No. S194861

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA REDEVELOPMENT ASSOCIATION, LEAGUE OF CALIFORNIA CITIES, CITY OF UNION CITY, CITY OF SAN JOSE, AND JOHN F. SHIREY,
Petitioners,

v.

ANA MATOSANTOS, in her official capacity as Director of Finance, JOHN CHIANG, in his official capacity as the Controller of the State of California, PATRICK O'CONNELL, in his official capacity as the Auditor-Controller of the County of Alameda and as a representative of the class of county auditor-controllers,
Respondents.

OPPOSITION TO PETITIONERS' MOTION FOR CLARIFICATION AND MODIFICATION OF STAY BY RESPONDENTS COUNTY OF SANTA CLARA AND VINOD K. SHARMA, COUNTY OF SANTA CLARA AUDITOR-CONTROLLER, AND SUPPORTING DECLARATION OF LESLIE CROWELL

MIGUEL MÁRQUEZ (No. 184621)
County Counsel
ORRY P. KORB (No. 114399)
Assistant County Counsel
LIZANNE REYNOLDS (No. 168435)
Deputy County Counsel
JAMES R. WILLIAMS (No. 271253)
Deputy County Counsel
OFFICE OF THE COUNTY COUNSEL
70 West Hedding Street, East Wing, 9th Floor
San Jose, California 95110
Telephone: (408) 299-5900
Facsimile: (408) 292-7240

Attorneys for Respondents
VINOD K. SHARMA, Auditor-Controller of the County of Santa Clara, and the COUNTY OF SANTA CLARA

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Other Authorities

OPPOSITION TO PETITIONERS' MOTION FOR CLARIFICATION AND MODIFICATION OF STAY BY RESPONDENTS COUNTY OF SANTA CLARA AND VINOD K. SHARMA, COUNTY OF SANTA CLARA AUDITOR-CONTROLLER

I. INTRODUCTION

The California Constitution plainly states that "[t]he Legislature *may* provide" redevelopment agencies with the ability to use tax increment financing to pay for their activities and to issue debt. (Cal. Const., art. XVI, § 16 (emphasis added).) This is the key language upon which the validity of AB1X 26 turns. If this language means what it says, then it was clearly within the Legislature's sound discretion to enact AB1X26, including the provisions that prohibit redevelopment agencies ("RDAs") from incurring additional debt.

In its stay order, the Court judiciously stayed the provisions in AB1X 26 that would automatically dissolve RDAs, but left in place the prohibitions against incurring new debt and taking other actions that would deplete RDA funds. Petitioners now seek to skirt the Legislature's express desire to preserve the corpus of RDA funds for use by other taxing agencies that desperately need those funds. Instead, Petitioners ask this Court to modify its carefully-crafted stay order to allow RDAs to engage in another round of spending to rack up inordinate amounts of debt that will take decades to retire. That way, even if they lose this lawsuit, they will have delayed the effect of the legislation and the Court's order for years, or perhaps decades. For this reason, Respondents the County of Santa Clara and Vinod K. Sharma, County of Santa Clara Auditor-Controller, (collectively, the "County") oppose Petitioners' motion to modify the stay order issued by this Court.

Despite the fact that Petitioners challenge the validity of AB1X 27 – and that they requested the stay of its provisions – Petitioners now seek to

avail themselves of its benefits, but not its concurrent burdens. Petitioners' position is inherently contradictory and the Court should decline their invitation to disturb the careful balance achieved in the stay order.

As for Petitioners' likelihood of prevailing on the merits, Petitioners present this as an "all or nothing" situation – that the Court will either uphold AB1X 26 and AB1X 27, or invalidate them, *in toto*. But there is another, much more likely, scenario. Even if Petitioners ultimately convince the Court to invalidate the voluntary payment provisions of AB1X 27, they stand virtually no chance of prevailing on their claim that the Legislature lacks the authority to dissolve RDAs pursuant to AB1X 26.

Despite Petitioners' assertions to the contrary, the two bills are expressly severable. But the individual provisions of AB1X 27 are *not* severable from one another. Hence, if any aspect of AB1X 27's voluntary payment scheme is declared invalid, then all of AB1X 27 fails. And if AB1X 26 withstands judicial scrutiny, as it should, then RDAs will be dissolved. Ironically, if the RDAs are successful in their challenge to the validity of AB1X 27, their ability to opt into anything will be rendered moot unless they also prevail against AB1X 26, which is unlikely. In that case, all other taxing agencies, such as schools and counties, will suffer the consequences of the additional indebtedness the RDAs will have rushed to incur.

There is no doubt that granting Petitioners' motion would not preserve the status quo. Instead, it would allow RDAs to continue to incur massive amounts of additional debt, unnecessarily prolonging the return of desperately-needed property tax revenues to their rightful recipients. For all of these sound reasons, the Petitioners' motion should be denied.

II. FACTUAL & PROCEDURAL BACKGROUND

AB1X 26 and AB1X 27 became law on June 28, 2011. Their provisions are briefly summarized below.

A. AB1X 26

The Legislature enacted AB1X 26 to address several concerns of critical importance:

> The Legislature finds and declares all of the following:
>
> (a) The economy and the residents of this state are slowly recovering from the worst recession since the Great Depression.
>
> (b) State and local governments are still facing incredibly significant declines in revenues and increased need for core governmental services.
>
> (c) Local governments across this state continue to confront difficult choices and have had to reduce fire and police protection among other services.
>
> (d) Schools have faced reductions in funding that have caused school districts to increase class size and layoff teachers, as well as make other hurtful cuts.
>
> (e) Redevelopment agencies have expanded over the years in this state. The expansion of redevelopment agencies has increasingly shifted property taxes away from services provided to schools, counties, special districts, and cities.
>
> (f) Redevelopment agencies take in approximately 12 percent of all of the property taxes collected across this state.
>
> (g) It is estimated that under current law, redevelopment agencies will divert $5 billion in property tax revenue from other taxing agencies in the 2011-12 fiscal year. . . . (AB1X 26, § 1.)

Key to addressing these problems is section 6 of AB1X 26, which adds Division 24, Part 1.8, to the Health and Safety Code. Part 1.8 requires RDAs to immediately cease virtually all of their activities, including incurring additional debt, entering into contractual obligations, transferring assets, and reneging on their pass-through obligations to other public

entities (collectively, "Part 1.8 Prohibitions"). (AB1X 26, § 6, adding Health & Saf. Code §§ 34161-34169.5.)[1] The Legislature provided the following explanation for why the Part 1.8 Prohibitions are so crucial:

> This part is intended to preserve, to the maximum extent possible, the revenues and assets of redevelopment agencies so that those assets and revenues that are not needed to pay for enforceable obligations may be used by local governments to fund core governmental services including police and fire protection services and schools. It is the intent of the Legislature that redevelopment agencies take no actions that would further deplete the corpus of the agencies' funds regardless of their original source. All provisions of this part shall be construed as broadly as possible to support this intent and to restrict the expenditure of funds to the fullest extent possible. (§ 34167(a).)

As of October 1, 2011, RDAs are to be dissolved and successor agencies established to wind down their affairs. (AB1X 26, § 7, adding Part 1.85, §§ 34170-34191.)

B. AB1X 27

AB1X 27 establishes a voluntary alternative redevelopment program under which an RDA may continue to exist despite the provisions of AB1X 26 *if* the city or county that created the RDA agrees to make certain payments to the relevant county auditor-controller. These voluntary payments are to be reallocated to other public entities.

C. Severability

AB1X 26 contains a severability clause providing that, if any of its provisions is held invalid, the invalidity shall not affect its remaining provisions. (AB1X 26, § 12.) In contrast, AB1X 27 contains a non-severability clause providing that, if any aspect of the voluntary alternative redevelopment plan is held invalid, no part of AB1X 27 shall have any

---

[1] All further statutory references are to the Health and Safety Code unless otherwise indicated.

force or effect. (AB1X 27, § 5.) AB1X 26 and AB1X 27 are severable from each other. (AB1X 26, § 12; AB1X 27, § 4.)

D. Current Stay Order

On August 17, 2011, the Court granted Petitioners' request for a stay of AB1X 26, except for the Part 1.8 Prohibitions. In other words, the Court stayed the automatic dissolution of RDAs, but kept in force the prohibitions on new RDA debt and other activities that would further deplete the RDA assets that the Legislature intended to preserve. The Court also stayed AB1X 27, except for a narrow provision requiring the state Director of Finance to make the calculations necessary to determine the voluntary payment amounts required by the statute. (§ 34194(b)(2)).

III. LEGAL STANDARD

Petitioners' request to stay implementation of the legislation is essentially a request for a preliminary injunction. The courts look at two factors when considering such a request: (1) the likelihood that the plaintiff will prevail on the merits at trial; and (2) the interim harm that the plaintiff is likely to suffer if injunctive relief is not granted, as compared to the interim harm the defendant will suffer if the injunction is granted. (*Butt v. State of California* (1992) 4 Cal.4th 668, 677-678; *King v. Meese* (1987) 43 Cal.3d 1217, 1226.)

Regardless of the balance of harms, an injunction may not be issued if the plaintiff has no chance of prevailing on the merits. (*Butt*, 4 Cal.4th at p. 678; *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442-443; *In re Quoc Thai Pham* (2011) 195 Cal.App.4th 681, 685; *O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1463.) Thus, a court must necessarily address the plaintiff's ultimate likelihood of success when evaluating the request for injunctive relief. (*Butt*, 4 Cal.4th at p. 678; *In re Quoc Thai Pham*, 195 Cal.App.4th at p. 685; *O'Connell*, 141 Cal.App.4th at p. 1463.)

IV. ARGUMENT

The issue raised by this motion is whether RDAs should be allowed to engage in the Part 1.8 Prohibitions (*e.g.*, incurring additional debt) while this litigation is pending. The answer is no. For the reasons explained below, Petitioners have no chance of prevailing on their claims that the Legislature lacks the authority to eliminate RDAs (AB1X 26). However, there are serious questions about the Legislature's ability under AB1X 27 to divert local property tax revenues in any manner that does not distribute them back to the taxing agencies that would have received those tax dollars in the absence of RDAs.

If AB1X 26 is upheld and AB1X 27 is invalidated, RDAs will cease to exist. Therefore, the Court should not modify its well-reasoned stay order to allow RDAs to incur additional debt or to engage in any other Part 1.8 Prohibitions until this litigation is resolved, regardless of whether those RDAs opted into the voluntary program before the stay took effect.

A. The Legislature Has Plenary Authority to Establish and Dissolve RDAs – the California Constitution Merely Provides the Legislature with Discretion Whether or Not to Provide RDAs with Tax Increment Financing.

Redevelopment agencies are nothing more than creatures of statute. Several years before Section 16 of Article XVI was added to the California Constitution, the Legislature enacted the first redevelopment law in 1945. (Community Redevelopment Act, Stats. 1945, c. 1326.) This Act gave cities and counties the authority to address urban decay and the ability to obtain federal financing for these efforts. In 1951, this Act was renamed the "Community Redevelopment Law" and codified in the Health and Safety Code. (Stats. 1951, c. 710, § 33000 *et seq.*)

It was not until 1952 that the California Constitution was amended to give the Legislature the following discretion to allow RDAs to use tax increment financing:

> The Legislature may provide that any redevelopment plan may contain a provision that the taxes, if any, so levied upon the taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows: . . . ." (Cal. Const., art. XVI, § 16 (emphasis added).)[2]

Therefore, according to the plain meaning of article XVI, section 16, RDAs have no entitlement to tax increment financing unless the Legislature "may" so provide. "When interpreting the Constitution, [the court] must choose the plain meaning of the provision if the language is clear and unambiguous." (*California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183, 1206; *see also Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 444.)

The Legislature may exercise any legislative powers not expressly denied to it by the California Constitution. (*Methodist Hospital of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691.) There is also a presumption in favor of the Legislature's authority:

> 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. Such 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.

(*Ibid.*; *see also State Personnel Board v. Department of Personnel Administration* (2005) 37 Cal.4th 512, 523.)

Thus, the Legislature's decision to extend tax increment financing to RDAs – or not – lies within its sound discretion, as does its decision

---

[2] Formerly Cal. Const., art. XIII, § 19. Article XVI, section 16, also provides: "The Legislature shall enact those laws as may be necessary to enforce the provisions of this section."

regarding whether to allow RDAs to exist at all. "[T]he separation of powers doctrine (Cal. Const., art. III, § 3) obliges the judiciary to respect the separate constitutional roles of the Executive and the Legislature." (*Butt, supra*, 4 Cal.4th at p. 695.) Thus, it would not be appropriate for a court to interfere with the Legislature's exercise of discretion under article XVI, section 16, particularly where the issue involves fiscal matters. (*Id.* at pp. 698-700, 703; *California School Boards Assn. v. State of California* (2011) 192 Cal.App.4th 770, 802-803.)

Under the Community Redevelopment Law, even if an RDA has elected to use tax increment financing in its redevelopment plan, the Legislature has only allowed it to receive tax increment to the extent necessary to pay its existing obligations. Health & Safety Code section 33670(b) provides:

> Except as provided in subdivision (e) or in Section 33492.15, that portion of the levied taxes each year in excess of that amount[3] shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in that project as shown by the last equalized assessment roll referred to in subdivision (a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid to the respective taxing agencies. When the loans, advances, and indebtedness, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable

[3] The reference to "that amount" in Health and Safety Code section 33670, subdivision (b), refers back to subdivision (a), and is the amount of taxes based on the assessed value shown on the assessment roll last equalized before the effective date of the ordinance adopting the redevelopment plan. This amount constitutes the "base" for tax increment financing.

> property in the redevelopment project shall be paid to the respective taxing agencies as taxes on all other property are paid.

Consequently, an RDA's ability to receive tax increment is based solely on its outstanding indebtedness.[4] Once this indebtedness is repaid, the taxes that were diverted to the RDA must be redistributed to the local taxing agencies in the same manner as other property taxes. (*See* last sentence of section 33670(b), quoted above.)

The Community Redevelopment Law is clearly aimed at eradicating urban blight over a limited time period. It was never intended to serve as a permanent diversion of property tax revenues away from other public agencies for economic development purposes unrelated to the eradication of urban blight. (*See* §§ 33030-33039.) In fact, because RDAs have a tendency to perpetuate themselves even when urban blight no longer justifies their existence, the Legislature amended the Community Redevelopment Law to establish strict time limits on redevelopment plans and debt financing. (*See, e.g.*, Assembly Bill 1290, Stats. 1992, c. 942.) For redevelopment plans adopted after December 31, 1993, the maximum plan life is 30 years, and the maximum time limit to repay debt with tax increment is 45 years. (§ 33333.2.)[5] These limits are further evidence that RDAs do not have an independent, permanent right to exist or to spend other public agencies' tax revenues to finance their activities.

AB1X 26 honors this existing legal landscape. Once an RDA is dissolved, AB1X 26 provides that tax increment will continue to flow into a Redevelopment Property Tax Trust Fund established for that particular

---

[4] *See also* § 33675(b) (requiring RDAs to certify and file an annual statement of indebtedness with the county auditor).

[5] These time limits may be extended under certain circumstances, for example, if the RDA has not fulfilled its affordable housing requirements. (§ 33333.8.)

RDA. The relevant county auditor-controller will disburse funds from the Trust Fund to pay the RDA's debts. Any remaining funds will be redistributed to the local taxing agencies in the same manner as other property taxes.[6]

By carving out the Part 1.8 Prohibitions from the stay, the Court correctly maintained the status quo by requiring RDA assets to be preserved pending the imminent outcome of these proceedings.

B. Propositions 1A and 22 Do Not Expressly or Impliedly Abrogate the Legislature's Authority over RDAs.

Notwithstanding the plain language in the Constitution that gives the Legislature broad discretion over the existence of RDAs, Petitioners argue that Propositions 1A and 22 repealed this discretionary authority. Propositions 1A and 22 contain no express language to this effect, and repeal by implication is highly disfavored, particularly where it would deprive the Legislature of a constitutionally-designated power.

For purposes relevant to this litigation, Propositions 1A and 22 prohibit the Legislature from doing the following:

(1) allocating property tax revenues in a manner that reduces the total amount of revenues allocated among local agencies (Cal. Const., art. XIII, § 25.5(a)(1)(A));

---

[6] *See* § 34172(c), (d) (requiring tax revenues previously allocated to an RDA pursuant to art. XVI, § 16 to be deposited in the Redevelopment Property Tax Trust Fund and used to pay RDA indebtedness); § 34175 (stating that preexisting RDA debts are to be honored); § 34182(c) (imposing duties on county auditor-controllers to manage Redevelopment Property Tax Trust Funds for benefit of RDA creditors, taxing agencies entitled to pass-through payments, and other taxing agencies entitled to remaining property tax revenues); § 34183 (establishing priorities for distribution of property tax revenues from each Redevelopment Property Tax Trust Fund); § 34188 (requiring distribution of remaining property tax revenues to be made in accordance with each taxing agency's proportionate share of other property tax revenues).

(2) requiring an RDA to pay or transfer any property taxes to the state, any agency of the state, or any jurisdiction[7] except for existing statutory pass-through payments codified in Health and Safety code sections 33607.5 and 33607.7 or for affordable housing (Cal. Const., art. XIII, § 25.5(a)(7));

(3) altering the pro rata shares of *ad valorem* property taxes of local agencies[8] within a county except by a ⅔ vote of each house of the Legislature (Cal. Const., art. XIII, § 25.5(a)(3)); or

(4) using or reallocating *ad valorem* property tax revenues as a mechanism to reimburse local governments for state-imposed mandates (Cal. Const., art. XIII, § 25.5(a)(3); art. XIIIB, § 6(b)(3)).

Nothing in these restrictions prohibits the Legislature from eliminating RDAs. Nor should such a draconian result be implied:

> Repeals by implication are not favored; they will be recognized only where there is no rational basis for harmonizing potentially conflicting statutes. [citation omitted] The presumption is against repeal by implication where express terms are not used and the statutes are not irreconcilable.

(*Van de Kamp v. Bank of America* (1988) 204 Cal.App.3d 819, 838, *citing People v. Martin* (1922) 188 Cal. 281, 285, and *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors* (1968) 263 Cal.App.2d 41, 54.)

The standard for an implied repeal is even more stringent when the question is whether a constitutional provision has been repealed by implication:

> So strong is the presumption against implied repeals that when a new enactment conflicts with an existing provision,

---

[7] "Jurisdiction" is defined by reference to Revenue and Taxation Code section 95, and includes a city, county, special district or school district. (Cal. Const., art. XIII, § 25.5(b)(3).)

[8] "Local agency" is defined by reference to Revenue and Taxation Code section 95, and includes a city, county or special district. (Cal. Const., art. XIII, § 25.5(b)(2).)

> "In order for the second law to repeal or supersede the first, the former must constitute a revision of the entire subject, so that the court may say that it was intended to be a substitute for the first."

(*Board of Supervisors v. Lonergan* (1980) 27 Cal.3d 855, 868, *quoting Penziner v. West American Finance Co.* (1937) 10 Cal.2d 160, 176; *see also ITT World Communications, Inc. v. City and County of San Francisco* (1985) 37 Cal.3d 859, 866.) Propositions 1A or 22 were not intended to be a substitute for the entire subject of redevelopment.[9]

Existing law gives the Legislature ultimate control over the existence of RDAs and their ability to take tax increment from other public agencies. The only reason RDAs received tax increment in the first place was because the Legislature exercised its discretion under article XVI, section 16 of the Constitution to allow them to do so for the limited purpose of paying their existing debts incurred to eliminate urban blight. What the Legislature has the discretion to establish, it has the discretion to take away. (*State Personnel Board, supra*, 37 Cal.4th at p. 523 (Legislature may exercise any and all legislative powers unless expressly prohibited by the Constitution); *United Milk Producers of California v. Cecil* (1941) 47 Cal.App.2d 758, 764-765 ("Every legislative body may modify or abolish the acts passed by itself or its predecessors.").)

---

[9] In fact, Proposition 22 expressly repealed another constitutional provision – one that is not relevant to these proceedings. (*See* Proposition 22, § 5.6 (repealing Cal. Const., art. XIX, § 6).) This express repeal lends further support to the fact that the voters did not intend to repeal the Legislature's authority over RDAs pursuant to article XVI, section 16. "Where the electorate has demonstrated the ability to make their intent clear, it is not the province of this court to imply an intent left unexpressed." (*Mutual Life Ins. Co. v. City of Los Angeles* (1990) 50 Cal.3d 402, 412; *see also Kennedy Wholesale, Inc. v. State Board of Equalization* (1991) 53 Cal.3d 245, 330 (the fact that the voters expressly adopted a requirement in one section of an initiative strongly suggests that they did not impliedly adopt such a requirement in another section).)

C. The Balance of Harms Weighs in Favor of Staying AB1X 27's "Opt In" Provisions.

Even if the Court believes Petitioners have a chance of prevailing on the merits with respect to the Legislature's ability to eliminate RDAs (AB1X 26), the balance of harms weighs strongly against modifying the stay order to allow RDAs to opt into the voluntary plan under AB1X 27 to incur additional debt or engage in other Part 1.8 Prohibitions while this litigation is pending.

1. There Would Be Great Harm to the Public and to the State of California if RDAs Are Allowed to Incur an Unlimited Amount of Indebtedness While This Matter Is Pending.

When enacting AB1X 26, the Legislature expressly intended to prevent further shifts of "property taxes away from services provided to schools, counties, special districts, and cities." (AB1X 26, § 1(e).) The express findings in AB1X 26 demonstrate that the State of California, its public agencies, and its residents are experiencing some of the greatest financial challenges in history, and that many of these challenges are the direct result of RDA activities. (AB1X 26, § 1.) Although these findings are not binding on this Court, they are to be "given great weight" and "upheld unless they are found to be unreasonable and arbitrary." (*Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354, 1365; *see also Amwest Surety Insurance Co. v. Wilson* (1995) 11 Cal.4th 1243, 1252.)

Moreover, as explained above, it is illogical for the RDAs to attack AB1X 27, yet simultaneously seek to avail themselves of its provisions. If the Court modifies the stay order as requested by Petitioners, the likely result will be exactly what occurred during the first six months of 2011. Out of fear that they were going to be eliminated, RDAs disposed of or transferred their assets for little or no consideration and rushed headlong into mountains of additional debt. The County's experience with the San

José Redevelopment Agency is recounted in the attached declaration of Leslie Crowell. There are numerous news articles from this time period reporting similar behavior by other RDAs.[10]

2. A Short Debt Hiatus Would Not Harm Petitioners.

Petitioners cite a litany of hardships they will face if RDAs are precluded from opting into AB1X 27's purportedly illegal voluntary program pending resolution of this litigation. Many counties and cities in

---

[10] *See, e.g.*, Christine Bedell, *As "Horrendous" Threat Looms, Redevelopment Agency Allocates Millions*, BAKERSFIELD.COM (Feb. 25, 2011), http://www.bakersfield.com/ news/business/economy/ x1284224843/As-horrendous-threat-looms-redevelopment-agency-allocates-millions (describing actions of the Bakersfield RDA to fully commit its resources and increase debt obligations); Adam Elmahrek, *OC Cities Rush to Protect Redevelopment Assets*, VOICE OF OC (Mar. 8, 2011), http://voiceofoc.org/oc_central/ article_5f1b14e8-49df-11e0-b323-001cc4c002e0.html (describing efforts by RDAs across Orange County to transfer assets and incur new obligations); Chelsea Hawkins, *City Council Votes to Sell Bonds to Protect Redevelopment*, CITY ON A HILL PRESS (Mar. 10, 2011), http://www.cityonahillpress.com/2011/03/10/city-council-votes-to-sell-bonds-to-protect-redevelopment (describing City of Santa Cruz RDA's rushed private bond deal at 6.5% interest that deliberately did not include a standard unwinding provision); Kevin McCallum, *Santa Rosa Makes Last-Ditch Effort to Shield Redevelopment Money*, THE PRESS DEMOCRAT (Mar. 7, 2011), http://www.pressdemocrat.com/article/ 20110307/articles/110309617 (describing Santa Rosa RDA's efforts to "lock up the assets" by increasing obligations, committing to loans, and entering into "funding agreements" with the city); James Noonan, *Napa Planning Property Swap to Shelter Redevelopment Assets*, NAPA VALLEY REGISTER (Mar. 11, 2011), http://napavalleyregister.com/news/local/ article_bfd0aad6-4c6f-11e0-a363-001cc4c03286.html#ixzz1W3L0ezhM (describing Napa RDA's transfer of property to its host city); Natalie Ragus, *City Council Moves to Shore Up Redevelopment Funding*, CULVER CITY PATCH (Feb. 23, 2011), http://culvercity.patch.com/articles/city-council-moves-to-shore-up-redevelopment-funding (describing Culver City RDA's plan to transfer $311 million in funding plus other assets to the city); Jill Replogle, *Council Votes to Transfer Redevelopment Assets to City*, SAN LEANDRO PATCH (Mar. 8, 2011), http://sanleandro.patch.com /articles/council-votes-to-transfer-redevelopment-assets-to-city (describing San Leandro RDA's efforts to transfer property and funds to its host city).

California that do not have redevelopment agencies face similar hardships. Contrary to Petitioners' assertions, a debt hiatus of a few months is unlikely to result in severe hardship, particularly after the redevelopment spending spree that already occurred earlier this year.

V. CONCLUSION

Allowing RDAs to opt into AB1X 27's voluntary plan so they can incur additional debt pending the outcome of this litigation would not preserve the status quo. Instead, it would result in a repeat of the irresponsible behavior that occurred earlier this year and would further exacerbate the harms cited by the Legislature when it enacted AB1X 26. In any event, Petitioners are unlikely to succeed in their attempt to have AB1X 26 invalidated. For these reasons, the Court should deny the Petitioners' request to modify its prior stay order.

Dated: August 29, 2011

Respectfully submitted,

MIGUEL MÁRQUEZ
County Counsel

By: Lizanne Reynolds
Lizanne Reynolds
Deputy County Counsel

Attorneys for Respondents VINOD K. SHARMA, Auditor-Controller of the County of Santa Clara, and the COUNTY OF SANTA CLARA

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.504 or 8.204 of the California Rules of Court, I, **LIZANNE REYNOLDS,** hereby certify that this **OPPOSITION TO PETITIONERS' MOTION FOR CLARIFICATION AND MODIFICATION OF STAY BY RESPONDENTS COUNTY OF SANTA CLARA AND VINOD K. SHARMA, COUNTY OF SANTA CLARA AUDITOR-CONTROLLER, AND SUPPORTING DECLARATION OF LESLIE CROWELL**, has been prepared using one-and-a-half-spaced, 13-point Times New Roman typeface. According to the word count feature in our Microsoft Word 2007 software, the word count for this brief, including the signature lines following the brief's conclusion, is 4,533.

I declare under penalty of perjury under the laws of the State of California that this word count certification is true and correct and was executed on **August 29, 2011**.

Respectfully submitted,

MIGUEL MÁRQUEZ
County Counsel

By: Lizanne Reynolds
Lizanne Reynolds
Deputy County Counsel

Attorneys for Respondents VINOD K. SHARMA, Auditor-Controller of the County of Santa Clara, and the COUNTY OF SANTA CLARA

DECLARATION OF LESLIE CROWELL

I, Leslie Crowell, declare as follows:

1. I have personal knowledge of all matters stated herein.

2. I am a Deputy County Executive for the County of Santa Clara ("County"), State of California. Among my present responsibilities as Deputy County Executive is oversight of the County's budget. Until recently, I was the County Budget Director.

3. In January 2011, the County was forced to make severe mid-year budget reductions to deal with a $55 million shortfall. These cuts included eliminating 106.2 full-time equivalent positions in various County departments. The reductions included: cuts to staffing in public health and the public hospital safety-net, such as a reduction of 13.9 positions in the Valley Medical Center's Maternal Infant Care Center Unit, Neonatal Intensive Care Unit, and the Rehabilitation Unit; cuts to staffing in the Social Services Agency including front-line social workers; and cuts to staffing at the Sheriff's Office, Department of Correction, and the District Attorney's Office that reduced the County's ability to ensure public safety.

4. Many of these cuts could have been avoided if the County had timely received its payments from the Redevelopment Agency of the City of San José ("Agency").

5. The City of San José ("City"), Agency, and the County entered into an Amended and Restated Redevelopment Agreement on May 22, 2001 ("2001 Agreement").

6. Under the 2001 Agreement, the Agency is required to make certain payments of property tax increment funding to the County ("Tax Increment Allocation Payments").

7. For fiscal years 2008-2009 through 2009-2010, the Agency did not make any Tax Increment Allocation Payments to the County. And, by March 2011, the Agency had not made any payment for fiscal year 2010-2011. The amount due under the 2001 Agreement was approximately $21.3 million in fiscal year 2008-2009, $19.2 million for fiscal year 2009-2010, and $21 million for fiscal year 2010-2011.

8. The 2001 Agreement provides for 10 percent interest per annum if the Agency fails to make a Tax Increment Allocation Payment that is due. After accounting for interest accrued, by March 2011, the Agency owed the County approximately $62.9 million under the 2001 Agreement.

9. The Agency's failure to timely pay the County the past-due and currently owed Tax Increment Allocation Payments has caused and is causing serious harm to the County and its services. The County depends on these payments to meet its ongoing fiscal requirements.

10. Despite an unwillingness to settle their debt to the County at the time, in apparent response to the Governor's proposal to eliminate redevelopment agencies, the City and Agency made efforts to rapidly spend, commit, transfer, and otherwise dissipate Agency assets in early-2011. For example, on January 19, 2011, the Agency Board delegated blanket authority to its Executive Director to incur significant new indebtedness and other obligations. And on January 25, 2011, the Agency Board authorized payments totaling $1 million to SunPower and Maxim Integrated Products.

11. On March 8, 2011, the City Council and Agency Board approved the transfer of substantial Agency properties for no payment and no apparent consideration. The City Council and Agency Board authorized

the transfer of several valuable Agency properties to the City, including the California Theater, Convention Center Expansion Site, Circle of Palms, and certain properties on Autumn Court and Julian Street in San José. The City Council and Agency Board also created a new joint powers authority, the San José Diridon Development Authority ("Authority"), and approved the transfer of several valuable properties to the Authority. Moreover, the Authority's Joint Powers Agreement expressly provides that, upon dissolution, all assets go to the City; thus, if the Agency is dissolved, the Authority's properties will pass directly to the City.

12. Because the Agency owed the County over $60 million and because of the Agency's deteriorating financial condition, the County was very concerned about the Agency's ability to pay the debt that it owed the County. The County was critically concerned about the actions of the City and Agency, mentioned above, to dissipate assets that would otherwise have been available to pay the debt owed to the County.

13. On March 8, 2011, I verified a Complaint, based on my personal knowledge, in a lawsuit filed by the County against the City, Agency, and Authority regarding the failure to make the aforementioned Tax Increment Allocation Payments. The allegations in the Complaint included:

> 26. On January 19, 2011, AGENCY's governing board adopted a resolution delegating broad authority to AGENCY's Executive Director to, among other things, "negotiate and execute agreements necessary to protect and secure existing obligations and to acquire, construct, develop and implement projects specified in the Agency's and City's approved capital improvement plan and City's five-year affordable housing plan." This action was item 8.4(c) on the January 19, 2011 Joint AGENCY governing board/CITY Council meeting. The minutes from the January 25, 2011

Joint AGENCY governing board/CITY Council meeting, which reflect the actions taken on January 19, 2011, are attached to this Complaint as Exhibit C.

27. On January 19, 2011, CITY's City Council adopted a resolution delegating broad authority to CITY's City Manager to, among other things, "negotiate and execute agreements necessary to protect and secure existing obligations and to acquire, construct, develop and implement projects specified in the Agency's and City's approved capital improvement plan and City's five-year affordable housing plan." This action was item 8.4(c) on the January 19, 2011 Joint AGENCY governing board/CITY Council meeting. Minutes reflecting actions taken at this meeting are attached to this Complaint as Exhibit C.

28. On March 8, 2011, AGENCY's governing board adopted a resolution authorizing AGENCY's Executive Director "to negotiate and execute, on behalf of the Redevelopment Agency, a Cooperation Agreement with the City to provide for the transfer to the City of various Agency-owned properties acquired by the Agency and developed for, or to be developed for, public facilities." This action was item 8.2(b) the March 8, 2011 Joint AGENCY governing board/CITY Council meeting, a copy of which is included in Exhibit D to this Complaint.

29. On March 8, 2011, CITY's City Council adopted a resolution authorizing CITY's City Manager "to negotiate and execute, on behalf of the City, a Cooperation Agreement with the Redevelopment Agency, which provides for the transfer to the City of various properties which are public facilities." This action was item 8.2(a) the March 8, 2011 Joint AGENCY governing board/CITY Council meeting, a copy of which is included in Exhibit D to this Complaint.

30. On March 8, 2011, AUTHORITY's governing board adopted a resolution authorizing AUTHORITY's Executive Director "to execute such documents needed and take such other actions needed for the acceptance of property transferred to the San Jose Diridon Development Authority." This action was item 8.2(a) the March 8, 2011 Joint

AGENCY governing board/CITY Council meeting, a copy of which is included in Exhibit D to this Complaint.

14. On the morning of March 9, 2011, the day after the City and Agency created the Authority and authorized the transfer of valuable Agency real property and other assets to the City and Authority, the County filed a lawsuit against the City, Agency, and Authority. The County also sought a temporary restraining order to block the asset transfers in order to prevent the City and Agency from further depleting the Agency's assets.

15. While the County was in Court seeking the temporary restraining order to block the asset transfers, the respective deeds were recorded, completing the property transfers at issue.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and if called upon to do so I could and would so testify. Executed this 26TH day of August, 2011, at San José, California.

Leslie Crowell

SUPREME COURT, STATE OF CALIFORNIA

PROOF OF SERVICE BY MAIL

California Redevelopment Association, et al. v. Matosantos, et al.
Case No. S194861

I, Michele C. Wright, say:

I am now and at all times herein mentioned have been over the age of eighteen years, employed in Santa Clara County, California, and not a party to the within action or cause; that my business address is 70 West Hedding, East Wing, 9th Floor, San Jose, California 95110-1770. I am readily familiar with the County's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I served a copy of the **OPPOSITION TO PETITIONERS' MOTION FOR CLARIFICATION AND MODIFICATION OF STAY BY RESPONDENTS COUNTY OF SANTA CLARA AND VINOD K. SHARMA, COUNTY OF SANTA CLARA AUDITOR-CONTROLLER, AND SUPPORTING DECLARATION OF LESLIE CROWELL** by placing said copy in an envelope addressed to:

Steven L. Mayer
Emily H. Wood
Howard, Rice, Nemerovski, Canady, Falk & Rabin
A Professional Corporation
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111-4024
Facsimile: 415-677-6262
Attorneys for Petitioners
California Redevelopment Association, et al.

//
//
//
//

Kamala D. Harris, Attorney General
Ross C. Mood, Deputy Attorney General
Office of the Attorney General
State of California
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
Facsimile: 415-703-1234
Attorneys for Respondents
Ana Matosantos, Director of Finance
John Chiang, California State Controller

Jennifer K. Rockwell, Esq.
Chief Counsel
Department of Finance
State Capitol, Room 1145
915 L Street
Sacramento, CA 95814
Facsimile: 916-323-0600
Attorneys for Respondent
Ana Matosantos, Director of Finance

Richard J. Chivaro, Esq.
Office of the State Controller
State of California
Legal Department
300 Capitol Mall, Suite 1850
Sacramento, CA 95814
Facsimile: 916-322-1220
Attorneys for Respondent
John Chiang, Auditor-Controller, County of Alameda

Richard K. Karlson, Esq.
Interim County Counsel
Brian E. Washington, Esq.
Assistant County Counsel
Claude K. Kolm, Esq.
Deputy County Counsel
Office of the Alameda County Counsel
1221 Oak Street, Suite 450
Oakland, CA 94612
Facsimile: 510-272-5020
Attorneys for Respondent
Patrick O'Connell, Auditor-Controller, County of Alameda

which envelope was then sealed, with postage fully prepaid thereon, on **August 29, 2011**, and placed for collection and mailing at my place of business following

ordinary business practices. Said correspondence will be deposited with the United States Postal Service at San Jose, California, on the above-referenced date in the ordinary course of business; there is delivery Service by United States mail at the place so addressed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on **August 29, 2011**, at San Jose, California.

Michele C. Wright