

Civ. No. S253783

SUPREME COURT
FILED

APR 29 2019

IN THE SUPREME COURT OF CALIFORNIA

Jorge Navarrete Clerk

Deputy

EDWARD STANCIL, Defendant and Petitioner

vs.

SUPERIOR COURT OF SAN MATEO COUNTY, Respondent

THE CITY OF REDWOOD CITY, Plaintiff and Real Party in Interest

After a Decision by the Court of Appeal
First Appellate District, Division Four
[Case No. A156100]
Petition from Order of the Superior Court
State of California, County of San Mateo
Honorable Susan L. Greenberg, Judge Presiding
San Mateo County Superior Court Case No. 18UDL00903

**REAL PARTY IN INTEREST CITY OF REDWOOD CITY'S
MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF
POINTS AND AUTHORITIES; DECLARATION IN SUPPORT;
[PROPOSED] ORDER**

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Attorneys for Plaintiff and Real Party in Interest
CITY OF REDWOOD CITY

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 8.252(a) of the California Rules of Court, Plaintiff and Real Party In Interest, City of Redwood City (“Redwood City”), moves this Court to take judicial notice of two documents: (A) an excerpt of the Redwood City Charter that includes sections 47, 47a, and 47f, and (b) Petitioner’s Reply Memorandum in Support of Writ Petition in *Fambrough et al. v. Redwood City*, San Mateo County Superior Court Case No. 17CIV04680.

This motion is made on the following grounds: (1) Evidence Code sections 452 and 459 authorize this Court to take judicial notice of the documents set forth in this motion; and (2) the documents are relevant to the issues presented in this matter. The first document may assist the Court in understanding the organizational structure of Redwood City, particularly with respect to the City’s Port Department and Board of Port Commissioners. The second document helps illustrate the position petitioner’s counsel is taking with respect to the Redwood City Port Department in other litigation related to Docktown Marina.

This motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, and the attached Declaration of Maxwell A. Blum. A proposed order follows.

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
REDWOOD CITY'S MOTION FOR JUDICIAL NOTICE**

Redwood City requests that the Court take judicial notice of two documents. The first is an excerpt of the Redwood City Charter, particularly Sections 47, 47a, and 47f of the Charter, and the second is Petitioner's Reply Memorandum in Support of Writ Petition in *Fambrough et al. v. Redwood City*, San Mateo County Superior Court Case No. 17CIV04680. Stancil is a petitioner in that case.

Sections 47, 47a, and 47f of Redwood City's Charter help put Stancil's contention that the City lacks the capacity to bring the underlying unlawful detainer actions in context. Sections 47 and 47a provide that the Port Department is a department of the City, which is governed by a Board of Port Commissioners appointed by the City Council. Section 47f, subdivision (1), of the Charter provides that the Board of Port Commissioners has the power to "sue and defend in the name of the City of Redwood City in all actions and proceedings wherein there is involved any matter within the jurisdiction of the board." (Declaration of M. Blum, Exh. A.) Assuming arguendo that Petitioner Stancil is correct regarding the jurisdictional argument he advances, he is ultimately pointing to a distinction without a difference because it is the City that has filed the pending unlawful detainer action, and it would be the City that filed an unlawful detainer action even if the caption stated it was filed by the City of Redwood City, by and through the City's Port Department or its Board of Port Commissioners.

The Reply Brief in the related *Fambrough* case helps put Stancil's argument in this case regarding the City's capacity to sue in perspective. In the brief, Petitioner's counsel contends that the Port Department has unclean hands and is equitably estopped from terminating residential use at Docktown. (Declaration of M. Blum, Exh. B, p. 6.) Thus, her goal is to seek to prevent Redwood City from recovering possession of slips at Docktown that have been used for residential purposes, even if the arm of the City that

she contends must act on behalf of the City—the Port Department / Board of Port Commissioners—were to be identified as the responsible City actor(s) on the caption of the unlawful detainer complaints.

This Court may take judicial notice of any matter specified in Evidence Code section 452. (Evid. Code § 459(a).) This includes legislative enactments issued by any public entity in the United States. (Evid. Code § 542(b); see also *Linda Vista Village San Diego Homeowners Ass’n, Inc. v. Tecolote Investors, LLC* (2015) 234 Cal.App.4th 166, 185.) Because Redwood City is a public entity, the Court may judicially notice a relevant portion of its Charter.

Further, it is proper for courts to judicially notice the existence of court documents, including pleadings. (Evid. Code § 452(d); see also *Linda Vista*, 234 Cal.App.4th at p. 184 [“Judicial notice may be taken of ‘the fact of a document’s recordation, the date the document was recorded and executed, the parties to the transaction reflected in a recorded document, and the document’s legally operative language, assuming there is no genuine dispute regarding the document’s authenticity. From this, the court may deduce and rely upon the legal effect of the recorded document, when that effect is clear from its face.’ [Citation]”]; *Richtek USA, Inc. v. uPI Semiconductor Corp.* (2015) 242 Cal.App.4th 654, 659-60 [proper to judicially notice the existence of a complaint filed in another court].)

While neither document is essential to the Court’s consideration of the issue for which review was granted, the City believes that each will be helpful to the Court, and are proper subjects of judicial notice.


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Dated: April 29, 2019

Respectfully Submitted,

BURKE, WILLIAMS & SORENSEN, LLP

By: 

MICHELLE MARCHETTA KENYON

KEVIN D. SIEGEL

RANDALL G. BLOCK

MAXWELL BLUM

Attorneys for Plaintiff and Real Party in Interest

CITY OF REDWOOD CITY

DECLARATION

I, Maxwell A. Blum, declare:

1. I am an associate with the law firm of Burke, Williams & Sorensen, LLP, attorneys for Plaintiff and Real Party in Interest City of Redwood City ("City"). I am one of the attorneys representing the City. I have personal knowledge of the facts contained herein and if called upon to testify about them, I could and would do so competently.

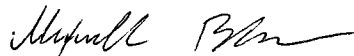
2. I execute this declaration under California Rules of Court, rules 8.252 and 8.54(a)(2), which require a motion for judicial notice of matters outside the record to be accompanied by a supporting declaration.

3. Attached to this declaration as **Exhibit A** is a true and correct excerpted copy of Redwood City's Charter.¹ Sections 47, 47a, and 47f of Redwood City's Charter may help put Mr. Stancil's underlying claims regarding the City's capacity to sue in context.

4. Attached to this declaration as **Exhibit B** is a true and correct copy of Petitioner's Reply Memorandum in Support of Writ Petition in *Fambrough et al. v. Redwood City*, San Mateo County Superior Court Case No. 17CIV04680. Mr. Stancil is one of the petitioners in 17CIV04680. His counsel's arguments on page 6 of this brief help put his underlying claims in this case regarding the City's capacity to sue in context.

5. In the City's view, these two documents are not essential to determining this matter, but will be helpful to the Court, and are proper subjects of judicial notice.

I declare under penalty of perjury that the foregoing is true and correct and that I executed this declaration on April 29, 2019, in Oakland, California



MAXWELL BLUM

¹ The Charter is also available online at <https://www.redwoodcity.org/home/showdocument?id=18019> [as of April 26, 2019].

Civ. No. S253783

IN THE SUPREME COURT OF CALIFORNIA

EDWARD STANCIL, Petitioner

vs.

SUPERIOR COURT OF SAN MATEO COUNTY, Respondent

THE CITY OF REDWOOD CITY, Real Party in Interest

After a Decision by the Court of Appeal
First Appellate District, Division Four
[Case No. A156100]
Appeal from Judgment of the Superior Court
State of California, County of San Mateo
Honorable Susan L. Greenberg, Judge Presiding
San Mateo County Superior Court Case No. 18UDL00903

[PROPOSED] ORDER

Plaintiff and Real Party in Interest's motion for judicial notice is granted. The Court takes judicial notice of the following:

- (1) Sections 47, 47a, and 47f of the Redwood City Charter; and
- (2) Petitioner's Reply Memorandum in Support of Writ Petition in *Fambrough et al. v. Redwood City*, San Mateo County Superior Court Case No. 17CIV04680.

Dated: _____

Justice of the California Supreme Court

EXHIBIT A



City Charter (last amended November 6, 2018)

Redwood City is a "charter city" meaning that the legal authority for the City's actions originates with a legal document called a City Charter, rather than from the laws of the State of California (although the Charter must generally be consistent with State laws, with only a few exceptions).

Charters are adopted by cities where special conditions create needs that can't be adequately met by the general laws. A city can adopt a charter and tailor its organization and elective offices to provide for unique local conditions and needs. A charter can only be adopted and/or changed by a majority vote of city residents -- not by a vote of the city council.

Citizens can establish the terms and number of council members and impose other limitations upon their city council through a charter provision. Among other things, the City Charter gives the City Council the authority to adopt codes and ordinances in order to regulate certain issues within the City.

The Charter:

BOUNDARIES, POWERS, ELECTIONS

Section 1. NAME:

The municipal corporation now existing and known as shall remain and "Redwood City" continue a body politic and corporate, as at present, in fact and in law, by the name of the "City of Redwood City," and by such name shall have perpetual succession.

Section 2. BOUNDARIES:

The boundaries of Redwood City shall continue as now established until changed as authorized by law.

Section 3. POWERS:

The City shall have all the powers heretofore claimed or exercised by the City, shall have all the powers granted to municipal corporations and to cities by the constitution and General Laws of this State together with all the implied powers necessary to carry into execution all the powers granted, and shall retain all rights, interests, powers and privileges heretofore gained by the City or any of its departments, boards, commissions

with the State constitution. No franchise or privilege so granted shall be sold, leased, assigned or otherwise alienated without the express consent of the Council given by ordinance and subject to referendum. (As amended April 8, 1958, ratified by Legislature April 18, 1958. As amended November 6, 2018, certified by Secretary of State December 24, 2018)

PORT DEPARTMENT

(Sections 47 to 50-a inclusive, added June 11, 1936, ratified by Legislature January 23, and May 15, 1937, Stats. 1937, pp. 2697, 2957.)

Section 47. ESTABLISHMENT OF A PORT DEPARTMENT:

To promote and insure more definitely the comprehensive and adequate development of the Port of Redwood City through continuity of control, management and operation, there is hereby created a department of the City of Redwood City to be known as the "Port Department."

Section 47a. BOARD OF PORT COMMISSIONERS:

The exclusive control and management of the Port Department is hereby vested in the Board of Port Commissioners, which shall be composed of five (5) members who shall be appointed by the Council.

No person shall be appointed as a member of the Board who is not at the time of their appointment, and has not been continuously for three (3) years immediately preceding, a resident and elector of the City of Redwood City. All members of the Board shall continuously and during their incumbencies be residents and electors of the City. (As amended November 6, 2018, filed Secretary of State December 24, 2018)

The members of the Board shall serve without salary or compensation. (As amended April 13, 1954, ratified by Legislature January 13, 1955, Stats. 1955, Chapter 27; as amended April 10, 1984, certified by Secretary of State June 21, 1984; as amended November 6, 2018, certified by Secretary of State December 24, 2018)

Section 47b. ORGANIZATION: TERMS OF OFFICE:

Members of the Board shall hold office for a term of four (four) years, except in the case of a vacancy, in which event the appointment shall be for the unexpired term. Board members in office at the time this amendment takes effect shall continue in office until the end of their respective terms. (As amended November 6, 2007, filed by Secretary of State March 12, 2008).

No person shall serve on the Board of Port Commissioners for more than four full consecutive terms. A partial term to which a person is appointed to fill a vacancy on the Board shall not be included in computing consecutive terms. The full term during which a member may resign shall be included in the same manner as if no resignation had taken place. If a member is not reappointed after serving one or more terms, such member may be appointed in a later appointment cycle and shall be eligible to serve four consecutive terms from the date of the later appointment. Full terms or partial terms served prior to January 1, 2019 shall be included in computing consecutive terms. When a member completes a term without being reappointed to the succeeding term, including instances in which a member is not reappointed because of the term limits set forth herein, such member shall continue to serve until their successor is appointed and qualified. (As amended November 6, 2018, certified by Secretary of State December 24, 2018)

The Board shall elect a President, Vice-President and a Secretary. The Board shall make provision for the time, place and conduct of its meetings, which meetings shall be open to the public. (As amended April 9, 1968, approved by Legislature, April 29, 1968, Stats. 1968, Chapter 76; as amended November 8, 2005, certified by Secretary of State January 24, 2006, as amended November 6, 2018, certified by Secretary of State December 24, 2018)

Section 47c. REMOVAL:

Any member of the Board may be removed from office on a five-sevenths (5/7ths) vote of the whole Council, or by recall as provided in Section 6 of this Charter.

Section 47d. ORDINANCES AND RESOLUTIONS:

All actions taken by the Board of Port Commissioners shall be by motion spread upon its minutes, or by resolution except as hereinafter set forth.

Any member of the Board may require a record of the vote on any resolution to be made in its minutes. The Board shall keep a minute book wherein shall be recorded the proceedings taken at its meetings and it shall keep a record and index of all its resolutions and ordinances, which shall be open to public inspection when not in use.

No ordinance or resolution shall be passed or become effective without receiving the affirmative votes of at least three (3) members of the Board.

No ordinance shall be placed upon its final passage until at least five (5) days have elapsed after its first reading. All ordinances shall be published at least once in accordance with procedures established by ordinance of the Board of Port Commissioners for the publication of ordinances, and no ordinance shall become

effective until thirty (30) days after the date of its final passage. (As amended November 6, 2018, certified by Secretary of State December 24, 2018)

The Board may by vote of three (3) of its members, pass emergency measures to take effect at the time indicated therein. Emergency measures shall contain a section in which the emergency is particularly set forth and defined, and a separate roll call on the question of emergency shall be taken.

The enacting clause on ordinances passed by the Board shall be substantially in these words:

"Be it ordained by the Board of Port Commissioners of the City of Redwood City as follows:"

All ordinances shall be signed by the President, or Vice-President of the Board, and attested by the Secretary.

A certified copy of each ordinance adopted by the Board shall be forthwith filed with the City Clerk, and the City Clerk shall keep a record and index thereof which shall at all times be open to public inspection. (As amended April 9, 1940, ratified by Legislature May 16, 1940, Stats. 1941, p. 241; as amended November 6, 2018, certified by Secretary of State December 24, 2018)

Section 47e. PROPERTIES, TARIFFS AND REGULATIONS:

All proceedings for the acquisition of real property by purchase, condemnation, or otherwise, or the granting of any lease longer than one (1) year, the fixing, regulating, and altering schedules of rates, dockage, wharfage, tolls, and charges for all publicly-owned docks, piers, wharves, slips and other facilities, and for services rendered by the Port Department, and the adoption of all general rules and regulations of the Port Commission excepting administrative regulations of a temporary nature shall be done by ordinance or resolution as determined by the Port Commission. (As amended April 9, 1940, ratified by Legislature May 16, 1940, Stats. 1941, p. 241.)

Section 47f. POWERS AND DUTIES OF THE BOARD:

The Board of Port Commissioners shall have the complete and exclusive power, and it shall be its duty for and on behalf of the City of Redwood City:

(1) To sue and defend in the name of the City of Redwood City in all actions and proceedings wherein there is involved any matter within the jurisdiction of the Board.

(2) To make provision for the needs of commerce, shipping and navigation of the Port, to promote, develop, construct, reconstruct, alter, repair, maintain, equip and operate all waterfront properties including piers, wharves, sea walls, docks, basins, channels, slips, landings, warehouses, floating and other plants or works, to dredge, and reclaim land, construct, equip and operate terminal trackage with sidings and turnouts and railroad connections between docks, piers, and other Port structures, and connect the same with mainline tracks, and to establish, equip and operate all other facilities or aids incident to the development, protection and operation of the Port, as may be deemed proper and desirable in its judgment, and it may modify its plans from time to time as the requirements of commerce, shipping and navigation may demand, and as part of such development and operation to provide for tugs, dredges, fireboats, barges, cold storage plants, and all other publicly-owned facilities or appliances, incident to the operation of the Port, and of such number and character, and in such places as the Board may deem feasible and proper.

(3) To take charge of, control and supervise the Port of Redwood City, including all the waterfront properties, and land adjacent thereto, or under water, structures thereon, and approaches thereto, storage facilities and other facilities, and all rights and interest belonging thereto, which are now or may hereafter be owned or possessed by the City of Redwood City.

(4) To have control and jurisdiction of the area hereinafter defined as the "Port Area," and to make and enforce therein general rules and regulations, to the extent that may be necessary or requisite for Port purposes or harbor development and in carrying out the powers elsewhere vested in the Board; provided, however, that with the approval of the Council, the Board may relinquish to the Council control of portions of the said area and likewise, upon request of the Board, the Council may, by ordinance, enlarge the Port Area.

(5) To require owners of the water terminal properties and facilities within the Port to keep the same in proper condition and repair and to maintain them with especial reference to the safety of persons and property and the reduction of fire hazard or nuisance, and it shall have the right to inspect such terminal facilities at reasonable times.

(6) To regulate and control all public service and public utilities operated in connection with, or for the promotion and accommodation of commerce, navigation or fishery in the Port Area; to fix the proper license fees to be paid to the City by any person, firm or corporation operating any such public service or utility; and to fix and regulate the rates or tolls to be charged or collected for services furnished by any such public service or utility. The Board shall have the right, at all reasonable times, to have access to, and in person, or by its duly authorized representatives, to examine the books, papers, maps and records

showing the affairs, transactions, property and financial condition of such persons, firms or corporations, and to require reports respecting said matters from such persons, firms or corporations at such times and in such form as the Board may prescribe. The amounts of the license fees to be paid to the City by any such person, firm or corporation, operating any such public service or utility, and the rates or tolls to be charged and collected for service furnished or supplied by such public service or utility shall be fixed by the Board by ordinance.

(7) To fix all rates, dockage, rentals, tolls, pilotage, wharfage, and charges, for the use and occupation of the public facilities or appliances of the Port and for services rendered by the Port Department, and to provide for the collection thereof.

(8) To purchase materials and/or supplies without soliciting or advertising for bids in an amount not exceeding twenty thousand dollars (\$20,000). Every contract for any purchase of materials and/or supplies, the estimated cost of which is more than twenty thousand dollars (\$20,000) but less than fifty thousand dollars (\$50,000), shall be awarded to the lowest responsible bidder after solicitation of bids without public advertisement. Every contract for any purchase of materials and/or supplies, the estimated cost of which is fifty thousand dollars (\$50,000) or more, shall be awarded to the lowest responsible bidder after public advertisement therefor. The Board shall have the power to reject any and all bids, and solicit or advertise again. All solicitations and advertisements as to purchases shall contain a reservation of the foregoing right.

(9) To enter into contracts, agreements, leases, or stipulations, germane to the scope of its powers and duties.

(10) To let all work by contract or order it done by day labor, as the Board may determine.

(11) To employ and appoint a Port Manager, who shall hold their position during the pleasure of the Board, and such other officers, employees and agents as may be necessary in the efficient and economical carrying out of its functions and to prescribe and fix their duties, authority and compensation, and to require such officers, employees and agents to give a bond in such an amount as the Board may require for the faithful discharge of their duties. All offices and places of employment in the permanent service of the Board shall be created by ordinance duly passed.

(12) To provide and equip offices.

(13) To expend all funds necessary to the carrying out of the powers and duties herein expressed.

(14) To adopt and enforce such ordinances, orders, regulations and practices, as are necessary for the proper administration and discharge of its duties and powers, or for the management and government of the Port, and its facilities.

(15) To prescribe fines, forfeitures and penalties for the violation of any provision of Sections 47 to 50a of this Charter, or of any ordinance, but no penalty shall exceed five hundred dollars (\$500) fine, or six months imprisonment, or both.

(16) To have and exercise the right of eminent domain within the "Port Area," on behalf of and in the name of the City of Redwood City, for Port purposes, harbor development or the carrying out of any of the powers granted to said Board, and to exclusively find and determine by ordinance adopted by a four-fifths (4/5ths) vote of all its members the public interest and necessity thereof.

(17) To appoint a Port Attorney who shall be the same person who is at that time City Attorney and who shall continue to act as Port Attorney during such time as they may continue to be City Attorney, whose duty it shall be to pass upon the form and legality of all contracts within the jurisdiction of the Board, give legal advice to the Board on official matters, defend and (subject to direction from the Board) prosecute or compromise all actions at law or in equity and special proceedings for or against the City of Redwood City or any officer thereof in their official capacity, pertaining to matters within the jurisdiction of the Board. The Board shall fix and provide for their compensation which shall be in addition to their compensation from the City as City Attorney.

(18) To do and perform any and all other acts and things which may be necessary and proper to carry out the general powers of the City, or any of the provisions of Sections 47 to 50a of this Charter, and to exercise all powers not in conflict with the constitution of the State, or with this Charter, germane to the scope of its powers, purposes and duties. (As amended March 4, 1975; certified by Secretary of State March 20, 1975; as amended November 8, 2005 certified by Secretary of State January 24, 2006, as amended November 6, 2018, certified by Secretary of State December 24, 2018)

Section 47g. RELATION TO CITY MANAGER AND COUNCIL

The City Manager and City Council shall be notified of the time and place of the holding of all meetings of the Commission and shall have the right to attend and address the Commission at such meetings. The Secretary of the Commission shall, within two (2) days after the adjournment of each meeting of the Commission, furnish the City Manager and City Council with a copy of the minutes of such meeting. The files of the Commission shall be open to inspection by the City Manager or the City Council at all reasonable times. The Board shall annually, at a meeting designated by the Council,

report on the preceding year's activities and accomplishments, and future plans and objectives. (As amended April 10, 1984, certified by Secretary of State June 21, 1984, as amended November 6, 2018, certified by Secretary of State December 24, 2018)

Section 47h. POWERS AND DUTIES OF PORT MANAGER:

The Port Manager shall have such powers and duties as shall be prescribed from time to time by the Board by ordinance.

Section 48. HARBOR LANDS:

All tidelands and submerged lands within the Port Area, whether filled or unfilled, heretofore and hereafter acquired by the City of Redwood City from the State of California, are hereby declared to be required for use for purposes in connection with or for the promotion and accommodation of commerce, navigation or fishery and shall, except as herein provided, continue to be withheld for such purposes. It shall be unlawful to grant, sell, convey, alienate, transfer or otherwise dispose of, any part of or any interest in such tidelands and submerged lands, or appurtenances thereto belonging, owned, controlled, possessed or held by the City of Redwood City in the Port Area, except as follows:

- (a) Such lands may be leased for not to exceed a term of fifty (50) years in accordance with the procedures established by this Charter for the leasing of real property and subject to the trusts and conditions contained in the grants of such property to the City of Redwood City.
- (b) Any land owned and lying easterly of Harbor Boulevard may be sold as provided by the Charter of the City of Redwood City for selling of property within said City by said Council or by said Port Commission.
- (c) Grants of such lands may be made to the State of California, or to the United States of America, for public purposes, when authorized by a majority vote of the qualified voters of the City, voting upon the question of authorizing any such grant at an election or upon a vote of five-sevenths (5/7ths) of the Council of said City, or four-fifths (4/5ths) of the Port Commission of said City, in case said Port Commission has jurisdiction thereof. (Section 48 as amended April 10, 1962, ratified by Legislature June 29, 1962.)

Section 48a. LEASES:

No sale of any real property under the jurisdiction of the Board of Port Commissioners shall be made except in accordance with the provisions of Section 3-3/4 of this Charter and all powers and duties therein imposed on the Council are hereby conferred and imposed on the Board of Port Commissioners with respect to

EXHIBIT B

1 ALISON MADDEN, SBN 172846
2 P.O. BOX 620650
3 Woodside, CA 94062
4 Tel: (650) 270-0066 Fax: None
5 Email: maddenlaw94062@gmail.com

6 In Pro Per

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN MATEO**

10 FRANCESCA FAMBROUGH, et al,
11 Petitioners/Plaintiffs,
12 v.
13 REDWOOD CITY,
14 Respondent/Defendant.

Case No.: 17CIV04680

**PETITIONER'S REPLY MEMORANDUM IN
SUPPORT OF WRIT PETITION; DECLARA-
TION/VERIFICATION; OBJECTION TO
CITY REQUEST FOR JUDICIAL NOTICE
("RJN"); PETITIONER'S RJN**

Date/Time: April 12, 2019, 9 a.m.
Judge/Dept.: Hon. Marie S. Weiner, Dept. 2

15
16 Petitioner Madden respectfully submits this Reply Memorandum of Points & Authorities
17 ("Reply" and "MPA"), in support of the collective Petition for Writ of Mandate filed October 2017
18 for a number of Docktown Marina residents, challenging the adoption, and the administrative
19 implementation, of the Docktown Plan (the "Plan", and such collective Writ, the "Petition").

20 **I. Introduction**

21 As Defendants have focused on Petitioner Madden, and the taxpayer representative action in
22 her name filed pursuant to CCP §526a ("17CIV00316" San Mateo Co. Super. Ct. Dept. 28) (also the
23 "526a Action"), this Introduction addresses City's wildly erroneous allegations regarding the same.

24 526a Action is on Appeal to First District Court of Appeal; Stay is Likely (Request Imminent)

25 First, 17CIV00316 is on appeal to the First District Court of Appeal (A156288) ("1DCA" or
26 "1st District") and no Order from that 526a Action should be considered final nor binding, and not
27 even advisory, until the appeal is fully and finally resolved, as Petitioner believes it shall be
28 remanded with instructions to Dept. 28 to apply the correct standard, as more fully briefed below.

1 Related to the appeal, it is highly likely the 1DCA will enter a stay of the Plan on request (to
2 be sought imminently), given the ongoing waste of public resources by donating and auctioning
3 barges and vessels acquired for over \$20 million, for free or for pennies on the dollar. See Madden
4 Declaration/Verification in support of this Reply MPA (“Madden Dec.”), ¶2, 3.

5 City’s Scattershot and “Hide the Ball” approach to the 526a Action is not in Good Faith

6 Second, City cherry-picked Orders from Judge Miram’s handling of the 526a Action.
7 Madden agrees with Judge Miram there is a triable issue of fact on jurisdiction. See Madden Dec., at
8 ¶4 (citing Order after Demurrer to 2AC, Madden RJN, Item #1). Judge Miram rightly overruled
9 City’s Demurrer claiming jurisdiction should be handled on Demurrer, but as noted below, applied
10 the wrong standard to a 526a Action (“abuse of discretion” vs. “void as illegal if *ultra vires*”¹).

11 As noted in fn. 1 below, illegal acts are void, and Council “had” no discretion to abuse, and
12 could not wrongly assume discretion to act that belongs by Charter to a co-equal branch of City
13 government, the Port. Judge Miram also reversed nearly all the “Minute Order” points in City’s RJN,
14 Ex. N and that Exhibit is of zero utility in addressing this nuanced, complex issue. Ex. N is a March
15 2017 tentative summarily denying OSC for preliminary injunction, adopted with no change after
16 argument. Dept. 28 later clarified or ruled differently on most points in the Order, hence it should be
17 disregarded or stricken. Citing it at all, and not all of the Orders, is not in good faith. See Madden
18 Oppo. to RJN, *infra* (adding the most germane Order post-Demurrer to 2AC Madden RJN, Item #1).

19 Finally, Judge Miram entered approximately a dozen Orders and Judgments that are all on
20 appeal, from the noted “526a taxpayer representative entity standing issue” to the proper standard of
21 review for a 526a challenge (discretion, fraud/collusion, arbitrary/capricious, “all” of which Dept. 28
22 variously claimed and ruled were the standard, when simply “if it’s against the charter it’s void”)

23 Given all this, none of the 526a Action should be considered here.
24

25
26 ¹ *Crowe v. Boyle* (1920) 184 Cal. 117, 120 (San Francisco city charter, Board of Supervisors
27 ordinance at issue re: Hetch Hetchy contracts – void if *ultra vires*, i.e. outside the bounds of the
28 charter’s provisions); *People ex rel. Kamala Harris v. Rizzo* (2013) 214 Cal.App.4th 921, 941 (City
of Ross, multiple illegal acts without any heightened burden, if in violation of charter, void); *San
Diego City Firefighters, Local 145, AFL-CIO v. Board of Admin. of San Diego City Employees’
Retirement Sys.* (2012) 206 Cal.App.4th 594, 608 (adopting pension plan in violation of charter void)

1 Request to Stay this Admin Writ and "Mass Action" 17CIV05387

2 On the bases that Council lacked jurisdiction, and that the 526a Action was pending, Madden
3 suggested in her Aug. 2018 Declaration in Support of Petitioners' TRO request to Dept. 2 prior to
4 threatened UD's, that this Dept. 2 stay the admin Writ *and* the "mass action", 17CIV05387. This
5 suggestion was made, given that resolution of the 526a Action shall potentially void the Plan
6 altogether, including all appeals, and render moot this Writ and the mass (then-putative class) action.

7 Madden was present in Dept. 2 for the TRO hearing, and believes the Hon. Weiner may have
8 construed Madden's declaration as suggesting this admin Writ be *unstayed* (it was stayed at the
9 time), which was not the request. Madden believed, and still believes, that this admin Writ and the
10 mass action should be stayed pending the 1DCA's determination of the issues on appeal. The 526a
11 Action was first-filed, and addresses jurisdiction.

12 Full Scope of 526a challenge and Fallout of Wrongful Assumption of Jurisdiction

13 Finally, by way of full explanation, the 526a Action challenges the jurisdiction of the Council
14 of Redwood City ("**Council**") to have ever acted whatsoever in accepting service, defending and
15 settling the action brought by Ted Hannig and his "Citizens for the Public Trust" in San Mateo Co.
16 Super. Ct. Nov. 9, 2015 (CIV 536168) ("**Hannig Suit**"). The Hannig Suit and the wrongful
17 settlement thereof by Council is responsible for the agreement to adopt the Plan at all, and the
18 ensuing carnage of the wasteful expenditure of over \$20 million unnecessarily, division of a
19 community, and the eviction and attempted eviction of dozens of residents.

20 11 UD's Granted Review by Supreme Court of California: We Want to Keep our Homes

21 Over 11 homes still remain at Docktown and they are defending the UD's, and the Cal.
22 Supreme Court has Granted Review in 11 of the UD's, on the "*Delta Motion*" motion to quash issue,
23 with briefing through May 2019. Madden Dec., at ¶5. This Court, Dept. 2, has previously opined that
24 Petitioners in this admin Writ and/or the mass action (then-putative class) are seeking money.

25 This is untrue. Petitioners desire, over all other arguments and remedies, to keep our homes.
26 We are presently lawful in occupation under long-standing practice under the public trust to allow
27 10% of marina slips for residential use for a safe and secure presence. *See id.*, Madden Dec. ¶6,
28 Madden RJN, Item #3. Petitioners only seek just compensation under CRAL and condemnation in

1 the mass action if they cannot stay by prevailing in the 526a Action and defeating the UDs, both now
2 out of San Mateo County and to be decided, at least in part, by the 1DCA and Cal. Supreme Court.²

3 Unfolding Nature of Jurisdiction Claim and this Admin Writ

4 The bases in the 526a Action, as well as this administrative Writ, for challenging adoption
5 and implementation of the Plan (including without limitation the primary issues of lack of
6 jurisdiction and the requirement to apply the CRAL, Gov. Code §7260 *et seq.*) were raised:

7 (1) to the Council before and after its adoption of the Plan in Dec. 2016;

8 (2) in the appeals process in this administrative proceeding to the Hearing Officer (“H.O.”)
9 (raised but not considered by her); and

10 (3) as to jurisdiction, as the basis of the 526a taxpayer representative Action.

11 Notably, Judge Miram specifically held mandate is not the only method to attack and void
12 the Plan, and that Sec. 526a indeed is one such method (one of the items in the City RJN, Ex. N
13 Order he reversed). And timely filing that challenge can also be construed as mandamus; on remand
14 with the proper standard both 526a and mandamus shall again be stated. *See* Madden RJN, Item #1.

15 Mass Action – Revision

16 Lack of jurisdiction has also been previously pleaded in the “mass action” 17CIV05387
17 pending in Dept. 2 (which has been granted leave to amend by Dept. 2’s CMO denying class
18 _____

19 ²Note that §526a is inherently representative of all residents of the political agency to which the tax
20 has been paid or which has assessed the tax, regardless whether the 526a claim is brought by an
21 individual or a representative entity. *See Weatherford v. San Rafael* (2017) 2 Cal.5th 1241.

22 *Weatherford* is an individual standing case; the entity line of cases holds that any entity with one
23 or more individual taxpayers has standing. *See, e.g., Los Altos Prop. Owners Assoc. v. Hutcheon*
24 (1977) (69 Cal.App.3d 22, at 30 & fn.1 (collecting cases through 1977, with many more since then in
25 alignment, and involving “both” an individual as well as entity challenging the Los Altos School
26 District). Dozens of U.S. and Cal. Supreme Court and lower federal and Cal. State cases have
27 addressed representational entity cases for decades, all holding the test is whether “members” as
28 *individuals* have paid a tax, not whether the “entity itself” has paid a tax. Indeed, in *Los Altos, supra*
the entity was an unincorporated association not subject to any tax, and whether the entity is an LLC,
501(c)(3) or any other entity formation, the test is *whether the entity has individuals* (one or more,
not even many) that satisfy the individual *Weatherford* test.

Dept. 28 erroneously applied the *Weatherford* individual test to the *entity*, holding that a non-
profit must pay a tax, and dismissing “San Francisco Bay Marinas for All” (a nonprofit, “**Marinas**”),
whereupon Madden proceeded as an individual representing all Redwood City residents. The more
nuanced two-step analysis was lost in the Dept. 28 analysis for some reason, and is on appeal.

1 certification among other issues addressed therein). Jurisdiction can be reasserted with clarity in
2 17CIV05387, and consolidated with this admin Writ, or addressed thereafter. Lack of jurisdiction is
3 also the basis of affirmative defenses in 11 UD's, as it goes to the right of possession.

4 *A Full Trial on Jurisdiction is Warranted; Not a Ruling in this Admin Writ*

5 Accordingly, it is evident that a full trial on jurisdiction is warranted, and should be held, at a
6 minimum, in the mass action, after this administrative Writ is dispatched. Most proper, however, is
7 to stay both this administrative Writ (as it had been), as well as the mass action, until the appeal is
8 decided in the 526a Action. Only Defendant Ted Hannig, through his law associate Trevor Ross,
9 "peremptoried" Dept. 2, the Hon. Marie Weiner, when 17CIV00316 had been related with all
10 actions. On remand after appeal, the standard for a §526a case shall have been re-stated ("abuse of
11 discretion" is not the standard for an entity assuming wrongful dominion when it lacks jurisdiction
12 by Charter – any such acts in violation of Charter are void, not merely voidable). It is uncertain on
13 remand how the actions should or shall be consolidated and if Hannig will be a party thereafter.

14 The UD's entitle Petitioner (and all of them) to a jury trial, and the UD's have currently been
15 Granted Review at the Cal. Supreme Court, and shall be briefed through May 2019 and heard and
16 decided in the weeks and/or months thereafter. See Madden Declaration/Verification in support of
17 this Reply MPA ("Madden Dec."), ¶5.

18 If the UD's are not dismissed via the Supreme Court's decision, or thereafter on remand, the
19 UD's shall be tried to a jury on the lack of jurisdiction affirmative defense, among other defenses also
20 going to the right of possession. Thus, any notion that the jurisdiction issue is properly decided
21 solely on the briefs in this Writ is improper. Judge Miram held that a 526a writ is tried by the bench
22 (also on appeal to the 1DCA), but consolidation of a UD that goes to the right of possession on the
23 same issue is mandatory (abuse of discretion to deny consolidation³, on appeal to 1DCA), requiring

24 _____
25
26 ³ *Martin-Bragg v. Moore* (2013) 219 Cal.App.4th 367, 391 (abuse of discretion for court to have
27 insisted on summary proceeding avenue when complex issues going to the right of possession were
28 at issue in a related pending proceeding); *Wilson v. Gentile* (1992) 8 Cal.App.4th 759 (unlawful
detainer consolidated with specific performance action) (both *Martin-Bragg* and *Wilson* even
involved consolidating UD's with actions later-filed by UD defendants; here both the jurisdiction
17CIV00316 and the mass action and Writ were filed before, 17CIV05387 and 17CIV04680); see

1 a jury for fact issues. This court has already related the UD's that track the Petitioners, and a Motion
2 to Consolidate shall be brought before or after the Supreme Court's decision.

3 Note: CCP §418.10 tolls a UD Defendant's obligation to file response pending finality of Writ
4 proceedings, it is not a full stay that precludes a MTC. Petitioner is aware a MTC a UD in Dept. 2's
5 case 17CIV04898 ("Sole Writ") was denied, but it is uncertain if any claims or defenses there went
6 to the right of possession; Ours do, we have different counsel and different issues, and it is abuse of
7 discretion to deny a MTC when an action on the same issues is pending. *See supra* n.3.

8 Finally it must be addressed that City just does not grasp the risks of acting without
9 jurisdiction. City's lawyers argue in Opposition that Petitioners can't even be in their homes on
10 Redwood Creek if the Council has no jurisdiction. They are wildly mistaken in this assumption. The
11 Council and City Manager simply never had any right of any kind or nature to enter into agreements
12 with residents, or to "take over" Docketown in 2013 when the former operator left. As shown by the
13 Sorba Letter, Madden RJN Item #2, the Council and Port knew the Port had jurisdiction, they just
14 didn't care. To act without capacity and jurisdiction is one of the most fundamentally risky legal
15 propositions around. Petitioners are "allowed" to be on Redwood Creek, having entered into
16 agreements with the prior operator; it matters not that such operator and the City *ex rel.* Council and
17 Port were sloppy and failed to know, or to comprehend, the nature of their illegal acts.

18 Petitioners would have, and now may, simply direct themselves to the Port Department,
19 which has unclean hands and is equitably estopped, having allowed detrimental reliance by
20 Petitioners for so long. Petitioners have a right to be on Redwood Creek, just the same as Municipal
21 Marina, Redwood Landing, and multiple other Redwood City marinas, through this equitable
22 estoppel. If the Port determines otherwise, it is the Port that is responsible for relocation under
23 CRAL. Moreover, the residents have been ideal tenants, paying rent and acting properly as their UD's
24 have wound to the Cal. Supreme Court. They will continue to act responsibly and in good faith, and
25 *in cooperation with the PD, Port and DPW, among other entities and agencies until this morass of*

26
27 *also Asuncion v. Super. Ct. (1980) 108 Cal.App.3rd 141 (also later-filed fraud suit by UD defendant*
28 *trumped summary nature of earlier-filed UD and appeals court required them to be consolidated).*

1 the Council's own making is resolved. One thing is clear, it is nobody's fault but the Council's.

2 It is also abundantly clear the H.O. did not consider jurisdiction, nor consider nor apply
3 CRAL; accordingly, any and all persons who have not signed a waiver are proper parties in the
4 "mass action", as futility of having participated in the administrative process to "exhaust
5 administrative remedies" is manifest. The City is arguing, in the "class/mass" (now solely mass due
6 to denial of class cert motion) that CRAL claims can't be made for failure to exhaust administrative
7 remedies. But then they argue in their Opposition that the entire admin process was indeed – and
8 exactly – set up to exclude CRAL. They cannot have it both ways. We "must" bring this admin Writ
9 to exhaust the remedy of claiming that CRAL obligations are mandatory, otherwise when we sue for
10 CRAL in the mass action we shall have failed to exhaust. It is clear by City's own reasoning that this
11 entire admin Writ is a futile exercise, hence the mass action should include everyone at Docketown,
12 or that has left, if any such persons have not accepted Plan benefits, thereby signing a waiver.

13 The basis for administrative challenge is lack of independent hearing officer and plain error
14 in failing and refusing to consider the CRAL or jurisdiction issues at hearing, requiring vacation and
15 remand, at a minimum, or the setting of a full trial on such issues in the mass action in 17CIV05387.

16 **II. Administrative Writ of Mandate Review**

17 The focus of this Reply MPA, after dispatching City's wildly erroneous and misleading
18 claims about the 526a Action, is that the administrative process did not have an independent hearing
19 officer, and that her lack of independence and artificially constrained range of issues that she could
20 and would consider, deprived Petitioner(s) of substantive and procedural due process. Madden joins
21 the Reply Brief filed on behalf of all Petitioners by counsel Frostrom and offers all of these
22 arguments in support of the Writ on behalf of all Petitioners. This is just and justified. It is also noted
23 that City's Opposition is 40 pages, exclusive of RJN and supporting Exhibits. Madden does not see
24 that the Briefing CMO set such a lengthy page limit and more time was necessary to have responded
25 to such a lengthy Opposition that, due to its length, rambled into the dozens of cases and arguments.

26 **Relief Sought—Vacate H.O. Decisions, Remand for Consideration of CRAL and Jurisdiction**

27 Notwithstanding that something as germane and material as capacity to act through lack of
28 jurisdiction had been timely raised, and that CRAL was mandatory, and that actions had been filed

1 as to both, the Plan was nevertheless implemented by Council's retained "relocation expert" OPC,
2 and with haste. The State Lands Commission *never* stated a 1- or 2-year timeframe and indeed never
3 required haste at all. Moreover, the SLC itself, the *Commission*, nor the AG, has "*ever*" and rather,
4 "*has never*" taken any official action declaring the boundaries of residential liveaboards in marinas.
5 The Council's entire set of actions, adoption of the Plan and staggeringly irresponsible series of acts
6 costing taxpayers over \$20 million are "*all*" based on a series of "staff" letters of SLC professional
7 staff, and by a single individual, not a lawyer and not the not the Commissioners nor the "SLC", and
8 a DAG, not the "Attorney General" and via an "informal advice letter" of counsel by Deputy Vogel.

9 This Court, the Hon. Marie Weiner, has repeatedly questioned Defendant's counsel as to why
10 Council proceeded to implement the Plan notwithstanding multiple challenges in court. In the long
11 run, this has caused more financial and other damage to those Madden represents in the 526a Action.

12 Petitioners filed this Writ because the City of Redwood City, *ex rel.* its Council and City
13 Manager, advised them multiple times, through the Plan and execution of the Plan, that they,
14 Petitioners, must:

- 15 (1) exhaust administrative remedies by participating in the Plan,
- 16 (2) file an appeal if a Petitioner disagreed with a determination under the Plan, and
- 17 (3) challenge the H.O.'s final decision thereafter, in court, within 90 days of that decision.

18 *See* Madden RJN, Item #4 (history of communication from Council, City Manager, OPC, and H.O.
19 re: eligibility, process, appeals, and the like).

20 Notably, the City did not advise residents who had appealed whether their filing in court had
21 to be "*administrative*" or "*traditional*" mandamus. They just now try to avail themselves of any
22 distinction, and this is merely form not substance, and Petitioners shall prevail. As noted previously,
23 Judge Miram held that the 526a Action suffices to timely challenge the Plan and it is on appeal.

24 Petitioners did participate in the Plan. As a preliminary matter, it was OPC, and not "the
25 City", that rendered initial determinations as to whether individuals at Docketown would receive
26 benefits under the Plan, and in what amount. Madden RJN, Item #4.

27 To challenge an OPC determination, each Petitioner had to file an appeal. Each Petitioner
28 that did so received a letter from the H.O. stating the scope of appeal—that the appeal would not

1 address CRAL, nor any other argument external to the Plan. *Id.*

2 Because the H.O. failed and refused to take evidence on material issues raised in the appeals,
3 the appeals lacked due process as more fully argued below. Moreover, the H.O. was not
4 independent, and routinely checked with OPC and the City Manager for substantive decisions and
5 positions, including respecting the very material and substantive outcome whether the particular
6 resident would be “allowed” to move to Municipal Marina. Madden Dec., para. 8 (it is Petitioners’
7 contention there is an unlawful blacklist and none of them remaining have been allowed to move to
8 Municipal). The lack of independence and failure to consider claims raised renders the decisions
9 flawed and subject to vacation and remand, at a minimum.

10 *Futility Established by Specifically Failing and Refusing to Consider CRAL or Jurisdiction*

11 Moreover, the entirety of the proceeding without a doubt supports the “futility” of raising
12 CRAL and jurisdiction as to any and all Docketown residents eligible for benefits under CRAL and /
13 or the Plan, and all such residents, even if they did “not” participate in the Plan or an appeal, may all
14 now bring CRAL actions and other claims and causes in the mass action due to such futility.

15 First, it must be forever put to rest that the CEQA Writ in 17CIV00276 “alleges that the City
16 Council has jurisdiction over Docketown.” City’s Oppo. p. 20, ll. 19-20. This is false. Madden has
17 repeatedly demanded that the Burke law firm justify this by pointing to the Verified Writ Petition,
18 and show the court and parties where this “allegation” is made. Allegations are affirmative
19 statements, “alleging” that certain facts are true, and established. Petitioners in the CEQA action
20 were the Marinas non-profit (not “Madden”), and did “not” allege that Council properly undertook
21 the Docketown Plan. Indeed, we filed concurrently, as permitted by law, different actions seeking
22 complementary, not conflicting, remedies. First, the 526a Action timely alleged lack of jurisdiction
23 and that the legislative act of adopting 15550 (the Plan) was invalid. Second, although we very much
24 believed and alleged Council “lacked” jurisdiction, it had indeed usurped it and ran with it – Council
25 is the one that acted to adopt the Plan without an EIR! To sue to stop the Plan from going into effect
26 before “the City” did an EIR is not inconsistent, and Petitioners sought to set aside the Plan until the
27
28

1 "City" (in our view, the Port) properly did an EIR. The Port oversees Port Area EIRs. Unfortunately,
2 the CEQA action did not succeed, on the ground that removing residential use, when Council denied
3 it had any plan to close the marina or destroy the docks and barges and boats, did not trigger CEQA.

4 The City's ridiculous contention that the CEQA action renders the jurisdiction action invalid
5 due to any such "allegation" would have put an end to the 526a Action two years ago if correct.
6 Madden implores this Dept. 2 to dispatch this argument, if at all possible, to a most ignoble end.

7 Having shown both that "Madden" did not bring CEQA, and that "Madden" only brought the
8 526a Action after a wrongful "taxpayer representative entity" standing decision, Madden also now
9 shows that the CEQA action has nothing to do with "jurisdiction" and this Dept. 2 resolved the
10 CEQA Action 17CIV00276 in any event. It should be noted this had the salutary effect of fleshing
11 out that the State Lands Commission is "not" a necessary or indispensable party as noted by Judge
12 Wiener in various CMO's in both the 17CIV00276 Action as well as this Writ and mass action.
13
14

15 **III. Conclusion**

16 Madden respectfully requests that the Court, Dept. 2, grant the following relief: (1) allow
17 more time for briefing and trial on the instant Writ given City's voluminous and rambling
18 Opposition; (2) vacate the H.O. decisions and remand with instructions to consider CRAL and
19 jurisdiction, among any other issue raised in appeal; (3) order the City to employ an independent,
20 and competent, hearing officer for due process; (4) find that, if the appeals were properly
21 administered pursuant to the four corners of the Plan, that all Petitioners, and all others that have not
22 signed a waiver, may now proceed to seek CRAL benefits in the mass action 17CIV05387 after
23 amendment, the "exhaustion" requirements clearly being futile, by the Council's own design.
24

25 Respectfully:

26 4/9/19
27 _____
28 Date:

ALISON MADDEN

Signature; In Pro Per

1 **Madden Dec.**

2 1. My name is Alison Madden, I am in pro per in this action and in 17CIV00316 (the “526a
3 Action”). I am co-counsel in the unlawful detainers filed pertaining to Docketown and I am member
4 of the mass action, 17CIV05387. I am licensed to practice in all of the courts of the State of
5 California. My SBN is 172846. I run my own law office and render services to technology
6 companies and other business entities. I make this Declaration of my own personal knowledge, as to
7 all facts asserted and I verify the Reply, this Declaration and my Request for Judicial Notice
8 (“Madden RJN”). I swear under penalty of perjury that all of the assertions are known to me
9 personally as to a factual basis and if called could and would testify competently thereto.
10

11 2. “Redwood City”, *ex rel.* its Council in December 2016 adopted the Docketown Plan, even
12 though both Council and Redwood City’s Board of Port Commissioners (“Port Board”) knew that
13 the Port Department (“Port”) had Charter jurisdiction over Docketown on Redwood Creek. *See*
14 Redwood City Charter (“Charter”), chap. 47; “Sorba” letter to Redwood City Council 2005,
15 Madden RJN Item #1 (also with the Sorba letter is items produced by the Port showing Port
16 reporting to the SLC over Granted Lands pursuant to the charter and the Grant of the tidelands to
17 Redwood City). By Charter, the Port acts *as* “Redwood City” *ex rel.* its Port Board and the Council
18 does not review Port Board actions; the two entities are co-equal by Charter. *Id.* The Port Board
19 adopts Ordinances and Resolutions governing the Port Area.
20

21 3. Madden shall imminently seek a stay at the IDCA on any further execution under the Plan,
22 of any kind or nature. Madden has undertaken Public Records Act (“PRA”) requests (“PRAR”)
23 under the Cal. Public Records Act (“CPRA”), Gov. Code §§6250 *et seq.* Results of the PRAR show
24 that the City has sold barges for between \$700 and \$1,400 that it had paid hundreds of thousands of
25 dollars for. The §526a Action is a taxpayer action for waste, and the OSC for PI that was denied
26 resulted in the City being able to undertake the buyout of vessels for over \$20 million collectively.
27
28

1 The PRAR includes all the buyouts for every departing former Docktown resident, and they total
2 over \$20 million, with well over \$1 million being offered for 4 barge homes alone, totaling
3 approximately \$5 million solely for those 4 barge homes. Multiple additional barge homes and
4 vessel homes were bought for tens and hundreds of thousands of dollars. Also in PRAR the City
5 Attorney has advised Madden that the Council has been authorized to “donate” and to sell or
6 otherwise dispose of the purchased barges and vessels. Finally, there was a “single buyer” proposed
7 transaction, negotiated and signed by the City Manager, that would have sold all the boats, barges
8 and personal property on the docks for approximately \$500,000. This “single buyer” transaction has
9 been cancelled, ostensibly at the bidding of the single buyer after due diligence revealed the multiple
10 lawsuits and exposure. Through all of the PRAR, the City has delayed, not followed the timelines of
11 the CPRA, has engaged in “hide the ball” games, but eventually all of the records show a clear
12 practice of waste, and all of it through the illegal conduct of continuing to execute on the Hannig
13 Settlement, the Plan and the wrongful assumption of jurisdiction. The contracts with OPC, the
14 relocation “specialist” and the auction company are all alleged to be void under the 526a Action.

17 4. Petitioner agrees with Judge Miram that there is a triable issue of fact on jurisdiction. See
18 Order after Demurrer to 2AC, Madden RJN Item #2. Judge Miram rightly overruled City’s Demurrer
19 that jurisdiction could be handled on Demurrer, but as noted, applied the wrong standard to a 526a
20 Action (“abuse of discretion” vs. “void as illegal if *ultra vires*”). It is ironic that the City’s RJN
21 includes an OSC order, and Orders after 2AC and 4AC but not after 1AC and 3AC. The Order
22 overruling the challenge to the jurisdiction and stating it is a triable issue is the Order after Demurrer
23 to 1AC, item #2, Madden RJN, and the dueling Orders of Aug. 2, 2018 after Demurrers to 3AC and
24 pending 4AC (which only one should have been heard) is the Order claiming 526a writs are solely
25 subject to bench trial (issue on appeal). Also in Item #2 Madden RJN, Aug. 2 Orders 1A and 1B.
26 The judge ruled on Demurrers to 1AC, 2AC (both filed by former counsel Redenbacher), as well as
27 3AC and 4AC (both filed by current counsel Madden), as well as motions surrounding a 5AC, all
28 during which Judge Miram reversed or clarified nearly every item in the OSC Summary Denial.

1 5. Over 11 homes still remain at Docktown; I am co-counsel and we are defending the UDs.
2 The Cal. Supreme Court on March 25, 2019 Granted Review in all 11 of the UDs, on the "Delta
3 Motion" motion to quash issue, with briefing through May 2019. Argument, if permitted, would
4 occur in June and it is not known when the Supreme Court would render its decision and direction as
5 to further proceedings, if any, in the UDs.

6 6. San Mateo County Superior Court Dept. 2 has previously opined that Petitioners in this
7 admin Writ and/or the mass action (then-putative class) are seeking money; this is untrue. Petitioners
8 desire, over all other arguments and remedies, to keep their homes. I am co-counsel and a tenant. We
9 are presently lawful in occupation under long-standing practice under the public trust to allow 10%
10 of marina slips for residential use for a safe and secure presence at a marina. See Madden RJN, Item
11 #3, from CPRA pursuant to Madden Dec. p.2 (showing Brisbane, as well as Municipal, Marina
12 among other Bay marinas allowing 10% (Municipal is shown by Docktown Plan and Port records).

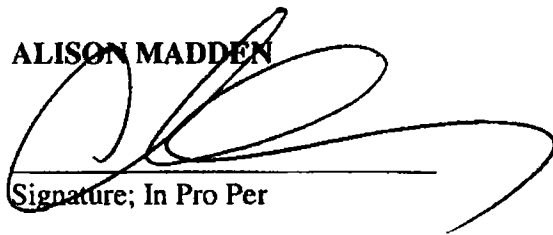
13 7. The entire history of my appeal in this administrative Writ and the unfolding of the acts taken
14 by Redwood City's Council, City Managers and the alleged "independent" H.O., from commence-
15 ment of the Hannig Suit to adoption of the Plan, to the admin appeal, and the execution thereafter by
16 filing UDs is chronicled in the RJN Item #4 and Petitioner requests that the AR be augmented to
17 include any of RJN Item #4 that is not already within the AR.

18
19 Respectfully:

20 4/29/19

21 Date:

ALISON MADDEN



Signature; In Pro Per

22 **Petitioner Madden's Objections and Opposition to City's "RJN" ("Oppo. to RJN").**

23 The following objections are made to City's RJN. This Oppo. to RJN is incorporated by this
24 reference into Petitioner's Declaration and Reply Brief as if fully set forth therein.

25 **City Ex # Objection/Lack Thereof**

26
27 A. No objection the statute Ord. 15550, adopting the Docktown Plan, is subject to notice;
28 our claim is that the ordinance is void as *ultra vires*, in excess of Council jurisdiction.

- 1 B. SLC "staff" letter of Feb. 25, 2014 to City (Ekern). *Object* to any characterization that
2 this comes from the *Commission*; it is a letter of a mid- to senior-level staffer, not the
3 Executive Officer, nor the Commission. Moreover SLC is not an "executive agency",
4 it is an agency created by the legislature (PRC, Public Resources Code) to undertake
5 certain "quasi-legislative" actions.
- 6 C. *Same Objections* as B, to this Ex C SLC "staff" letter of Aug. 7, 2014 to City
7 (Ekern).
- 8 D. *Same Objections* as B and C, to this Ex D SLC "staff" letter of Jan. 4, 2017 to City
9 (O'Dell). *In addition*, this staff letter covered an "informal legal advice" of counsel
10 letter from a DAG, deputy Attorney General Vogel, and the cover letter to O'Dell
11 from a non-lawyer incorrectly called it, more than once, an "opinion" of the AG. AG
12 Opinions are solely provide for by the Gov. Code and must be voted and authorized
13 by the Commissioners themselves, which never happened; this Ex D was waiver of an
14 attorney-client privilege on a staff DAG advice letter, containing no marina cases
15 whatsoever, much of it has been undercut by SLC settlement with S.F. City and
16 County allowing affordable homes on filled Port lands (the authority in the letter
17 pertaining mostly, if not solely, to prohibiting permanent housing projects on filled
18 public trust lands; this settlement and following AB law to be introduced at trial.
- 19 E. Res. 3344. *Agree* the Court may take Judicial Notice of resolutions and ordinances of
20 the City of Redwood City *ex rel* its Council and Port Dept., each acting in its
21 authorized Charter capacity. Res. 3344 is but one of over a dozen "back and forth"
22 ceding and reclaiming jurisdiction over upland, filled public trust lands and tidelands.
23 All to be introduced and proven at trial. A triable issue is clearly shown, as
24 acknowledged by Judge Miram's Orders (after Demurrer to 2AC).
- 25 F. Res. P-357 Port (w/map 5 of 5 pertaining to Granted Lands). *Same Agree* as "E", but
26 Court must recognize "*all*" of the Ordinances and Resolutions back and forth, and
27 City's RJN is selective; Moreover, Judge Miram recognized a triable issue in his
28 Order Overruling City's Demurrer, obviously not cited by City in its RJN.
- G. City Charter. *Object* that this version is not the most up to date. To be provided, as it
has been amended by vote of the electorate Nov. 2018. City is in control of that
revised Charter draft and its publication.
- H. Stat. 1954, ch. 34 amend. Stats. 1945, ch. 1359 – *Agree* the Court may take Judicial
Notice of enactments of the Legislature of the State of California, which speak for
themselves; *disagree* with description-did not grant "Docketown portion" of Redwood
Creek, granted entire Granted Lands 5-map set to City of Redwood City, and the Port
has jurisdiction, has always reported on Granted Lands, and more. To be tried at trial.
- I. Dept. 2's CMO # denying City's RJN, declaring Special Demurrer Moot, Overruling
City's Demurrers to 1st and 2nd Causes of Action (CRAL and Inverse Condemnation)
but Granting Relief as to "Declaratory Relief". *Speaks for itself*.
- J. Dept. 2's CMO #3 . *Speaks for itself*.

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- K. 17CIV00276 CEQA Writ. Resolved, No objection to Dept. 2 taking Judicial Notice of this case handled entirely by her Dept. 2.
- L. City's Reply Supp. Brief in "K" CEQA. Object to court taking partial judicial notice; entire action handled by Dept. 2, Petitioner requests Dept. 2 to take Judicial Notice of all Supplemental Briefing (Opening and Reply) on the liveboard issue to the extent relevant.
- M. Judgment in K/L, CEQA Writ handled solely and fully by this Dept. 2, same as K/L.
- N. Minute Order, Dept. 28 March 30, 2017. *Object, Request to Strike*. Dept. 28 issues at least 12 ruling in 17CIV00316, thereby vacating or modifying, clarifying or overruling his own self as to multiple issues over time; all of the case on appeal with respect to appealable issues. This Order is of zero weight and value in this Writ.
- O. 2nd Amended Complaint in 17CIV00316. *Object, Request to Strike*. Useless without full case Register being taken judicial notice of. Multiple conflicting orders over time, with all of it on appeal. This interim Complaint is of no weight or value in this Writ.
- P. Order sustaining Demurrers to 2AC Sept. 21, 2017 Dept. 28. *(NOTE: Order after IAC wrongly ejected nonprofit (representative entity) by applying the individual test to an entity; but recognized that there is a triable issue of fact as to jurisdiction)*. Also object that the multiple Orders did "not" in full "sustain Demurrers" and leave was always permitted, with Dept. 28 continuing to apply varying, different and ultimately, all wrong standards (first "fraud and collusion" necessary, then "abuse of discretion" then "arbitrary and capricious" – all wrong, simply "void if ultra vires" and on appeal. The Orders are of no utility unless taken fully in totality and in any event every appealable Order and Judgment is before the IDCA.
- Q. 4th Amended Complaint in 17CIV00316. Same as "O" and N through T.
- R. Order Sustaining Demurrer to 4AC in 17CIV00316. Same as N through T. Note: court continues to apply wrong standard; now on appeal.
- S. Order denying Motion for Leave to File 5AC in 17CIV00316. Same as N through T, including R, continuing error of applying wrong standard; now on appeal.
- T. Judgment of Dismissal in 17CIV00316. Same as N through T, continuing error of applying wrong standard; now on appeal.
- U. Relo Agreement – Groce; by way of verification and personal knowledge, as co-counsel for Groce in the UD's, this is a slip for which Ms. Groce at the time had Power of Attorney, for an ill elderly man, and he expressly gave PoA to manage this during his lifetime; he is now deceased. She has a liveboard on another slip. She did not fully sublicense her interest to Alan Eder, indeed she could not do so under the terms of the forced liveboard rental agreement the city demanded signed; and the

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City cannot have it both way (unclean hands). Lack of Jurisdiction in Council applies in any event. Ms. Groce appealed with and for Mr. Eder who was present for a few months, the City routinely paid the tenants of Mr. Stancil, Mr. Callister and others. Tenants were entitled to benefits under the Plan, hence subleasing may not divest any owner of any benefits.

Respectfully:

ALISON MADDEN

Date:

Signature; In Pro Per

Petitioner Madden's Request for Judicial Notice ("RJN"):

This RJN is incorporated by this reference into Petitioner's Declaration and Reply Brief as if fully set forth therein.

Item # Document

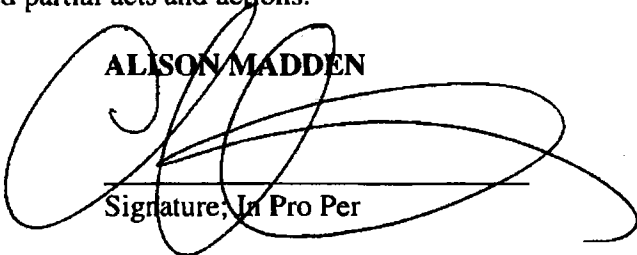
- 1. Order after Demurrer to 2AC, Miram, J. Dept. 28 holding 526a satisfies mandamus requirement and overruling challenge to jurisdiction (triable issue).
- 2. Sorba letter 2005 from Francois Sorba, City Attorney and Port Special Counsel, to Council and others advising that Port has jurisdiction over Docktown; and reporting by Port Finance Director to SLC re: Granted Lands (all due to PRA requests under CPRA).
- 3. CPRA to Port and BCDC showing Brisbane, as well as Municipal, Marina among other Bay marinas allowing 10% of slips for residential liveaboard for safety and security (Municipal is shown by Docktown Plan and additional Port records).
- 4. History of communication directly to Madden from Council, City Manager, OPC, and H.O. re: eligibility, process, appeals, and the like. Supplement to AR.
- 5. CPRA re: Port and Council Resolutions re: jurisdiction back and forth, leaving with 1977 Joint and Individual acts of Council and Port re-setting tide and submerged lands in all of Port Area in Port; backed by collateral additional historical back and forth. City emphasized partial acts and actions.

Respectfully:

4/9/19

Date:

ALISON MADDEN



Signature; In Pro Per