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SUPERIOR COURT OF THE STATE OF CALIFORNIA

SAN DIEGO COUNTY--HALL OF JUSTICE

9
10 SAN DIEGANS FOR OPEN GOVERNMENT,)

11 Plaintiff,)

12 vs.)

13 CITY OF SAN DIEGO; PUBLIC FACILITIES)
14 FINANCING AUTHORITY OF THE CITY OF)
15 SAN DIEGO; and ALL PERSONS INTERESTED)
16 IN THE MATTER OF THE APPROVAL AND)
17 ISSUANCE OF THE PUBLIC FACILITIES)
18 FINANCING AUTHORITY OF THE CITY OF)
19 SAN DIEGO SPRECKELS ORGAN PAVILION)
20 PUBLIC PARKING GARAGE LEASE REVENUE)
21 BONDS, SERIES 2012C, THE RELATED)
22 FACILITIES LEASE DATED NOVEMBER 1,)
23 2012, BY AND BETWEEN THE PUBLIC)
24 FACILITIES FINANCING AUTHORITY OF THE)
25 CITY OF SAN DIEGO AND THE CITY OF SAN)
26 DIEGO, THE RELATED SITE LEASE DATED)
27 NOVEMBER 1, 2012, BY AND BETWEEN THE)
28 CITY OF SAN DIEGO AND THE PUBLIC)
29 FACILITIES FINANCING AUTHORITY OF THE)
30 CITY OF SAN DIEGO, THE RELATED BOND)
31 PURCHASE AGREEMENT BY AND AMONG)
32 THE PUBLIC FACILITIES FINANCING)
33 AUTHORITY OF THE CITY OF SAN DIEGO,)
34 THE CITY OF SAN DIEGO, AND LOOP)
35 CAPITAL MARKETS, LLC, AND THE)
36 RELATED INDENTURE BY AND BETWEEN)
37 THE PUBLIC FACILITIES FINANCING)
38 AUTHORITY OF THE CITY OF SAN DIEGO)
39 AND WILMINGTON TRUST, NATIONAL)
40 ASSOCIATION,)

Defendants.

CASE NO. 37-2012-00086572-CU-MC-CTL

**FIRST AMENDED REVERSE-
VALIDATION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF** [filed by right per CODE OF CIV.
PROC. § 472]

**** IMAGED FILE ****

Action Filed: November 30, 2012
Department: C-73 (Denton)

1 Plaintiff SAN DIEGANS FOR OPEN GOVERNMENT alleges as follows in this First Amended
2 Reverse-Validation Complaint for Declaratory and Injunctive Relief:

3 **Parties**

4 1. Plaintiff is a non-profit taxpayer and voter organization formed and operating under the
5 laws of the State of California. At least one of Plaintiff's members resides in the City of San Diego,
6 California, and Plaintiff has an interest in ensuring open, accountable, responsive government, and the
7 protection of its members' rights as taxpayers and voters.

8 2. Defendant CITY OF SAN DIEGO ("CITY") is a charter city under the laws of the State
9 of California, is the successor agency to the Redevelopment Agency of the City of San Diego
10 ("RASD"), and is being sued in its capacity as a charter city and in its capacity as the successor agency.

11 3. Defendant PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN
12 DIEGO ("AUTHORITY") is a joint powers authority formed and operating under the Joint Exercise
13 of Powers Act ("JEPA"), Government Code Section 6500 *et seq.* On October 2, 2012, AUTHORITY's
14 members consisted of RASD and CITY; and AUTHORITY was administered by a commission
15 consisting of CITY's treasurer, RASD's assistant executive director, and three members of the public
16 appointed by CITY's mayor and confirmed by the San Diego City Council and the RASD.

17 **Background Information**

18 4. On or around October 2, 2012, CITY and AUTHORITY approved the latter's issuance
19 of what are commonly known as the Spreckels Organ Pavilion Public Parking Garage Lease Revenue
20 Bonds, Series 2012C, and also approved the following related items (among others): a Facilities Lease
21 dated November 1, 2012, by and between AUTHORITY and CITY; a Site Lease dated November 1,
22 2012, by and between CITY and AUTHORITY; a Bond Purchase Agreement by and among
23 AUTHORITY, CITY, and Loop Capital Markets, LLC; and the Indenture between AUTHORITY and
24 Wilmington Trust, National Association (collectively, "Bond Approvals").

25 5. The purpose of the Bond Approvals identified in the preceding paragraph is to raise
26 approximately \$17.4 million to pay CITY's portion of the construction costs for the parking garage
27 portion of the project commonly known as the reclamation and restoration of the Plaza de Panama in
28 Balboa Park ("PDP Project"), as well as the associated transaction and financing costs.

1 6. On or about July 12, 2012, the San Diego City Council adopted Resolution R-307558,
2 which states in part:

3 WHEREAS, the [Plaza de Panama] Committee and the City desire to
4 enter into the Plaza de Panama Improvement Agreement (Agreement)
5 wherein the Committee will donate most of the needed improvements,
6 with the City contributing funds towards the construction of a parking
7 structure located south of the Spreckels Organ Pavilion (Parking
8 Structure), using revenue generated by the Parking Structure; and

9 WHEREAS, because the Committee is donating all of the Plaza de
10 Panama Project improvements except for the Parking Structure, seeking
11 competitive bids or proposals for the design and construction of the
12 improvements, except for the Parking Structure, would not be
13 advantageous to the City; and

14 WHEREAS, the proposed Plan of Finance for the Parking Structure calls
15 for the City to issue tax-exempt bonds (Bonds) to finance the cost of
16 constructing the Parking Structure; * * *

17 7. On August 31, 2012, CITY's debt management director and its chief operating officer
18 issued Report no. 12-107, a Report to the City Council, which states in part: "The City's contribution
19 to the construction of the Parking Garage will be limited to approximately \$14 million--of the estimated
20 \$22.4 million total cost of the garage (excluding the rooftop park), construction cost amounts to \$16
21 million and the remaining \$6.4 million consists of design cost."

22 **Jurisdiction, Venue, and Exhaustion of Administrative Remedies**

23 8. Plaintiff is bringing this action and seeks review by and relief from this Court under
24 Code of Civil Procedure Sections 860 *et seq.* and 1060 *et seq.*¹

25 9. Venue in this Court is proper because the obligations, liabilities, and violations of law
26 alleged in this pleading occurred in the City of San Diego.

27 10. No public hearing was held on the Bond Approvals. Nonetheless, Plaintiff submitted
28 written opposition to the Bond Approvals to CITY prior to their approval.

 11. Plaintiff has no plain, speedy, adequate remedy in the ordinary course of law, since its
members and other members of the public will suffer irreparable harm as a result of Defendants'
violations of the law, as alleged in this pleading. The Bond Approvals also rest on Defendants' failure

¹ Petitioner does not believe that this proceeding is required to be prosecuted as a reverse-validation proceeding under Code of Civil Procedure Section 860 *et seq.* and is doing so only in an abundance of caution. Proof of publication of the summons was filed with the Court on or about December 28, 2012.

1 to satisfy a clear, present, ministerial duty to act in accordance with those laws. Even when Defendants
2 are permitted or required by law to exercise their discretion in approving projects under those laws, they
3 remain under a clear, present, ministerial duty to exercise their discretion within the limits of and in a
4 manner consistent with those laws. Defendants have had and continue to have the capacity and ability
5 to approve the Bond Approvals within the limits of and in a manner consistent with those laws, but
6 Defendants have failed and refuse to do so and have exercised their discretion beyond the limits of and
7 in a manner that is not consistent with those laws.

8 12. Plaintiff and its members also have a beneficial right and interest in Defendants'
9 fulfillment of all their legal and public duties, as alleged in this pleading.

10 **FIRST CAUSE OF ACTION:**
11 ***Bond Approvals' Non-Compliance with All Applicable Laws***
12 **(Against All Defendants)**

13 13. The preceding paragraphs are incorporated into this paragraph by reference.

14 14. The Bond Approvals do not comply with all applicable laws. By way of example and
15 not limitation:

16 A. The Bond Approvals are invalid because one of the parties to the Site Lease, the
17 Facilities Lease, the Bond Purchase Agreement, and the Indenture--namely, AUTHORITY--had no legal
18 right or power to enter into those transactions. In particular:

19 i. Under the JEPA, AUTHORITY may not exercise any right or power
20 unless at least two of its members have the same right or power.

21 ii. At the time of the Bond Approvals:

22 a. All legal right and power of RASD to participate in its own name
23 had been withdrawn by the Legislature. Alternatively, if all legal right and power of RASD to
24 participate in its own name had not been withdrawn by the Legislature, the legal right and power of
25 RASD necessary for the Bond Approvals had been withdrawn by the Legislature.

26 b. CITY, in its capacity as the successor agency to RASD, was not
27 a member of AUTHORITY.

28 c. CITY was the only member of AUTHORITY with any legal right
or power to participate in AUTHORITY.

1 iii. Plaintiff is informed and believes and on that basis alleges that
2 AUTHORITY has executed all instruments and taken all other steps necessary for completion of the
3 transactions; alternatively, that AUTHORITY's highest officials have been authorized to execute all
4 such instruments and take all other steps necessary for completion of the transactions and any failure
5 to execute a particular instrument or take a particular step thus far is a mere formality that requires no
6 further approval by AUTHORITY in order to be carried out; and alternatively, that AUTHORITY has
7 received all authorizations necessary for completion of the transactions but has failed to execute all
8 instruments and take all steps necessary for completion of the transactions solely on account of this
9 lawsuit solely for the purpose of being able to claim that this lawsuit is not yet ripe, fully intended to
10 execute the instruments and take the steps necessary for completion of the transactions after obtaining
11 the dismissal of this lawsuit based on a ripeness defense.

12 B. The agreement under which AUTHORITY was operating on October 2, 2012--
13 that certain Second Amended and Restated Joint Exercise of Powers Agreement dated October 29,
14 2002, by and between CITY and RASD ("JPA Agreement")--did not give AUTHORITY the right or
15 power to enter into the Site Lease, Facilities Lease, the Bond Purchase Agreement, or the Indenture and
16 did not give AUTHORITY the right or power to issue bonds. In particular:

17 i. The JPA Agreement limited AUTHORITY to exercising rights and
18 powers common to CITY and RASD, but on that date RASD had no legal right or power to issue bonds.

19 ii. The JPA Agreement gave AUTHORITY the right and power to purchase
20 bonds issued by CITY or RASD but did not give AUTHORITY the right or power to issue bonds.

21 iii. Under the JPA Agreement, AUTHORITY was limited to exercising its
22 rights and powers in the same manner as RASD in the exercise of similar rights and powers, but at that
23 time RASD's rights and powers to issue bonds, enter into finance-related contracts, and encumber assets
24 had all been withdrawn by the Legislature.

25 C. The Bond Approvals violated Section 99 of the San Diego City Charter. In
26 particular:

27 i. Section 99 provides as follows: "The City shall not incur any
28 indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue

1 provided for such year unless the qualified electors of the City, voting at an election to be held for that
2 purpose, have indicated their assent as then required by the Constitution of the State of California, nor
3 unless before or at the time of incurring such indebtedness provision shall be made for the collection
4 of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to
5 constitute a sinking fund for the payment of the principal thereof, on or before maturity, which shall not
6 exceed forty years from the time of contracting the same.”

7 ii. CITY’s use of AUTHORITY to issue bonds under the Bond Approvals,
8 instead of CITY issuing the bonds in its own name, is an artifice designed solely to circumvent the
9 voter-assent requirement of Section 99. Given the structure of the transaction contemplated by the
10 Bond Approvals, AUTHORITY could not generate the funds necessary to cover CITY’s portion of the
11 costs for the PDP Project without CITY’s consent to participate in the transaction in the manner
12 required by the Bond Approvals--even if there were no voter-assent requirement under Section 99.
13 Furthermore, CITY’s Independent Budget Analyst evaluated the Bond Approvals and concluded that
14 CITY’s general fund may be obligated to repay the bonds; in this regard, CITY property has been used
15 as collateral to secure repayment of the bonds, the absence of which would have precluded CITY from
16 finding willing purchasers of the bonds; thus, CITY is liable under the Bond Approvals for more than
17 making rent payments to AUTHORITY.

18 iii. Plaintiff is informed and believes and on that basis alleges that all
19 managers of AUTHORITY are CITY officials or employees; and that AUTHORITY would not have
20 approved the Bond Approvals if CITY had not also approved the Bond Approvals or directed
21 AUTHORITY to approve the Bond Approvals.

22 iv. The voters of the City of San Diego have not assented to any aspect of
23 the Bond Approvals. Indeed, there has not even been a vote.

24 D. The Bond Approvals violated Section 18(a) of Article XVI of the California
25 Constitution. In particular:

26 i. Section 18(a) provides as follows: “No county, city, town, township,
27 board of education, or school district, shall incur any indebtedness or liability in any manner or for any
28 purpose exceeding in any year the income and revenue provided for such year, without the assent of

1 two-thirds of the voters of the public entity voting at an election to be held for that purpose, except that
2 with respect to any such public entity which is authorized to incur indebtedness for public school
3 purposes, any proposition for the incurrence of indebtedness in the form of general obligation bonds
4 for the purpose of repairing, reconstructing or replacing public school buildings determined, in the
5 manner prescribed by law, to be structurally unsafe for school use, shall be adopted upon the approval
6 of a majority of the voters of the public entity voting on the proposition at such election; nor unless
7 before or at the time of incurring such indebtedness provision shall be made for the collection of an
8 annual tax sufficient to pay the interest on such indebtedness as it falls due, and to provide for a sinking
9 fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years
10 from the time of contracting the indebtedness.”

11 ii. CITY’s use of AUTHORITY to issue bonds under the Bond Approvals,
12 instead of CITY issuing the bonds in its own name, is an artifice designed solely to circumvent the
13 voter-assent requirement of Section 18(a). Given the structure of the transaction contemplated by the
14 Bond Approvals, AUTHORITY could not generate the funds necessary to cover CITY’s portion of the
15 costs for the PDP Project without CITY’s consent to participate in the transaction in the manner
16 required by the Bond Approvals--even if there were no voter-assent requirement under Section 18(a).

17 iii. The voters of the City of San Diego have not assented to any aspect of
18 the Bond Approvals. Indeed, there has not even been a vote.

19 E. The Bond Approvals violated San Diego Municipal Code Section 22.0901. In
20 particular:

21 i. The Site Lease involves a lease of CITY property to AUTHORITY, and
22 the Facilities Lease involves a lease-back of CITY property from AUTHORITY.

23 ii. Leases of CITY property may not be approved without, among other
24 things, a resolution or ordinance satisfying the requirements of Section 22.0901(a).

25 iii. The Site Lease and the Facilities Lease were approved by Ordinance O-
26 20205.

27 iv. The Site Lease’s approval was not accompanied by a resolution or
28 ordinance satisfying the requirements of Section 22.0901(a). By way of example and not limitation,

1 Ordinance O-20205 does not contain a statement of the market value of the real property of CITY that
2 is the subject of the Site Lease or of the real property of CITY that is the subject of the Facilities Lease.

3 15. Owing to the Bond Approvals' non-compliance with all applicable laws, the Bond
4 Approvals are invalid and have no legal effect.

5 **Prayer**

6 FOR ALL THESE REASONS, Plaintiff respectfully prays for the following relief against
7 Defendants (and any and all other parties who may oppose Plaintiff in this proceeding):

8 A. A judgment determining or declaring that the Bond Approvals do not comply with all
9 applicable laws in at least some respect, rendering the Bond Approvals null and void, invalid, or
10 otherwise without legal effect;

11 B. Injunctive relief prohibiting Defendants from taking any of the action contemplated by
12 the Bond Approvals unless and until Defendants comply with all applicable legal requirements, as
13 determined by the Court;

14 C. All legal fees and other expenses incurred in connection with this proceeding, including
15 but not limited to reasonable attorney fees as authorized by the Code of Civil Procedure; and

16 D. Any and all further relief that this Court may deem appropriate.

17 Date: March 5, 2013.

Respectfully submitted,

18 BRIGGS LAW CORPORATION

19 *Original Signed*

20 By:

Cory J. Briggs

21 Attorneys for Plaintiff San Diegans for Open Government
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PROOF OF SERVICE

1. My name is Cory J. Briggs. I am over the age of eighteen. I am employed in the State of California, County of San Bernardino.

2. My business _____ residence address is Briggs Law Corporation, 99 East "C" Street, Suite 111, Upland, CA, 91786.

3. On March 5, 2013, I served _____ an original copy a true and correct copy of the following documents: FIRST AMENDED REVERSEVALIDATION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

4. I served the documents on the person(s) identified on the attached mailing/service list as follows:

by personal service. I personally delivered the documents to the person(s) at the address(es) indicated on the list.

by U.S. mail. I sealed the documents in an envelope or package addressed to the person(s) at the address(es) indicated on the list, with first-class postage fully prepaid, and then I

deposited the envelope/package with the U.S. Postal Service

placed the envelope/package in a box for outgoing mail in accordance with my office's ordinary practices for collecting and processing outgoing mail, with which I am readily familiar. On the same day that mail is placed in the box for outgoing mail, it is deposited in the ordinary course of business with the U.S. Postal Service.

I am a resident of or employed in the county where the mailing occurred. The mailing occurred in the city of San Diego, California.

by overnight delivery. I sealed the documents in an envelope/package provided by an overnight-delivery service and addressed to the person(s) at the address(es) indicated on the list, and then I placed the envelope/package for collection and overnight delivery in the service's box regularly utilized for receiving items for overnight delivery or at the service's office where such items are accepted for overnight delivery.

by facsimile transmission. Based on an agreement of the parties or a court order, I sent the documents to the person(s) at the fax number(s) shown on the list. Afterward, the fax machine from which the documents were sent reported that they were sent successfully.

by e-mail delivery. Based on an agreement of the parties or a court order, I sent the documents to the person(s) at the e-mail address(es) shown on the list. I did not receive, within a reasonable period of time afterward, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws _____ of the United States of the State of California that the foregoing is true and correct.

Date: March 5, 2013

Signature: _____

SERVICE LIST

San Diegans for Open Government v. City of San Diego et al.
San Diego County Superior Court Case no. 37-2012-00086572-CU-MC-CTL

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