No. S194861

# IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA REDEVELOPMENT ASSOCIATION, ET AL.,
*Petitioners*,

v.

ANA MATOSANTOS, ET AL.,
*Respondents*.

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## INFORMAL REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDATE AND APPLICATION FOR TEMPORARY STAY

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## INTRODUCTION

Respondent Matosantos ("Respondent") concedes that "the issues presented" by the Petition "are of sufficient importance to warrant resolution by this Court in the first instance," and joins in Petitioners' request for expedited consideration by this Court. Informal Opposition ("Opp.") 2; *accord, id.* at 6, 20. No party contends to the contrary. Accordingly, the Court should issue an alternative writ or order to show cause, and set the case for further briefing and oral argument in the fall of 2011.

Although the Court asked Respondents to file an informal opposition that addressed "all issues presented in the petition for writ of mandate," Respondent does not discuss many of the contentions made in Petitioners' Memorandum ("Pet. Mem."). Most notably, Respondent ignores Proposition 22's stated purpose: "to conclusively and completely prohibit" the Legislature "from seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with" revenue dedicated to local government. Likewise, Respondent ignores the events that led the electorate to adopt both Proposition 1A and Proposition 22 as remedial measures intended to prevent the State from using local revenue for its own benefit. Consequently, Respondent does not contest a central premise of Petitioners' Memorandum: that invalidating AB1X 26 and 27 will further the purposes that led the voters to adopt these constitutional amendments. Her silence speaks volumes.

Nor does Respondent address many of the other constitutional flaws in AB1X 26/27 identified by Petitioners. For example, Respondent does not deny that the payments compelled by AB1X 27 are likely to be made with RDA tax increments and would therefore violate Article XIII, Section 25.5(a)(7)(A) had they been directly compelled by the Legislature. *See* Pet. Mem. 24-27. Similarly, Respondent ignores Petitioners' showing that the restrictions the Legislature has now placed on the RDAs pursuant to AB1X 26 violate Article XIII, Section 25.5(a)(7)(B), which prohibits the Legislature from restricting the RDAs' use of their tax increment funds. *See id.* at 30-31. Nor does

Respondent address Petitioners' showing that the payments required by AB1X 27 violate Article XIII, Sections 24(b), 25.5(a)(1) and (3). *See id.* at 34-38.[1] And last, but certainly not least, Respondent does not deny that the limited stay proposed by Petitioners will adequately protect the State against dissipation of RDA assets while this case is being adjudicated. *See id.* at 43-44.

Moreover, what Respondent does say about the merits is unconvincing. Her contention that the Court should consider the constitutionality of AB1X 26 and 27 separately mischaracterizes the relationship between the two statutes and ignores the rule that the Legislature cannot accomplish indirectly what it could not accomplish directly. *See* Part I, *infra*. Even if that were not true, Respondent's contention that the Legislature can dissolve the RDAs ignores the specific constitutional language on which Petitioners rely and the reasons why that language was added to the constitution. *See* Part II, *infra*. And her argument that a stay is unnecessary ignores Petitioners' showing of irreparable injury, erroneously claims that a stay will injure the State, misdefines the "status quo" that a stay would preserve and, as noted above, ignores the carefully crafted stay provisions that Petitioners fashioned to prevent dissipation of RDA assets *pendente lite*. *See* Part III, *infra*.

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[1]Respondent does mention Article XIII, Section 24(b) in a footnote, which asserts that Petitioners' reliance on this provision ignores "the difference between property tax and the property tax increment received by RDAs." Opp. 14 n.8. This makes no sense, because Article XIII, Section 24(b) has nothing to do with either the property tax in general or the specific property tax increment that RDAs receive. *See* Pet. Mem. 36.

## ARGUMENT

## I.

## AB1X 26 AND AB1X 27 USE AN UNCONSTITUTIONAL MEANS TO ACHIEVE AN UNCONSTITUTIONAL RESULT.

Petitioners contend that AB1X 26 and 27 are unconstitutional twice over, because they use an unconstitutional means—the threat of RDA dissolution—to achieve an unconstitutional result: the payment of RDA tax increment to and for the benefit of the State, schools and special districts. *See* Pet. Mem. 21-34. In response, Respondent contends that the Court should consider the constitutionality of AB1X 26 without regard for the constitutionality of AB1X 27 because AB1X 26 "terminated the existence of the RDAs as a 'stand alone' act, *without regard to actions that cities or counties might choose subsequently to avail themselves of under AB1X 27.*" Opp. 12 (emphasis added). On this premise, Respondent contends that the payments cities and counties must make under AB1X 27 are part of a "voluntary redevelopment program" (*id.*) that is unrelated to the prior dissolution of the RDAs. These contentions are wrong, for three separate and independently sufficient reasons.

*First*, Respondent mischaracterizes how AB1X 26 and 27 interrelate. Once a city or county passes a binding ordinance under AB1X 27, the provisions of AB1X 26 do not apply to its RDA. HEALTH & SAFETY CODE §34193(a) ("Notwithstanding Part 1.8 (commencing with Section 34161), Part 1.85 (commencing with Section 34170), or any other law, a redevelopment agency may continue to exist and carry out the provisions of the Community Redevelopment Law (Part 1 (commencing with Section 33000)) only upon the enactment of an ordinance enacted by the community to comply with this part on or before November 1, 2011").[2] Indeed, if a city or county enacts a binding ordinance to comply with AB1X 27 by October 1,

[2]Unless otherwise indicated, all statutory references are to the Health and Safety Code.

2011, or a non-binding resolution by that date and a binding ordinance by November 1, and makes the payments required by AB1X 27, its RDA will *never* be dissolved under AB1X 26.[3]

*Second,* Respondent's "stand alone" theory is incompatible with the Legislature's purpose in enacting AB1X 26 and 27. Respondent contends that the Legislature passed AB1X 26 to "terminate[] the RDA program" (Opp. 7 (emphasis omitted)), and passed AB1X 27 "to establish a new type of redevelopment program." *Id.* at 11. These statements are undermined by the fact that AB1X 26 and 27 permit the RDAs to continue *all* of their existing activities under current law if they make the payments provided by the latter statute. *See* p.3, *supra.* Moreover, Respondent herself acknowledges that the Legislature passed these bills as a means of using RDA funds "to close the more than $25 billion budget gap and to solve ongoing revenue challenges." Opp. 6; *accord, id.* at 2 (AB1X 26 and 27 are "critically important pieces of the state's current budget framework"), 18 ("AB1X 26 and 27 are . . . integral to the budget package for the current fiscal year"). Indeed, the two bills were "scored" for budgetary purposes as a single package. *See* SENATE RULES COMM., Off. of Sen. Floor Analysis, 3d Reading Analysis of AB1X 26 at 1 (2011-12 1st Ex. Sess.), as amended June 15, 2011 ("AB1X 26 Senate Floor Analysis"). In short, AB1X 26 was intended to be, and is, a means to an end, not an end in itself.[4]

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[3]In fact, the Legislature was told that the entire $1.7 billion payment would be made, which assumes that *none* of the RDAs would be dissolved. Similarly, the method by which the $1.7 billion is apportioned assumes that every city and county with an extant RDA will participate in the "voluntary" program created by AB1X 27. *See* Pet. Mem. 14 n.9, 16. Moreover, AB1X 26 does not become effective unless AB1X 27 does. A.B. 1X 26, 2011-12 1st Ex. Sess. (Cal. 2011) §14.

[4]In fact, the Governor had originally proposed a straightforward abolition of the RDAs, but the Legislature declined to adopt that proposal. *See* A.B. 101, 2011-12 Leg. Sess. (Cal. 2011); LEGISLATIVE ANALYST'S OFFICE, *Governor's Redevelopment Proposal* (Feb. 7, 2011).

*Third*, Respondent's "stand alone" argument is at odds with the rule, set forth in *Sonoma County Organization of Public Employees v. County of Sonoma*, 23 Cal. 3d 296 (1979) ("*SCOPE*"), that "constitutional power cannot be used by way of condition to attain an unconstitutional result." *Id.* at 319 (citation and internal quotation marks omitted). In other words, even assuming *arguendo* that the Legislature has the authority to dissolve redevelopment agencies by statute, it cannot use that power to condition the continued existence of the RDAs on the making of payments that would be unconstitutional if compelled directly by the Legislature.

Respondent attempts to distinguish *SCOPE* on two grounds. To begin with, she says that the legislation in that case "violated the contract rights of thousands of people, while the statutes here do not infringe any contract or constitutional rights." Opp. 13. Respondent errs. The result in *SCOPE* was unconstitutional because the State could not directly abrogate employment contracts between local governments and their employees. Similarly, the result here is unconstitutional because the State cannot directly require RDAs to pay money to schools and special districts. Consequently, both cases involve the use of an asserted constitutional power to achieve an unconstitutional result.[5]

Moreover, Respondent contends that this case is different than *SCOPE* because "[p]ayments under AB1X 27 are voluntary." Opp. 14. But the same was true in *SCOPE*. In that case, no local jurisdiction was legally required to accept the "bail out" funds the State made available after the passage of Proposition 13. Similarly, in this case no city or county is legally required to make the AB1X 27 payments. Indeed, the precise holding of *SCOPE* is that a constitutional power

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[5]As noted above, Respondent does not contend that the State could directly require RDAs to pay money to schools and special districts or contest Petitioners' assertion that Proposition 22 was enacted to prohibit such transfers. And since AB1X 26 and 27 violate Proposition 22, Respondent's contention that the statutes protect the rights of "bondholders and others who have enforceable rights against the RDAs" (Opp. 13) is irrelevant.

cannot be used "*by way of condition*" to achieve an unconstitutional result. 23 Cal. 3d at 319 (citation and internal quotation marks omitted; emphasis added). Accordingly, the State cannot use its constitutional power to impose a condition on local government that has the practical effect of attaining a result prohibited by Article XIII, Section 25.5(a)(7): the payment of RDA funds to benefit the State, school districts and special districts.

For these reasons, AB1X 26 and 27 do not rest in separate watertight compartments. Instead, they comprise a two-bill scheme that uses the threat of depriving the RDAs of *all* their money to compel them to relinquish *part* of their money. Since even Respondent concedes that "state constitutional provisions . . . limit the Legislature's ability to tamper with the stream of income flowing into and out of RDAs" (Opp. 2), both bills are unconstitutional.[6]

## II.

## AB1X 26 IS UNCONSTITUTIONAL EVEN IF CONSIDERED IN ISOLATION.

Even if the Court considered the constitutionality of AB1X 26 in a vacuum, detached from its legislative sibling, the statute would be unconstitutional. Respondent's argument that the Legislature created the RDAs and can dissolve them at will fails for multiple reasons.

Respondent begins by relying on the familiar bromides that, under the California Constitution, legislative acts are presumed constitutional

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[6]In addition, the payment of RDA funds during FY 2011/12 also violates Article XIIIB, Section 6(b)(3). *See* Pet. Mem. 38-39. Respondent says Petitioners are wrong because "[a]n RDA's 'tax increment may not be deemed to be the proceeds of taxes within the meaning of article XIII B.'" Opp. 14 n.8 (citation omitted). This is a red herring. The words "proceeds of taxes" do not appear in Article XIIIB, Section 6(b)(3). Instead, that provision prohibits the use of property taxes to reimburse a local agency for the cost of compliance with a state mandate. *See* Pet. Mem. 39. AB1X 27 does just that during FY 2011/12 by requiring RDAs to use their property tax increment to reimburse cities and counties for the cost of paying part of the State's constitutional obligation to fund the public schools. *See id.*

and that all "'restrictions and limitations [imposed by the Constitution] are to be construed strictly.'" Opp. 5 (quoting *Methodist Hosp. v. Saylor*, 5 Cal. 3d 685, 691 (1971)). But, as this Court said in *State Personnel Board v. Department of Personnel Administration*, 37 Cal. 4th 512 (2005), after acknowledging these principles, the Court "also must enforce the provisions of our Constitution and may not lightly disregard or blink at . . . a clear constitutional mandate." *Id.* at 523 (citation and internal quotation marks omitted).[7]

Respondent ignores the constitutional mandates at issue in this case in two different ways. First, she focuses exclusively on the assertion in Petitioners' brief that the provisions of Article XIII, Section 25.5(a)(7) "presume the continued existence of the RDAs." Opp. 10; Pet. Mem. 32. Second, she mischaracterizes Petitioners' argument as claiming "that the mere mention of an entity in the Constitution immunizes it from legislative dissolution." Opp. 11.

These arguments fail to respond to Petitioners' showing that Article XIII, Section 25.5(a)(7) contains specific mandates of constitutional stature that preclude RDA dissolution, notwithstanding the general power of the Legislature in the absence of such a mandate to abolish agencies it has previously created. As Petitioners stated in their Opening Memorandum:

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[7]Nor is Respondent helped by cases such as *Board of Supervisors v. Local Agency Formation Commission*, 3 Cal. 4th 903 (1992), and *Broadmoor Police Protection District v. San Mateo Local Agency Formation Commission*, 26 Cal. App. 4th 304, 311 (1994). These cases, which involved equal protection challenges to voting procedures used to annex unincorporated areas to existing cities or create new cities out of unincorporated areas, stand for the proposition that "[i]n our federal system, the states are sovereign but cities and counties are not; in California as elsewhere they are mere creatures of the state and exist only at the state's sufferance." *Bd. of Supervisors*, 3 Cal. 4th at 914. But the principle that the federal constitution leaves the states free to create and dissolve local governments as they see fit has no relevance to whether a particular provision of the state constitution inhibits a state legislature's ability to dissolve particular entities of local government. Accordingly, these cases do not address whether provisions in the California Constitution that specifically recognize local entities prevent the Legislature from abolishing them by statute.

> Section 25.5(a)(7)(A) prohibits the payment or transfer of RDA tax increment funds, whether those payments or transfers are made "directly or indirectly." That language is broad enough to prohibit AB1X 26's diversion of the dissolved RDA's tax increments by the county auditors and their payment to third parties. Similarly, Section 25.5(a)(7)(B) prevents the Legislature from restricting the use of the tax increment funds annually allocated to the RDAs. Since dissolved redevelopment agencies can no longer use their annual allocations of property tax increment, this provision, too, prevents the Legislature from abolishing these agencies. In other words, Sections 25.5(a)(7)(A) and (B) don't just *assume* the continued viability of the RDAs, they *protect* that existence by prohibiting the Legislature from either transferring the RDAs' tax increments or limiting the uses to which those funds can be put. (Pet. Mem. 32 (citations omitted; emphases in original))

Respondent's only answer to these points is silence.

To be sure, Respondent grudgingly acknowledges that "the RDAs are mentioned in the Constitution in provisions which limit tampering with their revenue stream." Opp. 11. Nevertheless, she argues—as she must—that these provisions permit the Legislature to abolish the RDAs. However, Respondent does not explain why the voters would have protected the RDAs' revenue stream against legislative "tampering"—as they concededly did—without simultaneously protecting the redevelopment agencies themselves.[8]

As discussed above, the Legislature did not enact AB1X 26 because it wanted to "reform" the RDAs. Instead it conditionally abolished these agencies in AB1X 26 for a simple reason: it wanted their money. That brings the statute squarely within the provisions of the Constitution that, as Respondent admits, "limit the Legislature's ability to tamper with the stream of income flowing into and out of RDAs." Opp. 2.

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[8]For this reason, Respondent's reliance on the Legislature's ability to eliminate benefit programs and local entities that have no constitutional protection is misplaced. *See* Opp. 9 (analogizing RDA dissolution to the Legislature's elimination of Vocational Rehabilitation Unit and Program).

## III.

## THE COURT SHOULD STAY IMPLEMENTATION OF AB1X 26 AND 27 PENDING ITS DECISION.

Respondent's opposition to Petitioners' stay request contends that Petitioners are unlikely to prevail on the merits; that denying a stay will not irreparably injure Petitioners while granting a stay will injure the State; and that granting a stay will disrupt the status quo. Each contention is meritless.

### A. Petitioners Are Likely To Succeed On The Merits.

Petitioners are likely to succeed on the merits. Indeed, as noted above, Respondent has failed to address, much less refute, many of Petitioners' contentions. *See* pp.1-2, *supra*.

### B. A Stay Will Prevent Irreparable Injury To Petitioners While Causing No Harm To Respondent.

Even if Petitioners' likelihood of success were less overwhelming than it is, a stay should issue. That is because in determining whether to grant preliminary relief a court "must exercise its discretion 'in favor of the party most likely to be injured.'" *Robbins v. Superior Court*, 38 Cal. 3d 199, 205 (1985) (citation omitted). Here, the balance of hardships tips heavily in Petitioners' favor.

As the Petition and its accompanying declarations demonstrate, the need for a stay is particularly urgent with respect to those RDAs and cities that will not be able to make the payments required by AB1X 27. Under AB1X 26, these RDAs will be dissolved on October 1, 2011, once the relevant city or county fails to pass either a non-binding resolution or a binding ordinance to comply with AB1X 27. §§34170(a), 34193(a), (b). Dissolution will cause irreparable injury to the RDAs themselves, since it terminates their existence and all their legal authority. *See* Pet. Mem. 19-20. Moreover, once RDA dissolution occurs, agencies will be unable to complete existing projects[9];

[9] *See, e.g.*, Ross Decl. ¶9 ("If the [West Sacramento RDA] is dissolved, the [infrastructure plan, streetscape project, and streetcar (continued . . . )

financially strapped cities will face massive new and unanticipated liabilities[10]; RDA assets will be sold[11]; RDA employees will leave[12]; and existing obligations under federal and state grants will be breached, requiring the return of grant funds.[13] Moreover, it will be impossible to reverse these changes, and undo these harms, if AB1X 26 is ultimately invalidated.[14]

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( . . . continued)
project] would likely not be able to proceed"); Furman Decl. ¶7 ("the [San Jose RDA] has been planning a variety of projects that will be terminated or substantially delayed if the Agency is eliminated"); Candelario Decl. ¶5 ("If the [Guadalupe RDA] is dissolved, the [masonry rehabilitation and Brownfield remediation projects] would not be able to proceed"); Ridenour Decl. ¶6 ("The Agency is currently working on a variety of projects that will be eliminated if the Agency is dissolved"); Evanoff Decl. ¶10 ("neither BART Phase 2 nor the Station District Project will be able to proceed if the Agency is eliminated").

[10]For example, Modesto will be forced to take on $3,751,649 of its RDA's financial obligations, which will require layoffs of "[p]olice and [f]ire positions because most of the other departments have already been reduced to near skeletal levels." Ridenour Decl. ¶7.

[11]For example, the West Sacramento RDA's "assets would be sold" upon dissolution. Ross Decl. ¶9; *see also* Candelario Decl. ¶5 (Guadalupe RDA's "assets would be sold, including land on which the Agency has been planning . . . affordable housing projects"); Evanoff Decl. ¶16 ("If the [Union City RDA] is dissolved, its land and assets would be sold").

[12]For example, elimination of Guadalupe's RDA would force the city to cut services to the community and lay off employees to cover the Agency's obligations. Candelario Decl. ¶5.

[13]*See* Evanoff Decl. ¶13 ("the City and Agency have already received grants to assist with the Station District Plan and BART Phase 2, which would need to be returned"); *id.* ¶16 (If no stay is issued and "the City is required to repay the grant funds while waiting for a decision in this matter, it will need to reduce its budget by approximately 50%, which would result in massive layoffs"); *see also* Ross Decl. ¶9 ("Many of these projects are part of a $23 million Proposition 1C Grant, which may need to be repaid if the projects cannot be completed").

[14]*See, e.g.*, Ross Decl. ¶9 ("If AB1X 26/27 were subsequently invalidated, the [West Sacramento RDA] may not be able to re-assemble the Agency's assets"); Furman Decl. ¶7 ("Even if AB1X 26/27 were subsequently invalidated, each month that blight is allowed

(continued . . . )

Respondent largely ignores this showing of irreparable injury, focusing instead on peripheral points. For example, she cites the fact that two declarants (from Brentwood and Oakland) did not assert that a stay was necessary for their communities, but instead only described the need for expedited consideration. Opp. 16. But both Brentwood and Oakland can make the payments required by AB1X 27. Quan Decl. ¶4; *see* Landeros Decl. ¶¶4-5. The fact that some cities may be able to make these payments does not negate the harm to cities that can't.

Next, Respondent claims that "the bulk" of Petitioners' injuries "relate to asserted administrative burdens." Opp. 17. That is untrue, as the consequences of RDA dissolution described above demonstrate. Nor are these consequences speculative, as Respondents likewise claim. To the contrary, AB1X 26 *requires* that RDAs be dissolved, their cash balances surrendered, their assets sold and their tax revenues diverted. *See* Pet. Mem. 20. There is nothing speculative about that. Nor do Respondents even attempt to explain how RDAs can be eliminated on October 1, 2011, and then reconstituted if AB1X 26/27 are ultimately invalidated.[15]

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( . . . continued)
to continue [in San Jose] further harms these residential neighborhoods"); Candelario Decl. ¶5 ("If AB1X 26/27 were subsequently invalidated, it would be difficult, if not impossible, to re-assemble the [Guadalupe RDA's] assets, which would greatly impair the Agency's future redevelopment efforts"); Ridenour Decl. ¶6 ("If the [Modesto RDA] is dissolved and the [business park] project abandoned, it would be difficult if not impossible to revive it if AB1X 26/27 are later invalidated"); Evanoff Decl. ¶16 ("If AB1X 26/27 were subsequently invalidated, the [Union City RDA] might not be able to recover [its] land or locate and purchase an alternative site in time to comply with the terms of [its] grants").

[15]Respondent cherry picks a handful of declarations that contain qualifying language and asserts that those qualifiers "limit their evidentiary value." Opp. 17-18. But "it is not necessary to show that injury is inevitable . . . . Even in plain cases it would seldom be possible to know that the injury was certain to occur." *Nicholson v. Getchell*, 96 Cal. 394, 396 (1892). For example, the fact that cities cannot predict with certainty whether they will be able to rehire terminated RDA employees (Opp. 17-18) does not minimize the injury
(continued . . . )

Finally, Respondent contends that the State will suffer harm if a stay is granted because AB1X 26/27 are "integral to the budget package for the current fiscal year." Opp. 18. However, the first payment under AB1X 27 is not due until January 15, 2011 (§34194(d)(1)), and Respondent acknowledges that "a ruling on the merits could be forthcoming by December 20[, 2011] with an expedited briefing order." Opp. 16. Consequently, the grant of a stay would not prejudice Respondent because it would not interfere with the AB1X 27 payments if the bills are eventually upheld.

### C. A Stay Is Necessary To Preserve The Status Quo.

Respondent asserts that granting a stay would change the status quo because "AB1X 26 has been in effect for approximately one month, and many of its provisions took effect immediately upon passage." Opp. 18. But courts define the status quo as "the last actual peaceable, uncontested status which preceded the pending controversy." *United R.R.s of San Francisco v. Superior Court*, 172 Cal. 80, 87 (1916); *14859 Moorpark Homeowner's Ass'n v. VRT Corp.*, 63 Cal. App. 4th 1396, 1408 (1998) ("injunction would preserve the status quo, which has been defined to mean the last actual peaceable, uncontested status which preceded the pending controversy") (citation and internal quotation marks omitted). In this case, the last *uncontested* state existed *prior* to the enactment of AB1X 26/27, when RDAs were free to operate under then-current law. Consequently, the stay requested by Petitioners will preserve the pre-AB1X 26/27 status quo while

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that both the RDAs and their employees will suffer if the employees are laid off as the result of dissolution. Candelario Decl. ¶5 ("Having to take over [RDA] expenses would force [Guadalupe] to cut services to the community and layoff employees. Even if the bills are ultimately invalidated, the harm to the City and the community at large would have already occurred"); Ridenour Decl. ¶7 ("The City will have no choice but to pay [expenses normally reimbursed by the RDA] out of the General Fund, which means that [police and fire] positions will need to be cut").

preventing the irreparable harm that numerous cities and RDAs will face if AB1X 26/27 become fully operative on October 1.

Nor is there merit to Respondent's claim that a stay would "drastically alter the parties' relative positions by permitting RDAs to engage in all of the banned transactions and potentially dissipate the significant public resources they hold." Opp. 19. To the contrary, Petitioners proposed a detailed but limited stay that would enjoin the most onerous parts of AB1X 26/27 while preventing RDAs from taking on new obligations unless they have agreed to comply with AB1X 27 in the event that statute is upheld. *See* Pet. Mem. 43-44.

Here, as elsewhere, Respondent has nothing to say. She does not even mention the stay proposal made by Petitioners, let alone explain why granting this limited stay will cause prejudice to the State. Since denying a stay will injure Petitioners, while granting the stay will cause no injury at all, the choice is clear.

## CONCLUSION

Petitioners and Respondent agree that the Court should issue an alternative writ or order to show cause. After hearing the merits, the Court should issue a writ ordering Respondents to refrain from enforcing AB1X 26 and 27. A temporary stay should issue by August 15, 2011, ordering Respondents to refrain from enforcing these statutes, or the specific portions identified in Petitioners' Memorandum, until the Court decides this case.

DATED: July 29, 2011.

Respectfully,

STEVEN L. MAYER
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**CERTIFICATE OF COMPLIANCE PURSUANT TO CAL. R. CT. 8.204(c) and 8.486(a)(6)**

Pursuant to California Rules of Court 8.204(c) and 8.486(a)(6), and in reliance upon the word count feature of the software used, I certify that the attached Informal Reply in Support of Petition for Writ of Mandate contains 4,362 words, exclusive of those materials not required to be counted under Rules 8.204(c) and 8.486(a)(6).

DATED: July 29, 2011.

STEVEN L. MAYER

## PROOF OF SERVICE VIA FACSIMILE

I, Myrna M. DaCunha, declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within-entitled action; my business address is Three Embarcadero Center, Seventh Floor, San Francisco, California 94111-4024. On July 29, 2011, I served the following document(s) described as:

**INFORMAL REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDATE AND APPLICATION FOR TEMPORARY STAY**

☒ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date.

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.

☐ by transmitting via email the document(s) listed above to the email address(es) set forth below on this date before 5:00 p.m.

☐ by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.

☐ I served the documents described above on the parties listed below by causing them to be delivered by hand to the person(s) at the address(es) set forth below.

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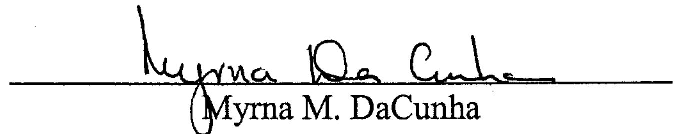
I am readily familiar with the practice for collection and processing of documents for transmission by facsimile machine at Howard Rice Nemerovski Canady Falk & Rabkin, A Professional Corporation, and that practice is that the document(s) are taken to the Telecommunications Department at Howard Rice Nemerovski Canady Falk & Rabkin, A Professional Corporation, along with a complete facsimile transmittal form for immediate transmission. Each such document received by the Telecommunications Department is transmitted, in the form received, as soon as possible after receipt.

On July 29, 2011, pursuant to the Court's communication to all parties, I served the document(s) described above on the persons(s) at the facsimile number(s) listed below by facsimile transmission from facsimile number 415/677-6262 along with a completed facsimile transmittal form in accordance with the regular process at the law offices of Howard Rice

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on July 29, 2011.



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