agency and Sylvan S. Shulman Co./West Covina Associates, a Delaware limited partnership, or in connection with any bonds issued as described in Article IV thereof...".

In August 1996, the Agency refinanced the 1990 bonds through a new bond issuance.[25]

On July 1, 2005, the City and the Agency entered into a contract entitled "Sales and Use Tax Reimbursement Agreement" (referred to in this ruling as the "2005 reimbursement agreement").[26]

Section 1 of the 2005 reimbursement agreement required the Agency to "reimburse to the City the amount of all the Reimbursable Sales and Use Tax received by the Commission from and after the adoption of its Ordinance No. 1", together with interest at 4% per annum.

Section 2 required the Agency to make annual payments from "any source of money legally available therefor and remaining at the end of each fiscal year after payment or provision for payment by the Commission of all Commission indebtedness, whether now existing or hereinafter incurred that is secured by and payable from Commission revenues, and after payment or provision of payment by the

[24] See, A.R. 1/39/0122-0124.

[25] See, A.R. 1/47/0297-0466.

[26] See, A.R. 1/26/0068-0075. At this point, the Agency was operating under the name of the Commission.

Commission of its operating costs." Payments were to be in amounts stated in an attached schedule, setting forth 20 years of annual payments commencing in 2006 and ending in 2025, but Section 2 also provided that if the Agency did not have sufficient revenues to make an annual payment, interest would continue to accrue on unpaid amounts.

Section 3 stated that the amount of reimbursable sales and use taxes that had accrued from the date of adoption of the ordinance but had not been paid was estimated to be $9.6 million.

C. 2000 Financing Agreement

On May 2, 2000, the City and the Agency entered into a contract entitled "2000 Financing Agreement Between the Redevelopment Agency of the City of West Covina and the City of West Covina Pertaining to the Provision of Financial Assistance" (referred to in this ruling as the "2000 financing agreement").[27]

Paragraph 5 of the 2000 financing agreement provided: "Commencing on July 1, 2000, the City shall make available for loans to Agency the amount of [$5.6 million]. The Agency shall treat such funds as a line of credit, in that Agency may draw funds as needed, for any legal redevelopment expenditure, and interest will accrue only on funds drawn, from the date of such draws."

Paragraph 7 stated that funds loaned pursuant to the agreement would bear interest at a variable rate equal to 2% greater than the rates paid by the State's Local Agency Investment Fund.

Paragraph 9 stated: "By approximately June 30, 2002, the Agency expects to have created a long-term financing plan to provide for the repayment of the principal amounts loaned pursuant to this Agreement. Subject to modification as part of such plan, or any other modification to which the parties agree, Agency shall repay to City all principal amounts loaned pursuant to this Agreement no later than December 31, 2021."

The City advanced $600,000 to the Agency in 2002 and $5 million in the fiscal year ending June 30, 2004. From the date of those advances until 2011 the Agency made interest-only payments.[28]

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[27] See, A.R. 2/52/0476-0478.

[28] See, A.R. 2/57/0495: Memo dated January 19, 2012 from Assistant City Manager/Finance Director Tom Bachman to City Manager Andrew Pasmant.

On March 1, 2011, the City and the Agency approved parallel resolutions that adopted certain new "terms and conditions relative to draws made under the line of credit" established under the 2000 financing agreement. These terms and conditions included a requirement that the Agency make a payment of $600,000 by June 30, 2011, and that "at a minimum", begin making repayment of principal in the amount of $1 million per fiscal year commencing by June 30, 2026, with the entire balance of $5 million to be repaid no later than June 30, 2030.[29]

On June 21, 2011, one week before AB 1x26 was enacted, the Agency repaid the City $602,625.00.[30]

On January 19, 2012, Assistant City Manager/Finance Director Tom Bachman sent a memorandum with the subject line "Repayment by CDC of City Line of Credit" to City Manager Andrew Pasmant. The memorandum addressed the effect of the Supreme Court's decision upholding AB 1x26. It stated: "Due to the recent court decision that upholds legislation to dissolve redevelopment agencies on February 1, 2012, the CDC will no longer be required to make the $5.85 million continuation payment. These funds are not available to repay the City and given the City's own dire financial situation, the city is desperately in need of these funds. Given this set of circumstances, it would be fiscally prudent to have the CDC repay the remaining $5 million to the City."[31]

On January 31, 2012, the day before it was dissolved by operation of law, the Agency repaid $5,024,194 to the City.[32]

D. 2010 Cash Flow Loan

On June 15, 2010, the City adopted two resolutions under which it agreed to loan the Agency a combined $2.5 million for the purpose of defraying project and administrative expenses and overhead in two different redevelopment project areas. The resolutions provided that the loans were to be repaid by

[29] See, A.R. 2/55/0491-0492; 2/55/0493-0494.

[30] See, A.R. 2/79/0569.

[31] See, A.R. 2/57/0495. The "continuation payment" referred to in the memorandum was a payment that the Agency would have been permitted to make under AB 1x27 (the companion bill to AB 1x26) in order to avoid dissolution. The Supreme Court invalidated AB 1x27 in *California Redevelopment Association v. Matsosantos*, eliminating that option.

[32] See, A.R. 2/79/0570.

the end of the next fiscal year "from any available funds of the Agency, including the portion of taxes mentioned in Subdivision (b) of Section 33670 of the Health and Safety Code of the State of California, which may legally be used for such repayment."[33]

The City previously had made similar loans to the Agency on June 16, 2009 for the 2009-2010 fiscal year.[34]

E. Agency Payments

As relevant to this case, the Agency made payments to the City between January 1, 2011 and January 31, 2012. The Successor Agency compiled a list of these payments, which is included in the Independent Accountants' Report prepared for the Oversight Board as part of the Other Funds and Accounts Due Diligence Review. The list shows that payments were made under the 1972 Funding Agreement, the May 2, 2000 Promissory Note, the June 15, 2010 Promissory Note, and the 2005 Sales Tax Reimbursement Agreement. The total of all such payments was $12,205,531.00. Of this amount, payments totaling $4,213,109.00 were made between January 1, 2011 and June 28, 2011. The remainder, totaling $7,992,422.00, were made between June 29, 2011 and January 31, 2012. One payment, specifically allocated to the 2005 reimbursement agreement, was made on June 30, 2011, two days after AB 1x26 was signed into law.[35]

F. Department of Finance Action I: ROPS Review

The Agency was dissolved by operation of law when AB 1x26 went into full effect on February 1, 2012. As part of the dissolution process, the Successor Agency submitted timely Recognized Obligation Payment Schedules ("ROPS") to DOF for the periods of January – June 2012 and July – December 2012. Each of the ROPS listed proposed payments for the following items listed as enforceable obligations: "City Note – Administration"; "City Note – CIP"; "City Note – Revolving"; and "Sales Tax

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[33] See, A.R. 2/65/0505-0506 (City Resolution adopted June 15, 2010 approving a loan of $2 million to be repaid by June 30, 2011); 2/67/0508-0509 (City Resolution adopted June 15, 2010 approving a loan of $500,000 to be repaid by June 30, 2011).

[34] See, A.R. 2/59/0497-0498 (City Resolution adopted June 16, 2009, approving a loan of $800,000 to be repaid by June 30, 2010); 2/62/0501-0502 (City Resolution also adopted June 16, 2009, approving a loan of $2.5 million to be repaid by June 30, 2010).

[35] See, A.R. 2/79/0568-0570.

Reimbursement". The first three of these items represent payments to be made under the 1972 Funding Agreement. The January – June ROPS also listed a proposed payment in the amount of $5,031,250 for an item described as "City Line of Credit", but this was not listed on the July – December ROPS.[36]

On May 31, 2012, DOF issued a letter stating that these items did not qualify as enforceable obligations on the following basis: "HSC section 34171(d)(2) states that agreements, contracts, or arrangements between the city that created the RDA and the former RDA are not enforceable unless the loan agreements were entered into within the first two years of the date of creation of the RDA".[37]

Following a "meet and confer" process, DOF allowed the Successor Agency to place previously-denied items on ROPS III, covering the period January – June 2013, for reconsideration.[38] The Successor Agency subsequently submitted a timely ROPS III that included proposed payments for "City Note – Administration", "City Note – CIP", "City Note – Revolving" and "Sales Tax Reimbursement" in the upcoming ROPS period as enforceable obligations, and also listed "City Note – Administration" and "City Note – CIP" as items for reconsideration. ROPS III did not include the "City Line of Credit".[39]

On December 18, 2012, DOF issued a letter stating its final determination regarding ROPS III.[40]

With regard to "City Note – Administration", "City Note – CIP" and "City Note – Revolving" (which had been listed as Items 23-25 and 41-44 on ROPS III), DOF stated:

"Finance continues to deny the items at this time. Finance denied the items per HSC section 34171(d)(2), which states agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency (RDA) and the former RDA are not enforceable obligations. The Agency contends the items are enforceable obligations because the loans were entered into within the first two years of the RDA's creation with amounts disbursed as needed. HSC section 34171 (d) (2) also states loan agreements between the former RDA and the city, county, or city and county that created it

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[36] See, A.R. 2/68/0510 (January – June 2012 ROPS); 2/69/0511 (July – December 2012 ROPS).

[37] See, A.R. 2/73/0522-0523.

[38] See, A.R. 2/89/0764.

[39] See, A.R. 2/74/0525.

[40] See, A.R. 2/78/0552-0555.

within two years of the date of creation of the RDA may be deemed to be enforceable obligations. The loan agreement was entered into within the first two years of the date of creation; however, the agreement does not specify dollar amounts to be loaned or advanced or specific repayment terms. Furthermore, the Agency did not provide documentation regarding any amounts of funds loaned within the first two years of creation."

With regard to "Sales Tax Reimbursement" (which had been listed as Item 26 on ROPS III), DOF stated:

"Finance continues to deny the item. Finance denied the item as it is an agreement between the City and the former RDA. The Agency contends the agreement is an enforceable obligation because it was originated by a bond issuance in 1990. However, the reimbursement agreement is not for the sole purpose of securing or repaying the debt. The agreement between former RDA and the City is to repay the City sales and use tax revenues with available revenues not used to satisfy the bond payments. Therefore, the agreement is not an enforceable obligation eligible for Redevelopment Property Tax Trust Fund (RPPTF) funding."

G. Department of Finance Action II: Due Diligence Review

As part of the Due Diligence Review process, the Successor Agency received a report from independent accountants dated December 3, 2012 (the "other funds and accounts" review) regarding all funds of the Agency except for the Low and Moderate Income Housing Fund. The other funds and accounts review included an examination of payments from the Agency to the City that took place between January 1, 2011 and January 31, 2012. These payments, which have been summarized above, were listed in Schedule 2 of the review.

Note (A), at the end of Schedule 2, stated: "Pursuant to Health and Safety Code Section 34171(d)(2), the legal agreements between the City of West Covina and the West Covina Redevelopment Agency that support these transfers are not considered to be enforceable obligations since they were not entered into within the first two years of the date of creation of the West Covina Redevelopment Agency

except for the Funding Agreement dated February 28, 1972."[41] The independent accountants accordingly added the amount of the payments to the balance available for allocation to affected taxing agencies.[42]

In response to the independent accountants' review, counsel for the Successor Agency prepared a letter opinion dated December 3, 2012 stating that the transfers to the City that were made between January 1, 2011 and January 31, 2012 in the amount of $12,205,531.00 represented funds that were pledged and/or restricted to the satisfaction of enforceable obligations and thus were not available to the taxing entities. This letter was attached as an exhibit to the other funds and accounts review.[43]

The other funds and accounts review was submitted to the Successor Agency's Oversight Board for review and approval. On January 10, 2013, the Oversight Board adopted a resolution approving the other funds and accounts review with one adjustment that was not related to the transfers to the City listed in Schedule 2.[44] The Oversight Board therefore adopted the conclusions of the independent accountants in their review.

By letters dated March 18, 2013 and April 24, 2013, DOF disallowed the transfers on the ground that they were not made pursuant to enforceable obligations.[45] Both letters directed the Successor Agency to remit $11,578,351.00 to the County Auditor-Controller for distribution to taxing entities and stated that if the Successor Agency was in possession of the funds, and was operated by the city that created it, failure to transmit the identified funds could result in offsets to the city's sales and use tax allocations or property tax allocations. There is no evidence that DOF has taken any action to initiate withholding penalties in this case.[46]

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[41] See, A.R. 2/79/0568-0570.

[42] See, A.R. 2/79/0560.

[43] See, A.R. 2/70/0612-0616.

[44] See, A.R. 2/80/0621-0622.

[45] See, A.R. 2/81/0623-0625; 2/83/0740-0742.

[46] As the parties to this case are aware, the Court recently issued a ruling in the case of *League of California Cities v. Matsosantos,* Case No. 2012-80001275, entering a declaratory judgment that sales and use tax offsets are unconstitutional and issuing a writ of mandate and an injunction directing DOF to cease using them, or threatening to use them, in redevelopment dissolution cases.

IV. Discussion

A. DOF's ROPS Determinations

1. 1972 Funding Agreement / 1992 Cooperation and Financing Agreement

Petitioners contend that the 1972 Financing Agreement, as revised by the 1992 Cooperation and Financing Agreement, represents an enforceable obligation that DOF should have recognized in its ROPS review.

Section 34171(d)(2) squarely addresses this issue. The statute provides:

"For purposes of this part, 'enforceable obligation' does not include any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency. [...] Notwithstanding this paragraph, loan agreements entered into between the redevelopment agency and the city, county, or city and county that created it, within two years of the date of creation of the redevelopment agency, may be deemed to be enforceable obligations."

The 1972 Financing Agreement, initially and as revised in the later 1992 Cooperation and Financing Agreement, is an agreement between the former redevelopment agency and the city that created it. Thus, the agreement may not qualify as an "enforceable obligation" unless it falls within the exception as a loan agreement entered into within two years of the date of creation of the redevelopment agency.

The evidence in this case shows that the parties executed the initial Financing Agreement in 1972, which was within two years of the 1971 establishment of the RDA. The Financing Agreement accordingly would fall within the exception if the statutory language "entered into" is functionally equivalent to "executed".

The Court is not persuaded that the terms are functionally equivalent. An executed agreement regarding loans is not actually operative until funds are advanced. This is particularly evident where the agreement is in the nature of a unilateral option to lend or not. The loan agreement is not consummated until the option is exercised. Indeed, a loan agreement under which no funds are ever advanced is functionally a dead letter which logically cannot be an enforceable obligation of any kind for redevelopment purposes unless and until funds are advanced. Nor is a unilateral option to loan in any

sense enforceable by the party hoping to obtain loans.

The Court therefore concludes that something more than mere execution of an agreement regarding loans is required to make that agreement into an enforceable obligation under Section 34171(d)(2). The relevant date for analysis is the date on which funds are actually advanced and the loan agreement thereby becomes operative. If that date was within two years of the creation of the RDA, the loan is an enforceable obligation. If that date was more than two years after the creation of the RDA, on the other hand, the loan is not an enforceable obligation.

In this case, the 1972 Funding Agreement was in the nature of a unilateral option on the part of the City to lend or not. As stated above, it provided that "[t]o the extent that funds are available in appropriations in the City budget and when authorized by the City Council, the City Finance Officer may transfer funds to the Agency".[47] Under this provision, the City was not bound to make any loans. Thus, even if the 1972 Funding Agreement contained some of all of the terms normally found in a loan agreement (such as loan amounts, date of the loan, repayment schedule and interest rate), it was not effective until the City exercised its option to make an actual loan.

Petitioner has not cited any evidence in the record that demonstrates that the City advanced funds to the former redevelopment agency within two years of its establishment in 1971. The first indication in the record of any advances from the City to the Agency is in December 1985, fourteen years later.[48] All subsequent actions, including the revision of the original Funding Agreement through the 1992 Cooperation and Financing Agreement, took place more than two years after the Agency was established.

In the absence of evidence of advances within the first two years, the Court cannot conclude that petitioners have shown that the 1972 Funding Agreement became operative so as to bring it within the scope of Section 34171(d)(2). The Court therefore concludes that DOF did not abuse its discretion when it determined that payments listed on the ROPS under the 1972 Funding Agreement and the 1992 Cooperation and Financing Agreement were not for enforceable obligations for purposes of the

[47] See, A.R. 1/3/0003.

[48] See, A.R. 1/4/0007: $815,500 appropriation upon establishment of redevelopment revolving fund.

redevelopment dissolution laws. That determination is supported by the lack of evidence of advances to make agreements operative within two years of the Agency's establishment.

2. 1989 / 2005 Sales Tax Reimbursement Agreements

Petitioners contend that the sales tax reimbursement agreements represent enforceable obligations that DOF should have recognized in its ROPS review.

Again, Section 34171(d)(2) is on point. The Sales Tax Reimbursement Agreements are agreements, contracts or arrangements between the former redevelopment agency and the city that created it, and therefore are not "enforceable obligations" unless they fall within an exception to the statute's general rule.

In this instance, petitioners argue that the agreements fall within the following exception: "However, written agreements entered into (A) at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations, and (B) solely for the purpose of securing or repaying those indebtedness obligations may be deemed enforceable obligations for purposes of this part."

The Court finds that the sales tax reimbursement agreements do not fall within the scope of the exception. Neither agreement had as its sole purpose securing or repaying indebtedness obligations, in this case, the bonds issued in 1990. Instead, a principal purpose of the agreements was to shift sales tax revenue back to the City, evidently for general use and not to repay the bonds. The 1989 agreement provided that the Agency would pay the City sales tax revenues that were not pledged or needed to pay the bonds or other debt, and the 2005 agreement provided that the Agency would pay the City all the sales taxes it had received since the adoption of the original sales tax ordinances. Thus, these agreements were not intended to secure or repay the bonds at all. Furthermore, neither agreement was entered into at the time of the issuance of the bonds in 1990, or at the time of issuance of the refunding bonds in 1996.

The Court therefore concludes that DOF did not abuse its discretion when it determined that payments listed on the ROPS for the 1989 and 2005 sales tax reimbursement agreements were not for enforceable obligations for purposes of the redevelopment dissolution laws.

3. 2000 Financing Agreement

Petitioners do not contend that the 2000 financing agreement is an enforceable obligation for the purposes of DOF's ROPS review. They do contend that it should have been treated as an enforceable obligation in the DDR process. Because there is some overlap between the definition of "enforceable obligation" in the ROPS and DDR processes, the Court will briefly address the issue in the context of the ROPS review.

The 2000 financing agreement between the City and the Agency is a loan agreement that falls squarely within the terms of Section 34171(d)(2). It was not entered into within two years of the date of creation of the Agency, and thus does not fall within the exception set forth in the statute. The 2000 financing agreement therefore does not qualify as an "enforceable obligation". DOF did not abuse its direction when it determined that payments listed on the ROPS for this agreement were not for enforceable obligations for purposes of the redevelopment dissolution laws.

4. 2010 Cash Flow Loan

Similarly, petitioners do not contend that the 2010 cash flow loan is an enforceable obligation for the purposes of DOF's ROPS review. They do contend that it should have been treated as an enforceable obligation in the DDR process. Because there is some overlap between the definition of "enforceable obligation" in the ROPS and DDR processes, the Court will briefly address the issue in the context of the ROPS review.

The 2010 cash flow loan in the amount of $2.5 million was made pursuant to an agreement between the City and the Agency, memorialized in formal resolutions, that the parties entered into more than two years after the date of the Agency's creation. It therefore represents a loan agreement that falls squarely within the terms of Section 34171(d)(2), and does not fall within the exception set forth in the statute. DOF did not abuse its direction when it determined that payments listed on the ROPS for this agreement were not for enforceable obligations for purposes of the redevelopment dissolution laws.

B. DOF's DDR Determination

Petitioners challenge DOF's DDR determination on several grounds. For the reasons explained below, none of these grounds are persuasive.

1. DDR Definition of "Enforceable Obligation"

Petitioners contend that DOF's DDR determination was invalid as a matter of law because it applied the wrong definition of the term "enforceable agreement". Specifically, petitioners argue that DOF should have applied the definition of that term in Section 34179.5(b)(2), which specifically applies to the DDR process, rather than the definition found in Section 34171(d), which applies more generally to the entire dissolution process. If Section 34179.5(b)(2) is applied, petitioners argue, the exclusion for sponsor city-agency agreements found in Section 34171(d)(2) does not apply.

Section 34179.5(b)(2) provides that, for purposes of the DDR process, the term "enforceable obligation" shall have the following meaning: " 'Enforceable obligation' includes any of the items listed in subdivision (d) of Section 34171, contracts detailing specific work to be performed that were entered into by the former redevelopment agency prior to June 28, 2011, with a third party that is other than the city, county, or city and county that created the former redevelopment agency, and indebtedness obligations as defined in subdivision (e) of Section 34171."

The Court finds petitioner's argument to be unpersuasive, because Section 34179.5(b)(2) specifically incorporates the definition of "enforceable obligation" found in Section 34171(d). That definition includes the exclusion of agreements between a sponsor city and its RDA found in subparagraph (d)(2) of the latter statute.

This is clear from the plain language of Section 34179.5(b)(2), which provides that the term "enforceable obligation" "includes any of the items listed in subdivision (d) of Section 34171". Subdivision (d) contains subparagraph (1), which states that the term "enforceable obligation" means any of seven enumerated types of obligations. However, it also contains subparagraph (2), which specifically provides that "for purposes of this part, 'enforceable obligation' does not include any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment

agency and the former redevelopment agency."

The intent of the Legislature is clear when the statutes are read together: even if an agreement between the City and the Agency may fall within one or more of the enumerated types of obligations set forth in subparagraph (1)[49], that agreement is not to be considered an enforceable obligation, as stated in subparagraph (2), unless one of the exceptions contained in that subparagraph applies.

The various agreements at issue in this case are all agreements between the City and the Agency and, as such, therefore are not included in the items listed as enforceable obligations under Section 34171(d). As discussed above, neither of the potential exceptions applies.

Petitioners argue that the Court should not "construe" Section 34179.5 in this manner, because doing so will result in certain superfluities and redundancies in the statute.[50] The Court is not persuaded by this argument. The Court's application of the statute is not really a case of "construction" so much as it is a straightforward reading of its terms. Even if "construction" of the statute arguably is involved, the general principles of statutory construction provide that the rule against interpreting statutory language in a manner that would render some part of the statute surplusage is only a guide and will not be used to defeat legislative intent. (See, *People v. Rizzo* (2000) 22 Cal. 4th 681, 687.) In this case, the Court concludes that the clear intent of the Legislature, as set forth in the language of Section 34179.5(b)(3), is that agreements between a sponsor city and its former redevelopment agency are not to be considered as "enforceable obligations" in the DDR process, unless they qualify for exceptions not applicable here. Petitioners' reading of the statute is contrary to that intent.

The Court also is not persuaded by petitioners' argument that the various agreements between the City and the Agency qualify as enforceable obligations in the DDR process because they represent "indebtedness obligations" within the meaning of Section 34179.5(b)(2).

Section 34179.5(b)(2) specifically refers to the definition of "indebtedness obligations" found in

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[49] For example, a "legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy", as provided in subparagraph (d)(1)(E).

[50] The alleged superfluities and redundancies relate to the provision of Section 34179.5(b)(2) including contracts detailing specific work that were entered into by the former redevelopment agency with a third party other than the sponsor city within the definition of enforceable obligation.

Section 34171(e), which provides that "indebtedness obligations" means "bonds, notes, certificates of participation, or other evidence of indebtedness, issued or delivered by the redevelopment agency...to third-party investors or bondholders to finance or refinance redevelopment projects...". This definition, in turn, applies to the term "indebtedness obligations" as used in Section 34171(d)(2), where an exception for the general rule that sponsor city-agency agreements are not enforceable obligations is provided for agreements entered into at the time of issuance of, and for the sole purpose of securing or repaying, indebtedness obligations.

When these provisions are read together, it is evident that any agreement between a sponsor city and its redevelopment agency to secure or repay indebtedness obligations is distinct from the indebtedness obligation itself, and that the latter is an obligation to a third party investor other than the sponsor city or the redevelopment agency. The definition of "enforceable obligation" as including "indebtedness obligations" accordingly applies only to agreements involving third parties other than the sponsor city and its redevelopment agency. In this case, petitioners' contention that the agreements at issue here should be treated as indebtedness obligations for the purposes of the DDR process fails because those agreements were not issued or delivered by the Agency to third parties. Instead, they were simply agreements between the City and the Agency which do not qualify as enforceable obligations on the facts present here.

The Court accordingly concludes that DOF did not err by applying an incorrect definition of "enforceable obligation" to the DDR process, or by determining that the agreements at issue in this case were not enforceable obligations.

2. Payments Under the Funding Agreement as "Transfers"

Petitioners contend that DOF should have allowed the payments made under the funding agreement because those amounts were not "transferred" within the meaning of Section 34179.5(b)(3). That subparagraph of the statute provides that "transferred" means "the transmission of money to another party that is not in payment for goods or services or an investment of where the payment is de minimus." Petitioners contend that the payments, at least in part, were made for "goods and services" in the form of

administrative services provided to the Agency by the City.[51] If so, they argue, such payments should not have been made subject to the DDR process.

Petitioners' contention fails for lack of evidence to support it. Although there is evidence in the record demonstrating that the City did advance money to the Agency under the funding agreement, petitioners cite to no evidence that establishes that those advances were for goods or for administrative or other services. Indeed, the limited evidence in the record related to specific advances suggests that those advances were not for the provision of goods and services by the City.

For example, the earliest evidence of an advance in the record is for an appropriation of $815,500 in 1985, which was made in connection with plans by the Agency to purchase property for the planned expansion of the Fashion Plaza shopping center.[52] This was not an advance for goods or services.

Also, the City resolution approving another appropriation of $3 million in 1986 shows no indication that the advance was for goods and services.[53] A supporting memorandum prepared by Agency staff dated May 12, 1986 states that the Agency has exceeded its budgeted amount for acquisition and relocation expenses and needs that appropriation in order to have sufficient funds for those purposes.[54] This memorandum supports an inference that the appropriation was not for goods and services, but for land acquisition costs and other expenses related to clearing sites for redevelopment projects.

The record shows that the City had advanced $26,477,791 to the Agency by June 1992, but there is no evidence of how much of that amount, if any, represented administrative or other services as opposed to land acquisition costs or other redevelopment project expenses, which would not qualify as goods or services provided by the City.[55]

Finally, the 1992 revision of the financing agreement specifically required the City to maintain an

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[51] See, A.R. 1/3/003: "[T]he City Finance Officer may transfer funds to the Agency for deposit in the Community Redevelopment Agency Administrative Fund for use in defraying the administrative expenses and overhead of the Agency."

[52] See, A.R. 1/4/0005-0006.

[53] See, A.R. 1/8/0011.

[54] See, A.R. 1/7/0010.

[55] See, A.R. 1/21/0042-0045.

account showing the direct and indirect cost of providing the Agency with the services of City personnel and the use of City facilities.[56] Petitioners have not cited to any such accounts in the record.

The Court accordingly concludes that petitioners have failed to demonstrate that any of the amounts transferred under the funding agreement represented payment for goods and services within the meaning of Section 34179.5(b)(3). Their argument that such transfers were not properly subject to the DDR process therefore fails.

3. Gift of Public Funds

Petitioners contend that DOF's DDR determination, as well as its determinations regarding the funding agreement and the sales tax reimbursement agreements in the ROPS review process, are invalid because they result in a gift of public funds in violation of Article XVI, section 6 of the California Constitution. This section provides that the Legislature shall not have "power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever".

Petitioners argue that the improper gift of public funds is the redistribution of funds from the City to other taxing entities which will occur through the operation of the redevelopment dissolution laws by way of the ROPS review and DDR processes. Specifically, petitioners focus on DOF's order directing the Successor Agency to transmit to the County Auditor-Controller over $11 million in funds, representing amounts transferred from the Agency to the City between January 1, 2011 and June 30, 2012.[57]

Petitioners' gift of public funds contention fails, based on the following principle stated in the case law: "A reason that would remove a gift from the ambit of article XVI, section 6 is that it is to be used for a public rather than a private purpose." (See, *Westly v. U.S. Bancorp* (2003) 114 Cal. App. 4th 577, 583.) In this case, any transfer of funds from the City to the taxing entities, via the Successor Agency, is for a public purpose. All of the taxing entities are governmental agencies providing public services (petitioners do not contend otherwise), and the money distributed to them as the result of DOF's determinations will

[56] See, A.R. 1/24/0052-0056, Section 1.

[57] See, A.R. 2/83/0740-0742.

be used to fund those services.

An application of the principle that money transferred to governmental agencies for public purposes is not a gift within the meaning of Article XVI, section 6 is found in the case of *White v. State of California* (2001) 88 Cal. App. 4th 298, which has significant similarities to this case.

White arose out of the 1994 bankruptcy of Orange County. In response to the County's severe fiscal difficulties, the Legislature passed a package of four bills (referred to collectively as "the Recovery laws") that allocated property and sales tax revenues from several Orange County public agencies, including a flood control district, a harbor, beaches and parks fund, and the county redevelopment agency, to the County's general fund. The Recovery laws were challenged on the ground that they violated Article XVI, section 6 because they transferred local agency funds to the County's general fund without furthering the interests of the "donor" agencies, thus representing an unconstitutional gift of public funds.

The Court of Appeal upheld the Recovery laws against this challenge on several grounds.

First, the Court relied on two basic principles: 1) money spent for public purposes is not a gift; and 2) the determination of what is a public purpose is primarily a matter for the Legislature, and its discretion in making that determination will not be disturbed by the courts so long as it has a reasonable basis. The Court found that the Legislature had made specific findings that the transferred funds were needed for Orange County to recover from the financial crisis, and to protect the health, safety, and welfare of the residents of the county and state. Those findings provided a reasonable basis for the Recovery laws.

Second, the Court rejected the contention that the transfers were invalid because they did not promote the specific interests of the "donor" agencies.

Initially, the Court found that most of the Recovery laws did not transfer funds from one agency to another, but reallocated funds from Orange County local agencies to the County's general fund. The Court stated: "Article XVI, section 6 is not triggered merely because the Legislature has allocated less property tax dollars to certain local agencies and instead determined that such funds should be allocated to the general fund to be used for a public purpose."

Next, the Court found that even if the reallocations could be viewed as transfers between local

agencies, the challenged transfers concerned the reallocation of sales and property taxes. The Court stated: "The same general group of taxpayers who paid these taxes will benefit from the transfer. A showing of specific public benefit to the transferor agency is only necessary where there is not a substantial identity between the taxpayers who paid the tax and those who benefit."

Similar factors are present in this case.

First, in enacting the redevelopment dissolution laws through AB 1x26, the Legislature made findings that the expansion of redevelopment agencies had "increasingly shifted property taxes away from services provided to [sic] schools, counties, special districts, and cities." It found that the dissolution of redevelopment agencies and the transfer of property tax revenues from those agencies to other taxing entities were actions necessary to address what it termed "incredibly significant declines in revenues and increased need for core governmental services."[58] These findings have a reasonable basis, and establish that transfers of property tax revenues to local taxing entities have a legitimate public purpose.

Even though AB 1484, the follow-up legislation enacting the DDR process, does not include its own set of findings, that legislation was intended to supplement and implement AB 1x26 and become an integral part of the redevelopment dissolution laws. The recovery of funds that a former redevelopment agency transferred to its sponsor city in order to allocate those funds to other taxing entities, which is the object of the DDR process, furthers the original purpose of AB 1x26. The original findings the Legislature made in enacting AB 1x26 continue to apply, and to establish the legitimate public purpose for transfers to taxing entities.

Second, as in *White*, the same general group of taxpayers who paid these taxes will benefit from the transfer. Petitioners' contention that the transfers will go to unrelated "recipient county entities" for "unique and specific purposes...not of such general concern to city residents" is not convincing.[59] The transfers concern property taxes (specifically, "tax increment") raised in the former redevelopment agency's project areas, which are within the City's territory. Taxing entities are entitled to a share of such

[58] See, AB 1x26, Section 1, petitioner's Request for Judicial Notice, Exhibit A.

[59] See, Petitioners' Opening Brief on the Merits, page 24:14-18.

revenues, if at all, by virtue of the fact that the former redevelopment agency's project areas are also within their taxing territory. Because the City's territory overlaps with that of those taxing entities that would be entitled to any distribution following the DDR process, the same general group of taxpayers is affected. Indeed, it is reasonable to infer that they benefit from the activities and services of those taxing entities.

In *California Redevelopment Association v. Matsosantos* (2013) 212 Cal. App. 4th 1457, the Third District Court of Appeal addressed the gift of public funds issue in the context of legislative enactments that pre-dated the dissolution laws. The case involved a challenge to AB 4x26, which the Legislature enacted in 2009. The effect of AB 4x26 was to take funds from redevelopment agencies and give them to the State as reimbursement for expenditures by the state for local services, in effect, to take funds from one local agency and give them to another.[60]

Relying primarily on *White v. State of California,* the Court rejected the contention of the challengers that the transfer of funds amounted to a gift of public funds. The Court stated:

"In the present matter, the funds in question were not raised by the redevelopment agencies for a specific purpose. They came from general property taxes that were allocated to the agencies. This is not a transfer of funds from the redevelopment agencies to other local agencies...but a reallocation of funds by the Legislature from one public purpose to another. And the same general group of individuals that contributed the funds, county property taxpayers, will benefit from the use of those funds elsewhere. Under these circumstances, there has been no gift of public funds within the meaning of article XVI, section 6."[61]

This holding also provides support for the conclusion that the actions challenged here do not result in an unconstitutional gift of public funds. The funds in question were not raised by the City or the Agency for a specific purpose. They came from general property taxes. All of the recipient taxing entities

[60] See, 212 Cal. App. 4th at 1498.

[61] See, 212 Cal. App. 4th at 1499. The Court distinguished the case of *Golden Gate Bridge and Highway District v. Luehring* (1970) 4 Cal. App. 3rd 204, upon which petitioners rely here, on the ground that it involved the transfer of funds from a special district with a limited purpose to the general funds of several counties. *Golden Gate Bridge* is inapposite here because of the transferring agency's limited purpose. In this case, the City uses property taxes for general governmental purposes.

perform public functions. Thus, the transfer that will occur as the result of DOF's DDR determination represents the Legislature's allocation of fund from one public purpose to another. And the same general group of individuals who contributed the funds, city taxpayers, will benefit from the use of those funds elsewhere.

Given the substantial identity between the taxpayers who paid the City taxes and the taxpayers who benefit from the transfer to the other taxing entities, no showing of specific public benefit to the City is required. The Court accordingly concludes that DOF's determinations do not result in an unconstitutional gift of public funds.

4. Retroactive Application of Due Diligence Review Process

Petitioners also contend that DOF's DDR determination is invalid insofar as it represents a retrospective review of transfers occurring between January 1, 2011 and June 30, 2012. They assert that the due diligence provisions enacted in AB 1484 do not expressly operate retroactively, relying on the general principles that statutes are construed to operate prospectively absent clear indication that the Legislature intended them to operate retroactively, and that there is a strong presumption against retroactivity. (See, *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal. 4th 828, 840; *McClung v. Employment Development Department* (2004) 34 Cal. 4th 467, 475.)

However, the presumption against retroactivity is "not a straightjacket", and evidence that the Legislature intended a statute to operate retroactively may be found in the wording of the statute itself. (See, *Mannheim v. Superior Court* (1970) 3 Cal. 3rd 678, 686.)

In this case, the provisions of AB 1484 establishing the due diligence review process clearly do evidence the Legislature's intent retroactively to invalidate some transfers between redevelopment agencies and their sponsor cities.

The plain language of Section 34179.5(c)(2) specifically requires the due diligence review to address cash transfers by a redevelopment agency to its sponsor city that occurred "after January 1, 2011, through June 30, 2012". All but three days of this period were prior to the enactment date of AB 1484 (June 27, 2012), which demonstrates that the review is to operate retrospectively.

Section 34179.5(c)(2) also requires the review to "provide documentation of any enforceable obligation that required the transfer". Subparagraph (c)(6) further requires the review to calculate net balances available for allocation to taxing entities after deduction of amounts that are needed to fund "enforceable obligations" as provided in subparagraph (c)(5)(D). These provisions, read in connection with the definitions of the term "enforceable obligation" found in Section 34179.5(b)(2) and Section 34171(d), indicate a clear intent to invalidate transfers made during the retrospective review period that are not supported by an "enforceable obligation", so that the amount of those transfers may be available for allocation to taxing entities.

The evidence of intent to have the due diligence review process operate retroactively could not be clearer. Petitioners' contention that DOF improperly applied the DDR process retroactively thus is not persuasive.

5. Preclusive Effect of EOPS Process

Petitioners argue that DOF was precluded from determining that the payments at issue in this case were not for enforceable obligations because the Agency listed the agreements with the City on the Enforceable Obligation Payment Schedules ("EOPS") that it prepared and submitted to DOF prior to its dissolution as required by Section 34169(g).

Specifically, petitioners argue that DOF failed to seek review of the EOPS as provided in Section 34169(i), which resulted in payments for items on the EOPS being approved. Petitioners also argue that DOF should be estopped from denying the challenged transfers because the Legislature expressly authorized redevelopment agencies to make such payments under the EOPS process.

These arguments are not persuasive, because the EOPS process was an interim process that was replaced by the ROPS and DDR processes, and does not govern those later processes. This is evident from the structure of AB 1x26 and the impaet of the later-enacted AB 1484.

The EOPS process was enacted by Section 34169, which is in Part 1.8 of AB 1x26. Under Section 34169, redevelopment agencies were required to adopt the EOPS, and to make payments on "enforceable obligations" listed in the EOPS, as defined in Section 34167(d). That definition included "[l]oans of

moneys borrowed by the redevelopment agency for a lawful purpose", without any exclusion for agreements between a redevelopment agency and its sponsor city. Thus, as long as the EOPS process established by Section 34169 was in effect, redevelopment agencies were permitted to make payments on the types of obligations at issue in this case.

However, this was an interim measure. It subsequently was replaced by the ROPS process, and by a different definition of "enforceable obligation", once Part 1.85 of AB 1x26 became effective. That Part dissolved redevelopment agencies and established successor agencies to wind down their affairs. Once it became effective, the new definition of "enforceable obligations" found in Section 34171(d) applied. That definition includes the exclusion for agency-sponsor agreements found in subparagraph (d)(2). Once the definition became effective, payments on the agreements at issue in this case were no longer authorized.

This was made explicit in Section 34177(a)(1), which provides that "payments associated with obligations excluded from the definition of enforceable obligations by paragraph (2) of subdivision (d) of Section 34171 shall be excluded from the enforceable obligations payment schedule and be removed from the last schedule adopted by the redevelopment agency under Section 34169 prior to the successor agency adopting it as its enforceable obligations payment schedule pursuant to this subdivision."

Finally, after the implementation of Part 1.85 was delayed by the Supreme Court's stay order in the *Community Redevelopment Association v. Matsosantos* litigation, AB 1484 established the retrospective DDR review process, permitting DOF to reverse transfers made after January 1, 2011.

The combined effect of these provisions is that payments under redevelopment agency-sponsor city agreements were properly listed on the Agency's EOPS and paid during the interim period prior to agency dissolution, but that all such payments were subject to review and reversal through the DDR process. Accordingly, DOF's failure to challenge the Agency's EOPS does not preclude it from challenging the payments during the ROPS or DDR process. Nor is DOF estopped from doing so. Indeed, it was doing only what the law required.

6. Constitutional Validity of DDR Payment Demand under Proposition 22

Petitioners contend that DOF's DDR payment demand violates Article XIII, section 25.5(a)(7) of the California Constitution, which was enacted by the voters in 2004 as Proposition 22.

Proposition 22 provides, in relevant part: "On or after November 3, 2004, the Legislature shall not enact a statute to do any of the following: [¶] Require a community redevelopment agency (A) to pay, remit, loan, or otherwise transfer, directly or indirectly, taxes on ad valorem real property and tangible personal property allocated to the agency pursuant to Section 16 of Article XVI to or for the benefit of the State, any agency of the State, or any jurisdiction; or (B) to use, restrict, or assign a particular purpose for such taxes for the benefit of the State, any agency of the State, or any jurisdiction...".

Although petitioners frame their contention in terms of DOF's payment demand, in essence they challenge the operation of the statutes governing the DDR process. Viewing petitioners' challenge in this manner, the Court is not persuaded that the DDR statutes violate Proposition 22. Those statutes, as applied in this case, do not require a community redevelopment agency to make any payment or transfer of its property tax revenues. Instead, the statutes (and DOF's DDR determination) direct a successor agency to recover funds from the former redevelopment agency's sponsor city, after the dissolution of the agency. By its own terms, Proposition 22 does not apply.

In reaching this conclusion, the most significant factor is the fact that the redevelopment agency no longer exists, but has been dissolved by operation of law through a statutory scheme that has been upheld by the California Supreme Court against various constitutional challenges, including arguments based on Proposition 22. (See, *California Redevelopment Association v. Matosantos* (2011) 53 Cal. 4th 231.) In its opinion, the Court found that "[t]hough the Legislature retains the broad power to dissolve redevelopment agencies, Proposition 22 strips it of the narrower power to insist on transfers to third parties of property tax revenue already allocated to redevelopment agencies as it had done on numerous occasions." But the Court also recognized that Proposition 22 had no application once redevelopment agencies had been dissolved: "The protection so granted is not insignificant simply because it is

conditioned on redevelopment agencies' existing and having property tax increment allocated to them."[62]

Because the redevelopment agency in this case no longer exists, the Court concludes that DOF's DDR determination and payment demand do not violate Proposition 22.

C. Conclusion Regarding DOF's ROPS and DDR Determinations

For the reasons stated above, the Court finds that petitioners have not established the DOF's ROPS or DDR determinations were invalid. To the contrary, the Court finds that DOF correctly applied the law, and that its determinations are supported by the facts as established by the evidence. The Court accordingly denies the petition for writ of mandate and petitioners' requests for declaratory and injunctive relief which seek to have DOF's determinations invalidated.

D. Constitutional Validity of AB 1484 Enforcement Mechanisms

Finally, petitioners contend that the provisions of the redevelopment dissolution laws which authorize the offset of sales and use taxes and the reduction in property taxes are constitutionally invalid because they violate Section 24(b) (adopted by Proposition 22 in 2010) and Section 25.5(a)(2)(A) (adopted by Proposition 1A in 2004) of Article XIII of the California Constitution. Because the Court has determined that the agreements at issue in this case do not represent "enforceable obligations" under the redevelopment dissolution laws, and because the evidence submitted in this case demonstrates that respondent DOF has asserted that it will enforce its determinations to that effect through the use of sales and use tax offsets, the Court finds it necessary to address the constitutional issue, at least as to sales and use tax offsets.[63]

Although petitioners' constitutional challenge to the enforcement provisions of AB 1484 arises out of a particular case, their argument is framed, in essence, as a facial constitutional challenge. In other words, petitioners contend that the challenged enforcement provisions, which are found in Section 34179.6(h)(1)(C), violate the California Constitution without reference to the particular facts of this case.

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[62] See, 53 Cal. 4th at 261-262.

[63] For DOF's letters stating that failure to transmit the identified funds "may result in offsets to the city's or the county's sales and use tax allocation as well as its property tax allocation", see, A.R. 2/81/0623-0625 and 2/83/0740-0742.

On December 9, 2013, the Court issued a ruling in another redevelopment-related case, *League of California Cities, et al., v. Ana J. Matosantos, et al.*, Case No. 2012-80001275, finding that the sales and use tax enforcement provision contained in Section 34179.6(h)(1)(C) facially violates Article XIII, Section 24(b) of the California Constitution and that DOF therefore may not lawfully use, or threaten to use it, in redevelopment dissolution cases. The parties in this case have presented no substantially new or different evidence or arguments than those presented to the Court in the *League of California Cities* case. The Court therefore adopts the ruling in the *League of California Cities* case as its ruling on the constitutional issue in this case. That ruling, with slight changes adapting it to the circumstances of this case, is set forth as follows.

To prevail on their facial constitutional challenge to the sales and use tax offset provision of Section 34179.6(h)(1)(C), petitioners carry a heavy burden. "The courts will presume a statute is constitutional unless its unconstitutionality clearly, positively, and unmistakably appears; all presumptions and intendments favor its validity." (See, *City of Los Angeles v. Superior Court* (2002) 29 Cal. 4th 1, 10-11.) If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Restrictions and limitations imposed by the Constitution are to be construed strictly, and are not to be extended to include matters not covered by the language used. (See, *California Redevelopment Association v. Matosantos* (2011) 53 Cal. 4th 231.)

The traditional rule governing facial constitutional challenges has been that a statute is invalid on its face only when it is incapable of any valid application. A party challenging the facial validity of the statute "...cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute.... Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional provisions." (See, *Tobe v. City of Santa Ana* (1995) 9 Cal. 4th 1069, 1084, quoting *Pacific Legal Foundation v. Brown* (1981) 29 Cal. 3rd 168, 180-181.) If the court can conceive of a situation in which the statute could be applied in a constitutionally valid manner, the facial challenge must be rejected.

This traditional rule has been relaxed in certain cases in favor of a more lenient standard, in which

the challenger need only demonstrate that a statute conflicts with the Constitution "in the generality or great majority of cases." (See, *Guardianship of Ann S.* (2009) 45 Cal. 4th 1110, 1126.)[64]

In this case, the Court need not resolve the issue of which of these two standards applies, because the sales and use tax offset provision of Section 34179.6(h)(1)(C) is unconstitutional under either standard. (See, *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32, 39: "We need not resolve this controversy [over the applicable standard] because the result would be the same under any of the tests...".)

Article XIII, Section 24(b) of the California Constitution provides: "The Legislature may not reallocate, transfer, borrow, appropriate, restrict the use of, or otherwise use the proceeds of any tax imposed or levied by a local government solely for the local government's purposes."

It is undisputed that sales and use taxes are taxes levied by local governments solely for the purposes of those local governments. Sales and use tax revenues therefore fall squarely within the protection of Article XIII, Section 24(b).

Moreover, it is undisputed that the effect of the challenged sales and use tax offset provision, once used, will be to take sales and use tax revenues from one local government entity for the ultimate purpose of paying them to other local government entities. The very purpose of the due diligence review process is to determine the amount of cash and cash equivalents that are available for allocation from successor agencies to taxing entities. (See, Section 34179.6(a), (f).) The purpose of the sales and use tax offset provisions is to give DOF a means of making this transfer when a city or county actually holds the funds that DOF has determined should be transferred to other taxing entities and refuses to turn them over. Thus, it is clear that the challenged sales and use tax offset provisions operate to reallocate, transfer, appropriate or otherwise use the proceeds of sales and use taxes within the meaning of Article XIII, Section 24(b).

The Court accordingly concludes that the sales and use tax offset provision violates Article XIII, Section 24(b) on its face.

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[64] As the California Supreme Court has stated: "The standard governing a facial challenge to the constitutional validity of a statute has been the subject of controversy in this court." (See, *Kasler v. Lockyer* (2000) 23 Cal. 4th 457, 502.)

Respondent DOF contends that the sales and use tax offset provision is constitutionally valid because it represents a remedy or penalty for wrongful conduct by successor agencies and cities or counties in the context of redevelopment dissolution, and the Constitution does not foreclose the use of sales and use tax offsets as a remedy or penalty.

In making this contention, respondent DOF argues that the purpose of Article XIII, Section 24(b), and the intent of the voters who enacted it through Proposition 22, was to prevent statewide transfers of revenue or other actions that affected the revenues of all local entities throughout the state, but not to prevent the use of limited transfers in the form of remedial or penalty offsets in a handful of cases.

Evaluating this contention requires the Court to determine the proper construction and interpretation of Article XIII, Section 24(b). In matters of legislative construction, including constitutional interpretation, the overriding concern is to determine the intent of the legislation in order to effectuate the purpose of the law. Where the law is one that has been enacted by the voters, it is the intent of the voters that controls.

While the court looks first to the language of the measure, the literal meaning of a measure must be in accord with its purpose. A literal construction should not prevail if it is contrary to the legislative intent apparent in the measure. (See, *TrafficSchoolOnline, Inc. v. Clarke* (2003) 112 Cal. App. 4th 736, 740.) "The intent prevails over the letter, and the letter will, if possible, be read so as to conform to the spirit of the act." (*Id.*, quoting *Lungren v. Deukmejian* (1988) 45 Cal. 3rd 727, 735; see also, *Upland Police Officers Association v. City of Upland* (2003) 111 Cal. App. 4th 1294, 1304.) The courts must give legislation a reasonable construction which conforms to the apparent purpose and intention of the lawmakers who enacted it. (See, *TrafficSchoolOnline, Inc., v. Clarke, supra,* 112 Cal. App. 4th at 740.) Once the intent of the electorate has been ascertained, the provisions must be construed to conform to that intent: "the voters should get what they enacted, not more and not less." (See, *People v. Park* (2013) 56 Cal. 4th 782, 796, quoting *Hodges v. Superior Court* (1999) 21 Cal. 4th 109, 114..)

In determining the purpose of legislation, both the policy expressed in its terms and the object implicit in its history and background should be recognized, by reference to the language used, the ballot

summary, and the argument and analysis presented to the voters. (See, *In re Schaefer* (1981) 116 Cal. App. 3rd 588, 597; *Amador Valley Joint Union High School District v. State Board of Equalization* (1978) 22 Cal. 3rd 208, 245-246.) The object that the legislation seeks to achieve and the evil that it seeks to prevent are of prime consideration in its interpretation. (See, *People ex rel. San Francisco Bay Conservation & Development Commission v. Emeryville* (1968) 69 Cal. 2nd 533, 543.)

Looking first to the language of Article XIII, Section 24(b), the Court finds that such language is framed as a complete prohibition against the Legislature taking or using local tax revenues. Article XIII, Section 24(b) contains no exceptions from this prohibition for any reason. The language of the Constitution itself therefore provides no support for the contention that the intent of the voters in enacting the measure was to permit the Legislature to take or use local tax revenues for a limited purpose as a remedy or penalty applicable to only a few local entities. Instead, the broad, prohibitory language of Article XIII, Section 24(b) appears to reflect the voters' intent to permit no exceptions from that prohibition under any circumstances.

Looking next to the ballot measure through which Article XIII, Section 24(b) was enacted, Proposition 22 contained an explicit statement of purpose: "The purpose of this measure is to **conclusively and completely prohibit** state politicians in Sacramento from seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with revenues that are dedicated to funding services provided by local government or funds dedicated to transportation improvement projects and services."[65]

Nothing in this statement of purpose indicates that the intent of the voters was to permit the taking of local tax revenues for remedial or penalty purposes, even on a limited basis. Instead, the language of the statement of purpose, particularly the language highlighted above, indicates that the intent of the voters was to enact a total prohibition on the taking of local tax revenues for any reason. This is clear from the fact that the harm Proposition 22 was intended to prevent was explicitly described as legislative action that interferes with revenues dedicated to funding services provided by local government. Taking local sales

[65] See, DOF's Request for Judicial Notice filed in the *League of California Cities* case on October 25, 2013, Exhibit A, page DOF011 (emphasis added).

and use tax revenues in any case, for any reason, including as a remedy or penalty under the redevelopment dissolution laws, undeniably interferes with revenues dedicated to funding services provided by the local government affected by such action. There is nothing in the statement of purpose, or in Article XIII, Section 24(b), that suggests that the voters intended to permit the Legislature to interfere with the revenues of even one or a few local governments, even those that could be described as "wrongdoers".

The Court therefore finds that respondent DOF's contention regarding the inapplicability of Article XIII, Section 24(b) to remedial or penalty offsets to be unpersuasive. Instead, the Court finds that the intent of the voters in enacting Article XIII, Section 24(b) was to prevent the Legislature from taking local tax revenues from any local entity for any purpose, and that there is no exception for remedies or penalties involving a limited number of local entities under the redevelopment dissolution laws. Interpreting Article XIII, Section 24(b) in this manner gives the voters what they enacted, not more and not less.

Based strictly on the language of the challenged statues and Article XIII, Section 24(b), the Court also concludes that there does not appear to be any manner in which sales and use tax offsets could be done without violating the Constitution. Because Article XIII, Section 24(b) represents a complete prohibition against the legislative use of sales and use tax revenues for any purpose, every offset, even an offset imposed against a local entity wrongfully withholding funds found to be unencumbered through the due diligence process, would represent a use of sales and use tax revenues forbidden by the Constitution. Even construing Article XIII, Section 24(b) strictly, and resolving all doubts in favor of the Legislature's plenary authority, the use of sales and use tax offsets cannot be deemed constitutional.[66]

The Court therefore concludes that petitioners are entitled to relief with regard to the sales and use tax offset provision of Section 34179.6(h)(1)(C). Judgment shall be entered in favor of plaintiffs declaring that this provision is invalid under Article XIII, Section 24(b) of the California Constitution. A writ of

[66] In the *League of California Cities* case, the intervenors also argued that the sales and use tax offset provisions could be reformed by the Court to eliminate constitutional defects. Respondent DOF does not raise that contention in this case, so the Court does not address it in this ruling. The Court rejected it in the *League of California Cities* case.

mandate and an injunction shall be issued directing respondent DOF to cease any use or threatened use of that provision in this case.[67]

In addition to the sales and use tax offset provisions, Section 34179.6(h)(1)(C) also provides an alternative remedy in the due diligence review process. If DOF does not order a sales and use tax offset, "...the county auditor-controller may reduce the property tax allocations of the city, county, or city and county that created the former redevelopment agency". Petitioners also challenge that provision as unconstitutional.

Unlike the situation with the sales and use tax offsets, however, petitioners have provided no evidence to the Court that the Los Angeles County Auditor-Controller has threatened to take, or has taken, any action under this statute to reduce the property tax allocations of any local entity as a result of the due diligence process.[68] Furthermore, the Court notes that possible property tax reductions under Section 34179.6(h)(1)(C) involve an action that is entirely within the discretion of the county auditor-controller, in that the statute does not provide that respondent DOF may order or direct the county auditor-controller to reduce property tax allocations.[69] Petitioners' challenge to the property tax reduction provision of Section 34179.6(h)(1)(C) is not ripe. It therefore does not appear to the Court that declaratory or other relief is warranted at this time.

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[67] In light of the ruling that the challenged sales and use tax offset provision is unconstitutional under Article XIII, Section 24(b), the Court finds it unnecessary to address the issue of whether that provision is also unconstitutional under Article XIII, Section 25.5(a)(2)(A), as petitioners argue.

[68] The Court notes that petitioners named the Los Angeles County Auditor-Controller Wendy L. Watanabe as a respondent in the case, but conditionally dismissed her from the action based on a stipulation filed on July 2, 2013 in which the Auditor-Controller agreed not to exercise her independent authority to impose penalties against petitioner, including those set forth in Section 34179.6(h), during the pendency of this action.

[69] Compare Section 34179.6(h)(2), which permits DOF, as an alternative or additional remedy to those stated in paragraph (1), to direct the county-auditor controller to deduct unpaid due diligence demands from future allocations of property tax to a successor agency. In this case, petitioners focus their challenge on the potential for reduction of the City's property tax allocations, and do not specifically challenge the enforcement mechanism involving successor agency property tax allocations under Section 34179.6(h)(2). The Court therefore makes no ruling on the validity of that section.

V. Conclusion

Petitioners have not demonstrated that DOF's determinations that the agreements at issue in this case were not "enforceable obligations" for purposes of the ROPS and DDR process were invalid. Insofar as petitioners seek relief invalidating those determinations, the petition for writ of mandate is denied, as are petitioners' requests for declaratory and injunctive relief. The Court does conclude, however, that sales and use tax offsets as a remedial measure for any failure by the City and Successor Agency to return the funds transferred in this case are unconstitutional. The Court therefore grants the petition for writ of mandate, and petitioners' requests for declaratory and injunctive relief, to the limited extent of directing DOF not to utilize, or threaten to utilize, sales and use tax offsets in this case.

In accordance with Local Rules 2.07 and 2.15, counsel for petitioners is directed to prepare a formal order granting declaratory and injunctive relief and the petition for writ of mandate on their claims regarding sales and use tax offsets, and otherwise denying such relief, incorporating this Court's ruling as an exhibit; and a separate judgment; submit the order and judgment to all other counsel for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit them to the Court for signature and entry of judgment in accordance with Rule of Court 3.1312(b).

DATED: February 25, 2014

Judge MICHAEL P. KENNY
Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.

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Dated: February 25, 2014

By: S. LEE
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