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20 as the County of Santa Clara Auditor-Controller,  
21 SANTA CLARA COUNTY OFFICE OF  
22 EDUCATION, SANTA CLARA UNIFIED SCHOOL  
23 DISTRICT, and COUNTY OF SANTA CLARA

16 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF SACRAMENTO

18 VINOD K. SHARMA, in his official capacity as  
19 the County of Santa Clara Auditor-Controller;  
20 SANTA CLARA COUNTY OFFICE OF  
21 EDUCATION; SANTA CLARA UNIFIED  
22 SCHOOL DISTRICT; and COUNTY OF SANTA  
23 CLARA,

22 Petitioners and Plaintiffs,

23 v.

24 SUCCESSOR AGENCY TO THE  
25 REDEVELOPMENT AGENCY OF THE CITY  
26 OF SANTA CLARA; CITY OF SANTA  
27 CLARA; HOUSING AUTHORITY OF THE  
28 CITY OF SANTA CLARA; SANTA CLARA  
29 STADIUM AUTHORITY; SPORTS & OPEN  
30 SPACE AUTHORITY OF THE CITY OF  
31 SANTA CLARA; and DOES 1-100 inclusive,

30 Respondents and Defendants,

Case No.: 34-2013-80001396-CU-WM-GDS  
~~PROPOSED~~ PEREMPTORY WRIT OF  
MANDATE

Assigned for All Purposes:  
Hon. Christopher E. Krueger

BY FAX

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ANA J. MATOSANTOS, in her official capacity as Director of the Department of Finance of the State of California; STATE OF CALIFORNIA DEPARTMENT OF FINANCE; OFFICE OF THE STATE CONTROLLER of the State of California; JOHN CHIANG, in his official capacity as the State Controller of the State of California; and ROES 1-100, inclusive,

Real Parties in Interest.

AND RELATED CROSS-ACTION.

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**PEREMPTORY WRIT OF MANDATE**

To Respondents SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA, CITY OF SANTA CLARA, SPORTS AND OPEN SPACE AUTHORITY OF THE CITY OF SANTA CLARA, HOUSING AUTHORITY OF THE CITY OF SANTA CLARA and the SANTA CLARA STADIUM AUTHORITY:

The Court after briefing and oral argument on the Petition for Writ of Mandate filed by EMILY HARRISON, in her official capacity as the County of Santa Clara Auditor-Controller, SANTA CLARA COUNTY OFFICE OF EDUCATION, SANTA CLARA UNIFIED SCHOOL DISTRICT, and COUNTY OF SANTA CLARA ("Petitioners") issued on December 1, 2014 its Order After Hearing on Petition for Writ of Mandate (attached hereto as Exhibit A).

**THEREFORE**, you are commanded immediately upon receipt of this writ:

1. To comply in full with the final order of the State Controller's Office issued September 10, 2013 and contained in the Asset Transfer Review Report for the Redevelopment Agency of the City of Santa Clara ("SCO Order," attached hereto as Exhibit B); and
2. To comply in full with the Other Funds and Accounts Due Diligence Review ("Other Funds DDR," attached hereto as Exhibit C) as finally approved by the Oversight Board of the Successor Agency to the Redevelopment Agency of the City of Santa Clara and the state Department of Finance.

**YOU ARE FURTHER** commanded as follows:

1. Pursuant to the Other Funds DDR, the CITY OF SANTA CLARA, SPORTS AND OPEN SPACE AUTHORITY OF THE CITY OF SANTA CLARA, HOUSING AUTHORITY OF THE CITY OF SANTA CLARA and the SANTA CLARA STADIUM AUTHORITY (collectively, the "City Respondents") shall immediately upon receipt of the writ remit to the Successor Agency \$23,002,235.00 (the remaining balance after credit for withholding of tax distributions);

2. Pursuant to the SCO Order, City Respondents shall immediately <sup>reverse the</sup> ~~transfer, assign~~ and grant full record title and City Respondents' full beneficial interest <sup>and return them</sup> in the following real property interests to the Successor Agency:

CHRISTOPHER E. BRUEGER  
CHRISTOPHER E. BRUEGER

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Site Description	APN(s)	Ownership Interest
Gateway Property Parcel #2	104-01-100	Fee Simple, Subject to Ground Lease
Hyatt Regency Santa Clara, 5105 Great America Parkway	104-55-005, 104-55-012	Fee Simple, Subject to Ground Lease
Techmart Meeting Center & Office Complex, 5201 Great America Parkway	104-55-013	Fee Simple, Subject to Ground Lease
Land Surrounding Santa Clara Convention Center, 5001 Great America Parkway	104-55-016	Fee Simple
Santa Clara Convention Center, 5001 Great America Parkway	104-55-017	Fee Simple
Pedestrian Bridge Between Convention Center and Golf Course	104-43-025	Fee Simple
Hilton Santa Clara, 4949 Great America Parkway	104-43-042, 104-43-054	Fee Simple, Subject to Ground Lease
Great America Theme Park parking (adjacent to the Hilton Hotel)	104-43-051	Fee Simple, Subject to Ground Lease and Parking Agreements.
Great America Theme Park, 4701 Great America Parkway	104-42-014, 104-42-019	Fee Simple, Subject to Ground Lease With Right of First Refusal

4. Pursuant to the SCO Order, and only to the extent not duplicative of lease revenue listed and ordered returned pursuant to the Other Funds DDR, City Respondents shall immediately

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remit to the Successor Agency all lease revenue received by City Respondents on or after July 1, 2012 for the real property interests listed in paragraph 3 above.

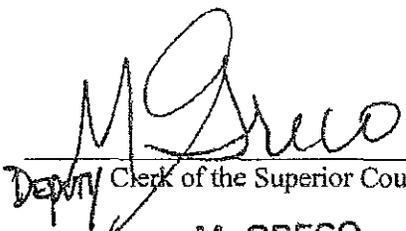
~~5. Pursuant to Civil Code section 3287(a), City Respondents shall immediately remit to the Successor Agency interest at the legal rate of 7 percent per annum as follows:~~

~~(a) Interest on the Other Funds DDR payment identified in paragraph 1 commencing October 11, 2013 (the date on which the Other Funds DDR payment was due) until paid in full;~~

~~(b) Interest on the lease revenue ordered returned by SCO Order as identified in paragraph 4 above commencing on the date City Respondents received each lease payment until paid in full.~~

**YOU ARE FURTHER** commanded to make an initial return to this Writ under oath specifying what Respondents have done to comply with the writ, and to file that return with the Court, and serve that return on Petitioners' counsel no later than 60 days after issuance of the writ. Any objections to said Return shall be filed no later than 30 days after the service date of the Return.

Dated: 2.17.15

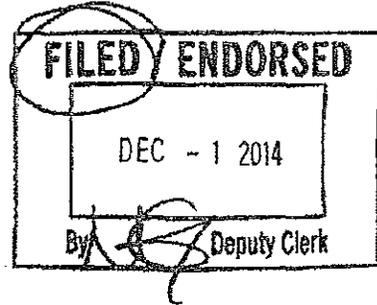
  
Deputy Clerk of the Superior Court  
**M. GRECO**

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CHRISTOPHER E. KRUEGER

CHRISTOPHER E. KRUEGER

# Exhibit A



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

VINDOD K. SHARMA et al.,  
Petitioners and Plaintiffs,  
v.  
SUCCESSOR AGENCY TO THE  
REDEVELOPMENT AGENCY OF THE  
CITY OF SANTA CLARA et al.,  
Respondents and Defendants,  

---

ANA J. MATOSANTOS et al.,  
Real Parties in Interest.

Case No.: 34-2013-80001396

ORDER AFTER HEARING ON PETITION  
FOR WRIT OF MANDATE

On October 31, 2014, hearing was held on the court's tentative ruling granting, in part, the petition for writ of mandate. Petitioners were represented by David Newdorf and Deputy Santa Clara County Counsel Christopher Cheleden. Respondents were represented by Karen Teidmann and Juliet Cox. Real Parties in Interest were represented by Deputy Attorneys General Benjamin Glickman and Ryan Marcroft.

Based on the pleadings and arguments presented, the tentative ruling is adopted as modified below.

INTRODUCTION

This case involves the transfer of some \$370 million in assets by the former Redevelopment Agency of the City of San Clara ("RDA") to the City of Santa Clara ("City") on the eve of elimination of redevelopment agencies. Petitioners, the County of Santa Clara, its

auditor-controller and two local agencies ("Petitioners"), allege the former RDA improperly transferred these assets to the City in violation of the statutory scheme governing elimination of redevelopment agencies. (Health & Saf. Code § 34161 et seq.)<sup>1</sup> Petitioners contend these assets must be returned to the RDA's Successor Agency, and the unencumbered portion then remitted to the county auditor-controller for distribution to other local entities.

From this comparatively simple start, the case devolved into a procedural complexity.

The City filed a cross-petition challenging the validity of orders by the State Controller and the Department of Finance ("DOF") directing the City to return most of the transferred assets. Resolution of the County's petition and the City's cross-petition both turn largely on the validity of these orders. However, hearing on the merits of the City's cross-petition is not scheduled until April 24, 2015.

The City argues the court may not entertain the merits of Petitioners' claim before addressing the City's cross-petition. Petitioners argue there is no reason the writ they seek should not issue now. Of course it would have been preferable to hear the County's petition together with the City's cross-petition together. However, with hearing having been requested only on the County's petition, the court is not persuaded it should not rule on that petition now. Resolution of the City's cross-petition awaits another day. For the reasons stated below, the court grants the County's petition, ordering the relief Petitioners request in their opening brief.

Petitioners filed a demurrer to the City's cross-petition, and a motion to strike both the cross-petition and the City's answer to the County's petition. The motion to strike is denied, and hearing on the demurrer is vacated.

## BACKGROUND

### Community Redevelopment Law

In 1945 the Legislature enacted the Community Redevelopment Law, authorizing cities and counties to establish redevelopment agencies to remediate urban decay. (§ 33000 et seq.; see also *California Redevelopment Association v Matosantos* (2011) 53 Cal.4<sup>th</sup> 231, 245-46.) Redevelopment agencies funded their activities primarily through "tax increment" financing: the redevelopment agency received property tax revenue in excess of the property tax revenue

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<sup>1</sup> All statutory references are to the Health and Safety Code, unless otherwise stated.

allocated to other local entities prior to the adoption of a redevelopment plan. (*Matosantos, supra*, 53 Cal.4<sup>th</sup> at 246-47.) This additional tax revenue was referred to as tax increment. By 2011 redevelopment agencies were receiving 12 percent of all property tax revenue in California. (*Id.* at 247.)

#### **Governor's call to dissolve redevelopment agencies**

On January 20, 2011, Governor Brown declared a state of fiscal emergency and proposed eliminating redevelopment agencies as a means of closing the State's projected \$25 billion budget deficit. (*Matosantos, supra*, 53 Cal.4<sup>th</sup> at 250.)

According to Petitioners, in response to the Governor's proposal in February and March of 2011 the RDA transferred virtually all of its assets to the City. (Opening at 1:12-13 ) The propriety of these transfers lies at the heart of the County's petition and City's cross-petition.

#### **Dissolution Law**

Following the Governor's proposal, on June 28, 2011, the Legislature enacted AB 1X 26 (stats. 2011-2012, 1<sup>st</sup> Ex. Sess., c.5 ["AB 26"].) AB 26 froze activities of redevelopment agencies and provided for their dissolution on October 1, 2011. (See generally §§ 34161, 34177.) It also established successor agencies to wind down the affairs of the former redevelopment agencies. (§§ 34173, 34177.) Here the City became the RDA's Successor Agency.

AB 26 was immediately challenged. The California Supreme Court accepted original jurisdiction, hearing the case on an expedited basis to resolve "significant constitutional questions concerning the validity" of the law. (*Matosantos, supra*, 53 Cal.4<sup>th</sup> at 241.) Pending its decision, the Supreme Court stayed implementation of parts of the law.

In December 2011 the California Supreme Court upheld the constitutionality of AB 26. (*Matosantos, supra*, 53 Cal.4<sup>th</sup> 231.) It also reformed numerous deadlines that had passed during the stay. (*Id.* at 274-276.) Redevelopment agencies were ultimately dissolved effective February 1, 2012. (*Id.* at 275.)

In June 2012 the Legislature adopted AB 1484 (stats. 2012, c. 26), modifying the provisions of AB 26 in response to *Matosantos*. The court refers to AB 26 and AB 1484 collectively as the "Dissolution Law."

### **State Controller's Review of Transfers**

The Dissolution Law gave the State Controller broad authority to unwind transfers of assets the RDA made to the City:

[T]he Controller shall review the activities of redevelopment agencies . . . to determine whether an asset transfer has occurred after January 1, 2011, between the city . . . that created a redevelopment agency . . . and the redevelopment agency. If such an asset transfer did occur during that period and the [city] is not contractually committed to a third party for the expenditure or encumbrance of those assets, . . . the Controller shall order the available assets to be returned to . . . the successor agency . . . . Upon receiving that order from the Controller, [the city] shall, as soon as practicable, reverse the transfer and return the applicable assets to . . . the successor agency. . . . The Legislature hereby finds that a transfer of assets by a redevelopment agency during the period covered in this section is deemed not to be in the furtherance of the Community Redevelopment Law and is thereby unauthorized.

(§ 34167.5.) Pursuant to this authority, the Controller ordered the City to return approximately \$272 million in assets to the Successor Agency.

### **Due Diligence Review of Transfers**

The Successor Agency is required to remit the unobligated balances of the former RDA's funds to the county auditor-controller for distribution to other local taxing entities. (See generally § 34177, subd. (d); § 34179.5.) To determine the amount available for distribution, the Successor Agency conducts a due diligence review ("DDR") of the former RDA's assets. (See generally § 34179.5.) The DDR determines the value of any assets transferred by the RDA to the City between January 1, 2011, and June 30, 2012. (§ 34179.5(c)(2).) For any transfer not required by an "enforceable obligation," the amount transferred is available instead for distribution to other local entities. (§ 34179.5(c)(6).) For purposes of the DDR, the Dissolution Law provides agreements between the City and the former RDA are not enforceable obligations. (§ 34171, subd. (d)(2).)

The DDR conducted by the Successor Agency must be approved by DOF, which may

adjust the amount available for distribution to other local agencies. (§ 34179.6, subs. (c) and (d).) Once DOF confirms this amount, the Successor Agency must transmit the money to the county auditor-controller for distribution to other local entities. (§ 34179.6, subd. (f).)

Here DOF's review of the Successor Agency's DDR determined approximately \$27 million is available for distribution.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **The Petition**

Petitioners initiated in this action in February 2013 with filing of their petition for writ of mandate, and complaint for declaratory and injunctive relief, imposition of a constructive trust, and claim of unjust enrichment. The petition was amended May 1, 2013.

Petitioners allege the former RDA improperly transferred over \$370 million in assets to the City in the waning days of redevelopment. They contend those assets must be returned to the Successor Agency, with the unencumbered portion remitted to the county auditor-controller for distribution to other local entities. Petitioners seek a writ of mandate compelling the City to return those assets.

At the time the petition was filed, the Controller's review and the DDR process had not been completed. The petition acknowledges this. (Pet. ¶¶ 82, 92-93.)

### **Demurrer and Preliminary Injunction**

The City demurred to the petition, arguing judicial intervention was inappropriate until the Controller and DOF completed their reviews. Concurrently, Petitioners moved for a preliminary injunction to prevent the City from transferring or depleting the assets pending resolution of the case. Both motions were heard July 26, 2013.

The court sustained the City's demurrer to two causes of action, but overruled it in all other respects. The court agreed it should not review the propriety of the disputed transfers until the Controller and DOF completed their reviews. It thus stayed further proceedings pending completion of those reviews.

The court granted Petitioners' motion for preliminary injunction, prohibiting the City from transferring, encumbering or spending the disputed assets pending resolution of this action.

### **Controller's Review and Order**

The State Controller completed his review of the RDA's asset transfers on September 10, 2013. (Ex. A.)<sup>2</sup> The Controller found the RDA transferred approximately \$373 million in assets to the City after January 1, 2011. Of this, the Controller found approximately \$279 million in transfers was unauthorized by Dissolution Law. The Controller ordered the City to return approximately \$273 million in assets to the Successor Agency.<sup>3</sup> Those assets consist of: (1) real property worth approximately \$93 million ("real property"); (2) lease payments from the real property made after January 1, 2011; (3) approximately \$24 million in cash; (4) approximately \$25 million in bond proceeds; and (5) approximately \$131 million in "housing assets" transferred to the City of Santa Clara Housing Authority.

### **DOF's Review and Order**

DOF completed its review of the DDR on October 4, 2013. It concluded approximately \$27 million was available for distribution to local taxing entities and ordered the Successor Agency to transmit this to the county auditor-controller within five days. (Ex. Z.) Of this amount, it appears approximately \$19 million consisted of rent payments received by the City on the real property.

### **Cross-Petition**

On May 16, 2014, the City answered the petition, and filed a cross-petition and complaint containing 31 causes of action. The City's cross-petition challenges the orders of the Controller and DOF regarding the disputed transfers.

Specifically, the City challenges the Controller's order it must return: (1) the real property; (2) rents received on the real property since January 1, 2011; and (3) approximately \$19.3 million it received to construct the Northside Branch Library. (Cross-Pet., ¶¶ 88-94.) It is not clear if the City complied with those portions of the order it does not challenge.

It appears the City challenges DOF's order in its entirety.

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<sup>2</sup> Lettered exhibits refer to exhibits submitted by Petitioners. Numbered exhibits refer to exhibits submitted by the City.

<sup>3</sup> It appears the difference between \$279 million and \$273 million, approximately \$5.9 million, had already been transferred.

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### **Demurrer to and Motion to Strike Cross-Petition**

Petitioners demurred to the City's cross-petition on numerous grounds. Some are procedural: ripeness; failure to exhaust administrative or judicial remedies; and declaratory relief not available to challenge administrative decisions. Other arguments go to the merits: the City's constitutional arguments fail; and the City fails to establish it held beneficial title to real properties. Petitioners also move to strike the cross-petition as untimely.

Petitioners scheduled hearing on their two motions challenging the cross-petition for the same day as hearing on the merits of their petition.

Petitioners' motion to strike the cross-petition as untimely is denied. The court stayed this action in July 2013, pending completion of the review by the Controller and DOF. Neither party asked the court to lift the stay. The court's order did not state the stay would be automatically lifted once the two reviews were complete. The City states it assumed Petitioners would amend the petition following completion of reviews by the Controller and DOF. This assumption was not unreasonable. The court thus denies the motion to strike the City's cross-petition and answer as untimely.

The court also vacates hearing on the demurrer to the cross-petition. The demurrer raises issues going to the merits of the cross-petition. The court finds it would be more efficient to decide those issues at the same time it decides the merits of the cross-petition. (See *People v Ingram* (2010) 50 Cal. 4th 1131, 1146; see also Guide to Procedures for Prosecution Petitions for Prerogative Writs, p. 6.)

### **Briefing on Merits of the Petition**

Petitioners request a writ of mandate ordering the City to remit to the Successor Agency numerous assets and take various other actions. (Pet. at 35-37.) In their opening papers, however, Petitioners limit the relief sought to a writ of mandate requiring the City to comply with the orders of the Controller and DOF and "return the assets identified therein." (Opening at 2:25 to 3:2.) Accordingly, that relief is the *only* relief addressed here.

Petitioners' primary argument in their opening brief is the Dissolution Law requires the City to comply with the orders of the Controller and DOF. (Opening at 18-20.) This is true. (§

34167.5 ["Upon receiving that order from the Controller, [the City] shall, as soon as practicable, reverse the transfer and return the applicable assets"]; § 34179.6, subd. (f) [successor agency must comply with DOF's order within five days].)

Petitioners note the City's cross-petition challenging those orders, briefly anticipating the City's arguments the orders of the Controller and DOF are invalid. (Opening at 20-23.) But Petitioners argue the court should "disregard the City's anticipated argument that compliance with the SCO's and DOF's final orders should be further delayed until the cross-petition is adjudicated." (Opening at 19:14-15.)

The Controller and DOF filed a very brief "statement in support" of the County's petition, echoing Petitioners' argument the court should enforce their orders. The Controller and DOF argue the City's filing of a cross-petition does not excuse compliance with those orders. The Controller and DOF do not discuss the merits of the City's cross-petition or the propriety of their orders

The City's opposition to the County's petition is similarly sparse on the merits of the underlying transfers or the orders by the Controller and DOF to reverse those transfers. Instead, the City raises several procedural arguments why the County's petition should be denied.

The City's primary argument is this case is not ripe: Petitioners did not amend their petition after the Controller and DOF issued their orders, yet Petitioners seek to enforce those orders. This argument is not persuasive. Petitioners may amend their pleadings to conform to proof, unless the amendment introduces "new and substantially different issues" into the case. (*Trafton v. Youngblood* (1968) 69 Cal.2d 17, 31; see also *Faigin v. Signature Group Holdings, Inc.* (2012) 211 Cal.App.4<sup>th</sup> 726, 736 [leave to amend to conform to proof at trial should ordinarily be liberally granted unless proposed amendment raised new issues].) The City does not suggest Petitioners' request to enforce the orders of the Controller and DOF raises new or different issues than the issues raised in the original petition. Petitioners have always challenged the RDA's transfer of its assets to the City in the waning days of redevelopment. The issues presented in Petitioners' opening brief are not a surprise. Indeed, Petitioners' brief actually *narrows* their claim, now addressing only the transfers covered by the orders of the Controller and DOF.

The City also argues the court must deny the County's petition because it seeks to enforce administrative orders being challenged in the City's cross-petition. In essence, the City

argues the court must rule on its cross-petition before addressing the County's petition. The City cites no authority for this position.

Petitioners note the Legislature's desire that disputes regarding dissolution of the former redevelopment agencies be resolved as soon as possible. (See § 34183.5, subd. (b)(2)(D) ["time is of the essence"].) The court shares that desire. The City could have asked to have its cross-petition heard with the County's petition. It did not. Additionally, in opposing the County's petition, the City had the opportunity to raise its objections to the orders of the Controller and DOF. The court is thus not persuaded it should delay addressing the merits of the County's petition.

## DISCUSSION

### 1. The Controller's Order

Petitioners ask the court to order the City to comply with the Controller's order. Again, the Controller ordered the City to return the following assets to the Successor Agency: (1) real property; (2) lease payments from the real property made after January 1, 2011; (3) approximately \$24 million in cash; (4) approximately \$25 million in bond proceeds; and (5) approximately \$131 million in housing assets.

It appears the City returned the \$25 million in bond proceeds, and thus this portion of the order is not at issue. (See Opening at 13, fn 9.) It also appears the \$131 million in housing assets are not at issue.<sup>4</sup> The court therefore addresses only the real property and associated lease revenues, and the \$24 million in cash.

#### A. The Real Property and Related Lease Revenues

The Controller ordered the City to reverse the transfer of all properties covered by the former RDA Resolution No. 11-11 and return those properties to the Successor Agency. The Controller also ordered the City to return to the Successor Agency all lease payments related to those properties made since January 1, 2011. (Ex. Z, p. 6.)

The parties use different terms or descriptions in referring to the properties. The Controller identified the properties as follows: (1) Theme Park Land (Great America); (2) 4949 Great America (Hilton Hotel); (3) Conference Center Property (including the Techmart Meeting

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<sup>4</sup> The court assumes this because the parties do not mention housing assets in their briefing.

Center and Hyatt Hotel); (4) North/South Parcels (Great America Theme Park Parking); (5) Southern Pacific; and (6) Martinson Day Care. (Ex. C, Finding 1.) The City acknowledges the Controller's order also includes a parcel of property known as "Gateway Parcel 2." Although this parcel is not specifically identified in the order, Gateway Parcel 2 was transferred to the City by Resolution No. 11-11, and the City agrees it is covered by the order. (Ex. 1, p. 56; Ex. C, p. 6.)

Petitioners also discuss a parcel of real property referred to as "Fairway Glen." (Opening at 11:8-18; Reply at 5:20 to 6:7.) As the City correctly notes, this property is not identified in the Controller's order. (Exs. C, Z, and 1.) Petitioners state the Controller's order is "unclear," but do not argue the order applies to the Fairway Glen property. (Reply at 5:22.) Because Petitioners only seek a writ of mandate ordering the City to comply with the Controller's order, the court finds the Fairway Glen property is not at issue.<sup>5</sup>

Neither party mentions the Southern Pacific or Martinson Day Care properties in their briefs. The court thus finds they are not at issue.

This ruling thus addresses only five properties: (1) Theme Park Land (Great America); (2) 4949 Great America (Hilton Hotel); (3) Conference Center Property (including the Techmart Meeting Center and Hyatt Hotel); (4) North/South Parcels (Great America Theme Park Parking); and (5) Gateway Parcel 2.

Section 34167.5 requires the Controller to order the return of any assets transferred from the RDA to the City if: (1) the transfer occurred after January 1, 2011 and (2) the City "is not contractually committed to a third party for the expenditure or encumbrance of those assets." It appears undisputed all five properties were transferred by the RDA to the City after January 1, 2011. (Ex. 1 [March 2011 resolution authorizing RDA to convey properties to City].)

The City does not argue the properties are contractually committed to a third party. Rather, the City maintains the Controller erred in ordering return of the properties because the properties never belonged to the RDA. Instead, the properties always belonged to the City. The City argues, variously:

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<sup>5</sup> Petitioners alternatively argue the Fairway Glen property was identified in the DDR as an asset improperly transferred to the City after January 1, 2011. (Reply at 5:24 to 6:2.) As evidence, they cite Exhibit K, page 13. However, the court finds no reference to the Fairway Glen property on this page.

- The RDA merely acquired bare legal title to, or a limited custodial interest in, the properties. (Opp. at 15:7, 16:9.)
- The RDA simply “restored” to the City properties that always belonged to it. (*Id.* at 3:16.)
- The properties were never RDA assets. (*Id.* at 15:9-11.)
- The RDA merely acted as “a property management agent” for the City, and held only a “nominal interest” in the properties it was managing. (*Id.* at 15:15, 16:7-8, 17:9-13.)
- The RDA acted merely as a “trustee” for the properties, with the City holding the “beneficial interests” therein. (*Id.* at 17:11-13.)

The court is not persuaded. The City fails to prove the RDA did not own the properties. Petitioners argue the owner of the legal title to property is presumed to own full beneficial title. This presumption may be rebutted only by clear and convincing proof. (Evid. Code § 662.) This presumption promotes the public policy favoring stable title to property. (*In re Marriage of Valli* (2014) 58 Cal.4<sup>th</sup> 1396, 1411.) “Allegations that . . . conveyances are subject to a trust, and that legal title does not represent beneficial ownership have . . . been historically disfavored because society and the courts have a reluctance to tamper with duly executed instruments and documents of legal title.” (*Weiner v. Fleischman* (1991) 54 Cal.3d 476, 489; see also *Estate of Schechtman* (1958) 162 Cal.App.2d 365, 369 [clear and convincing evidence needed to overcome the strong presumption the holder of legal title actually holds it only in trust].)

This is precisely what the City alleges: it conveyed property to the RDA subject to a trust and/or the RDA’s legal title does not represent full beneficial ownership. The City must prove those allegations by clear and convincing evidence. Its evidence falls far short.

Analysis of this issue is complicated because the documents the parties cite do not use the same terms as the Controller’s order. Nor do the parties use the same terms in referring to the properties.

For example, the City cites Exhibits 4, 5, and 6 as evidence the RDA acquired title from the City to the Hyatt site, the Techmart site,<sup>6</sup> the Hilton site, and the North/South Parcel. But Exhibits 4, 5, and 6 refer to the properties using recording descriptions:

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<sup>6</sup> It appears the Controller’s order refers to the Hyatt and Techmart sites collectively as the Conference Center Property.

- Ex. 4 -- “All of Parcel 3 of that Parcel Map filed for record August 6, 1975 in Book 359 of Maps at page 49, Santa Clara County Records.”
- Ex. 5 -- “Beginning at the most easterly corner of Parcel 3 of that Parcel Map filed for record August 6, 1975 in Book 359 of Maps at page 49 . . . . Thence, from point of beginning north 32° 35' 28” west, 967.29 feet along the northeasterly line . . . .”
- Ex. 6 -- “All of Parcels A and B, as shown upon that certain map entitled ‘Parcel Map Lands of the City of Santa Clara Being a Portion of Sections 16 and 21 T. 6S. R. 1W., M.D.M.’, which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on May 19, 1985 in Book 543 of Maps, at Pages 50 and 51.”

Similarly, the Controller’s order does not identify the “Convention Center” as one of the properties to be returned.<sup>7</sup> Petitioners do not mention the Convention Center in their opening brief. The City discusses a conveyance to the RDA of 39 acres in 1982, and it seems the City refers to this 39-acre parcel as the Convention Center. (Opp. at 3:24 to 4:4.) It appears the Convention Center parcel was divided into the “Conference Center Area” and “Development Area,” with the Development Area then was divided into the Hyatt Regency and Techmart parcels. (*Id.* at 4:1-13.) Petitioners briefly discuss the “Convention Center” in their reply brief, but do not explain how it relates to the property subject to the Controller’s order. (Reply at 3:18-28.)

Finally, Petitioners refer to the Hyatt and Techmart properties, the Hotel Ground Lease, and the Trade Center Ground Lease. (Opening at 8-9.) The City refers to “the Development Area (now known generally as 5101 Great American Parkway)” and “the Development Area (now known generally as the 5201 Great America Parkway),” and also refers to these properties as the Hyatt Regency Hotel and Techmart. (Opp. at 4.) The City appears to refer to two of the properties by assessor’s parcel number, one of which may be the property identified by the Controller as the “North/South Parcels” and one of which may be the property identified by the Controller as “4949 Great America (Hilton Hotel).” (Opp. at 4-5.) Again, however, this is not clear.

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<sup>7</sup> It identifies the *Conference Center Property*, including the Hyatt and Techmart sites.

These discrepancies and ambiguities in referring to the properties make it difficult to relate the various documents cited by the parties to the properties covered by the Controller's order. Accordingly, the court limits its review to evidence cited by the City to support its contention the properties at issue never belonged to the RDA.

i. The evidence cited by the City

The City cites Exhibits 4, 5 and 6. Exhibit 4 is a 1982 "Cooperation Agreement" between the City and the RDA, pursuant to which the City agreed to convey to the RDA "fee simple merchantable title" in certain property "free of all easements, covenants, conditions, restrictions and encumbrances." (Ex. 4, p. 81.) Exhibit 5 is a 1984 "First Amended Cooperation Agreement" between the City and the RDA, pursuant to which the City agreed to convey two parcels to the RDA (the "Development Area" and the "Conference Center Area"). With both parcels, the City conveyed "fee simple merchantable title, free of all easements, covenants, conditions, restrictions and encumbrances." (Ex. 5, p. 87.) Exhibit 6 is a 1985 Cooperation Agreement between the City and the RDA, pursuant to which the City agreed to convey to the RDA "fee simple merchantable title" to the "Disposition Parcel" "free of all easements, covenants, conditions, restrictions and encumbrances." (Ex. 6, p. 102.) There is no suggestion in these documents the City retained any interest in the property it conveyed to the RDA.

The City also cites Exhibits U, 16, 18 and 19. Exhibit U is a 1996 "Cooperation Agreement" between the RDA and the Sports and Open Space Authority ("SOSA"). The Cooperation Agreement states SOSA owns certain property, and agrees to grant the RDA a "leasehold" interest therein. (Ex. U, p. 1.) Exhibits 16, 18, and 19 appear to be the "Ground Lease" on Fairway Glen Parcels 1, 3 and 4, respectively. As noted, this ruling does not discuss the Fairway Glen parcel.

The City also cites Exhibits 10 and R. Exhibit 10 is a 2000 Cooperation Agreement between the City and the RDA, pursuant to which the City conveyed to the RDA "fee title" to certain property. (Ex. 10, p. 132.) Exhibit R is an amendment to this Cooperation Agreement expanding the consideration paid for the property. (Ex. R, pp. 1-2.) Neither document suggests the City retained any interest in the property it conveyed to the RDA.

The City also cites Exhibits 13 and T. Exhibit 13 is a 1985 Resolution of the City Council regarding changes to a "Litigation Settlement Letter" and a City/RDA "Cooperation

Agreement.” The City does not explain how the Litigation Settlement Letter or Cooperation Agreement are relevant. Exhibit T is a “Grant Deed” conveying certain real property from SOSA to the RDA. There is no suggestion SOSA retained any interest in the property conveyed.

Finally, although not cited by the City, the court notes the RDA’s March 2011 resolution approving the transfers states the RDA “owns certain real property” and desires to convey that property to the City. (Ex. 1, p. 1.) The actual conveyance documents are attached to the resolution. The “Property Conveyance Agreement” for the Convention Center Complex states the RDA “has acquired certain parcels of real property” and intends to “convey” the property to the City. (*Id.*, p. 11.) The “Grant Deed” attached to the Agreement states the RDA “hereby grants” the property to the City. (*Id.*, p. 24.) The documents regarding the other properties contain similar language. (*Id.*, pp. 30-47.) There is no suggestion in any of these documents the RDA was simply “restoring” to the City property the City already owned.

Accordingly, the City fails to rebut the presumption the RDA had full beneficial title to the real property the City transferred to the RDA. That being the case, the orders of the State Controller and DOF were appropriate in requiring the City to return these assets.

ii. Section 33396

The City cites section 33396, part of the Community Redevelopment Law, as authorizing the City to convey its surplus real property to the RDA. This is true – but irrelevant. Petitioners do not challenge the City’s conveyance of its property to its RDA. Rather, the issue is whether the Dissolution Law thereafter prohibited the RDA from transferring that property back to the City after January 1, 2011. It did. Section 34167.5 states a transfer of assets from the RDA to the City after January 1, 2011, “is deemed not to be in furtherance of the Community Redevelopment Law and is thereby unauthorized.”

The City argues the Community Redevelopment Law also allowed the City to require lease payments received from surplus City property conveyed to the RDA be paid to the City. (§ 33396.) Again, this is true but irrelevant. Assuming the requirements of section 33396 were met, the City was entitled to receive such lease payments prior to January 1, 2011. Thereafter, the Dissolution Law provided that to the extent lease payments are characterized as assets transferred from the RDA to the City, such payments are now “unauthorized.” (§ 34167.5.) Alternatively, if the lease payments are characterized as contractual obligations of the RDA to

the City, the Dissolution Law deems such contracts are no longer “enforceable obligations.” (§ 34171, subd. (d)(2).) If the contracts are no longer enforceable obligations, they may not be paid. (§ 34177.) Under either analysis, any lease payments the RDA made to the City after January 1, 2011, must be returned via the DDR process. (§ 34197.5, subd. (c).)

### iii. Constitutional arguments

The City alternatively argues the Dissolution Law is unconstitutional if interpreted to allow the Controller or DOF to “take” City property and give it to other agencies. The City maintains the Legislature lacks authority to enact any law redistributing the City’s property tax revenue to other local government agencies. (Opp. at 18:19-20.) But the City’s property tax revenues are not being redistributed. The Controller simply ordered the City to return assets it received from the RDA.

The City also argues article XVI, section 6, of the California Constitution prevents the Legislature from making “a gift from one local government agency to another.” (*Id.* at 18:21.) On the briefing submitted the court is not persuaded requiring the City to return assets transferred to it from the RDA constitutes an unconstitutional gift of public funds. (See *California Redevelopment Association v Matosantos* (2013) 212 Cal.App.4th 1457, 1499-1500; *Westly v U.S. Bancorp* (2003) 114 Cal.App.4th 577, 583.)

#### B. The \$24 million in cash

The Controller ordered the City to return approximately \$24 million in cash received from the RDA after January 1, 2011. This included (1) approximately \$19.3 million in cash spent to build the Northside Branch Library and (2) approximately \$4.4 million in unallocated cash. The City argues its cross-petition challenges the order to return the \$19.3 million used to build the library, implying it either returned the \$4.4 million or intends to. (Opp. at 3:3-8.) But the City’s opposition brief to the County’s petition offers no argument why it should not be required to comply with this portion of the Controller’s order.

#### 2. DOF’s Order

Petitioners also ask the court to order the City to comply with DOF’s order. Again, DOF ordered the Successor Agency to transmit to the county auditor-controller approximately \$27

million.<sup>8</sup> (Ex. Z, pp. 1, 4.) Of this, approximately \$19 million was for lease payments from January 1, 2011, through June 30, 2012, on some of the real properties. (Ex. Z, pp. 1-2.) It is not clear what the remaining \$8 million consists of, whether it relates to lease payments, or if the City challenges it.

Petitioners note the Dissolution Law requires the Successor Agency to comply with DOF's order within five days. (§ 34179.6, subd. (f).) The City barely mentions DOF's order in its opposition, other than to assert it conflicts with the Controller's order because it includes lease payments on the Fairway Glen property, which the Controller's order does not identify. (Opp. at 9.) The court finds no reference to lease payments on the Fairway Glen property in DOF's order. And, as noted, this ruling does not address the Fairway Glen property. There thus appears no reason why the Successor Agency and City should not comply with DOF's order.

#### CONCLUSION

Petitioners seek a writ of mandate compelling the City to comply with orders issued by the Controller and DOF over one year ago. The court is not persuaded it should defer ruling on the County's petition until it rules on the City's cross-petition, which is yet to be calendared. On the merits, the City fails to establish the orders by the Controller and DOF are unenforceable. The County's petition is thus granted as stated above.<sup>9</sup>

At the hearing, the City asked what effect this order would have on Petitioners' claim for declaratory relief, the preliminary injunction previously issued or the *lis pendens* recorded on the properties. These questions not being before the court or briefed, this order does not address them. If either party believes further action by the court is required, the parties should meet and confer. If they are unable to resolve the question, the parties should file a joint statement summarizing their positions and action requested.

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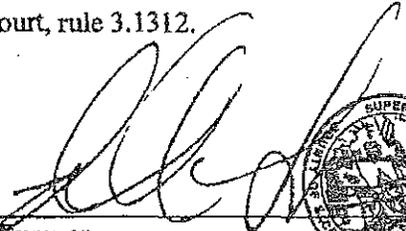
<sup>8</sup> According to Petitioners, the City has not paid any part of the amount due. (Opening at 15:15.) However, it appears approximately \$4 million has been paid via an offset of taxes due to the Successor Agency. (Harrison Decl., ¶ 11.)

<sup>9</sup> This ruling does not dispose of Petitioners' entire action -- just their petition for writ of mandate. Petitioners' other causes of action remain.

At the hearing Petitioners argued this ruling does not dispose of every issue raised in their petition for writ of mandate. For example, they argued the court should address the Fairway Glen property in this decision. As noted above, the court limits the relief to that clearly requested in Petitioners' opening brief. If other issues remain, they may be addressed when the court hears the merits of the cross-petition.

Counsel for Petitioners is directed to prepare a writ, incorporating this ruling as an exhibit; submit it to counsel for the City for approval as to form; and thereafter submit it to the court for signature in accordance with Rule of Court, rule 3.1312.

Dated: Dec 1, 2014

  
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Allen Sumner  
Judge of the Superior Court of California,  
County of Sacramento



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

**VINDOD K. SHARMA**

**Case Number: 34-2013-80001396**

**vs.**

**CITY OF SANTA CLARA**

**CERTIFICATE OF SERVICE  
BY EMAILING**

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing **ORDER AFTER HEARING ON PETITION FOR WRIT OF MANDATE** by sending true copies thereof, addressed respectively to the persons and email addresses shown below:

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I, the undersigned Deputy Clerk, declare under penalty of perjury that the foregoing is true and correct

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

Dated: December 1, 2014

BY M. GARCIA,   
Deputy Clerk