

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

DATE/TIME	May 24, 2013, 9:00 a.m.	DEPT. NO.	31
JUDGE	HON. MICHAEL KENNY	CLERK	S. LEE
<p>THE AFFORDABLE HOUSING COALITION OF SAN DIEGO COUNTY,</p> <p style="text-align: center;">Petitioner and Plaintiff,</p> <p>v.</p> <p>TRACY SANDOVAL, In Her Official Capacity as Auditor and Controller of the County of San Diego, et al.,</p> <p style="text-align: center;">Respondents and Defendants.</p> <hr/> <p>ANA MATOSANTOS, In Her Official Capacity as Director of the State Department of Finance; JOHN CHIANG, In His Official Capacity as State Controller,</p> <p style="text-align: center;">Real Parties in Interest.</p>		<p>Case No.: 34-2012-80001158</p>	
Nature of Proceedings:		MOTION FOR CLASS CERTIFICATION	

The following shall constitute the Court's tentative ruling on petitioner's motion for class certification, which is scheduled to be heard by the Court on Friday, May 24, 2013 at 9:00 a.m. in Department 31. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on Thursday, May 23, 2013, and further advises the clerk that such party has notified the other side of its intention to appear.

Please note that, if a hearing is requested, the Court is unavailable on Friday, May 24, 2013. The parties are directed to meet and confer and contact the Clerk of Department 31 for a hearing date. Any party requesting a hearing must notify the Clerk of this Department of that request no later than 4:00 p.m. on Thursday, May 23, 2013, although the re-scheduled hearing date may be confirmed later.

In the event that a hearing is requested, oral argument shall be limited to no more than 20 minutes per side.

Any party desiring an official record of this proceeding shall make arrangements for reporting services with the Clerk of the Department where the matter will be heard not later than 4:30 p.m. on the day before the hearing. The fee is \$30.00 for civil proceedings lasting under one hour, and \$239.00 per half day of proceedings lasting more than one hour. (Local Rule 1.12(B) and Government Code § 68086.) Payment is due at the time of the hearing.

Introduction

On January 4, 2013, the Court issued a minute order sustaining real party in interest Matosantos' demurrer and granting the motion for judgment on the pleadings solely on the issue of failure to join necessary parties (the successor agencies and affected local taxing entities). In the order, the Court granted petitioner 30 days "...to amend its pleading and join the necessary parties".

Petitioner/plaintiff filed a First Amended Petition for Peremptory Writ of Mandate and Complaint for Declaratory Relief on January 18, 2013. The filing was timely, but real party in interest subsequently made a motion to strike the amended pleading on the ground that it was not filed in conformity with the Court's order, because petitioner/plaintiff did not serve all of the necessary parties with the amended pleading. Instead, petitioner/plaintiff served two of them, and named the rest as members of two proposed classes of respondents/defendants. The Court denied the motion to strike without addressing any issues regarding possible certification of any classes.

The present motion seeks certification of two subclasses, consisting of all successor agencies in the County of San Diego (Subclass A) and all potentially affected taxing entities in the County of San Diego (Subclass B). Subclass A would consist of 17 entities, and would be represented by respondent City of San Diego. Subclass B would consist of 70 entities, and would be represented by real party in interest County of San Diego. The identity of all members of the two subclasses is known to petitioner and to all other parties to this action. Some of the affected taxing entities are also successor agencies.

Opposition to the motion for class certification has been filed by respondent Matosantos, by respondent City of San Diego, and by real party in interest County of San Diego.¹

Legal Standards for Class Certification

The briefing filed by the parties contains a detailed summary of the legal standards applicable to class certification. Only those most directly relevant to the Court's ruling are summarized here.

Code of Civil Procedure section 382 provides that "...when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."

As the party seeking class certification, petitioner has the burden of establishing that the necessary foundational elements for a class action are present. (See, *Washington Mutual Bank v. Superior Court* (2001) 24 Cal. 4th 906, 913.)

¹ Respondent Matsosantos' request for judicial notice of the petition filed in the case of *City of San Diego v. Matosantos*, Case No. 34-2013-80001454, another redevelopment case pending in this court, is granted. Petitioner's objections to the declarations submitted by respondent City of San Diego with its opposition papers are overruled. The Court notes that it has not relied on the petition in the other case, or on the opposition declarations, in making this ruling.

Among those foundational elements are the following: the existence of an ascertainable and sufficiently numerous class; a well-defined community of interest among the members of the proposed class; and substantial benefits from certification that render proceeding as a class superior to the alternatives. (See, *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1021.)

The question of whether there is a sufficient community of interest among proposed class members is particularly critical, and involves the analysis of three factors: whether there are predominant questions of law or fact applicable to the class members; whether the proposed class representatives have claims or defenses that are typical of all members of the class; and whether the proposed class representatives can adequately represent the class. (See, *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1021.)

The court must determine whether the issues to be tried jointly under a class action procedure, as opposed to issues that would require separate adjudication, are sufficiently numerous and substantial to make the class action procedure advantageous to the judicial system and to the litigants. In particular, each member of the proposed class must not be required to individually litigate numerous and substantial questions in order to determine its right to recover (or its individual defenses) after a class judgment. (See, *Washington Mutual Bank v. Superior Court* (2001) 24 Cal. 4th 906, 913-914.)

Thus, a common question predominates where determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims involving class members “in one stroke”. (See, *City of San Diego v. Haas* (2012) 207 Cal. App. 4th 472, 501.) On the other hand, where individual applications of law to fact are required to establish liability, common issues cannot predominate over individual issues. (See, *Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal. App. 4th 133, 147-148.) The court properly may deny certification where there are diverse factual issues to be resolved even though there may also be common questions of law. (See, *Evans v. Lasco Bathware, Inc.* (2009) 178 Cal. App. 4th 1417, 1427-1428.)

Because classes of defendants such as the ones proposed for this case are uncommon, California appellate courts have stated that such a class should be certified only after “...the most careful scrutiny is given to preserving the safeguards of adequate representation, notice and standing.” (See, *Simons v. Horowitz* (1984) 151 Cal. App. 3rd 834, 845.)

In determining whether to certify a proposed class, the court does not address the merits of the claims asserted in the complaint. (See, *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1023.)

Discussion

In this case, the Court concludes that certification of the two proposed subclasses is not appropriate, because the required element of a well-defined community of interest among the members of the subclasses is absent, and because the class action procedure does not offer substantial benefits that render it superior to proceeding through individual joinder of the successor agencies and affected taxing entities.

Petitioner contends that common legal issues predominate in this case. Specifically, petitioner describes two common issues: whether affordable housing obligations of former redevelopment agencies that arose under the Community Redevelopment Law continue to exist and are enforceable obligations of successor agencies under the redevelopment dissolution laws; and whether those affordable housing

obligations legally should be viewed as implied contracts which cannot be impaired under Article I, Section 9 of the California Constitution.²

The Court recognizes that these legal issues are presented by the petition in this case, and that they are common to all of the successor agencies and, through them, to all of the affected taxing entities. At the same time, however, a complete resolution of the issues presented by the petition will require the parties and the Court to address factual issues that differ for each successor agency.

This is evident from the fact that the petition does not merely seek a declaration that affordable housing obligations of former redevelopment agencies continue to be binding on successor agencies, and that such obligations are implied contracts that may not constitutionally be infringed. The petition goes beyond that to seek the identification and inclusion of all unmet affordable housing obligations of each of the San Diego County successor agencies on their Recognized Obligation Payment Schedules and the fulfillment of those obligations before the business of former redevelopment agencies is completely wound up.³

As demonstrated by the allegations of the Amended Petition, unmet affordable housing obligations of the seventeen successor agencies in San Diego County could have arisen under one or more of a number of statutes in the Community Redevelopment Law. Indeed, the Amended Petition requires nearly twenty detailed paragraphs to set forth the potential statutory bases under which such obligations may have arisen.⁴ Whether an obligation arose under any one of these statutes, and remains unfulfilled, is dependent upon the existence of a certain set of facts, which differs from one statute and one successor agency to the next. Even petitioner concedes that determining whether any particular successor agency in fact has an unmet affordable housing obligation under one or more of these statutes will require “discrete factual inquiries”.⁵

Given the admitted need for these discrete factual inquiries for each successor agency, the Court finds that common questions do not predominate to the extent that class certification would be advantageous to the judicial system and the litigants in this case. The potential liability of individual successor agencies for unmet and unscheduled affordable housing obligations cannot be established “in one stroke” on the basis of the common legal issues petitioner cites. Instead, the individual factual issues predominate.

Even petitioner appears to concede that the class action procedure would not be appropriate for the individualized factual inquiries that will be necessary in this case. In its reply papers, petitioner suggests that this matter could be bifurcated into a “liability” phase, in which the common legal issues are resolved on a class basis, and a “damages” phase, in which the classes are decertified and the actual extent of the unmet affordable housing obligations of successor agencies is resolved individually.⁶ This proposed procedure offers no substantial advantages to the Court or to the parties, and specifically could require an additional round of class action-related motion proceedings. Moreover, petitioner’s proposed approach begs the question of why a party that is entitled to be heard individually as to the extent of its liability should not also be heard individually on preliminary legal issues that are fundamental to establishing that liability.⁷

² See, e.g., petitioner’s Class Certification Motion, p. 18:6-9.

³ See, petitioner’s Class Certification Reply, p. 10:26-28; Amended Petition, par. 3, 9.

⁴ See, Amended Petition, par. 38-54.

⁵ See, petitioner’s Class Certification Motion, p. 18:9-10.

⁶ See, petitioner’s Class Certification Reply, p. 1:3-7; 4:21-23.

⁷ The Court notes that petitioner has not necessarily established that there will be no differences in the legal issues applicable to successor agencies. All parties recognize the complexity of the Community Redevelopment Law and

The Court therefore concludes that petitioner has not carried its burden of establishing a fundamental element necessary to class certification as to successor agencies, specifically, that common questions of law or fact predominate in this action.

The Court further concludes that petitioner has not shown that a class action is appropriate for affected taxing entities. The interests of those entities in this action derive from the interests of successor agencies, in that the amount of property tax revenue the taxing entities eventually will receive is dependent upon how much of that revenue must be devoted to fulfilling enforceable obligations of the successor agencies. Moreover, the interests of at least some of the individual taxing entities are directly connected to the potential liabilities of particular successor agencies rather than to those of the class of successor agencies as a whole, since a taxing entity located in one city would not necessarily be affected by a decision regarding the liability of a successor agency in another city. The rights and liabilities of affected taxing entities in this action thus are dependent upon the individual factual inquiries that will need to be made regarding successor agencies. Common legal and factual issues therefore do not predominate with regard to the proposed class of affected taxing entities.

Finally, based on the fact that the identity of all of the successor agencies and affected taxing entities is known to petitioner, and all of those entities are located within San Diego County and appear to be readily available to be joined as parties, the Court finds that it is not impracticable to bring them all before the court as parties.

Petitioner's motion for class certification is therefore denied.

In the event that the tentative ruling becomes the final ruling of the Court, the final ruling will be confirmed by minute order, and no further written order shall be required.

the redevelopment dissolution laws as they relate to affordable housing. Because the alleged unmet affordable housing obligations of the various successor agencies in this case arise under different statutes in the Community Redevelopment Law, it is conceivable that the Court will be required to address different legal issues for different successor agencies to determine whether the affordable housing obligations of a particular successor agency under a particular statute survived the enactment of the redevelopment dissolution laws.