SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE

MINUTE ORDER

DATE: 01/28/2013 TIME: 01:35:00 PM DEPT: 54

JUDICIAL OFFICER PRESIDING: Shelleyanne W L Chang
CLERK: E. Higginbotham
REPORTER/ERM:
BAILIFF/COURT ATTENDANT:

CASE NO: **34-2012-00134585-CU-MC-GDS** CASE INIT.DATE: 12/27/2012
CASE TITLE: **City of Pasadena Successor vs. Ana Matosantos Director of the State of California Department of Finance**
CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Motion for Preliminary Injunction

APPEARANCES

Nature of Proceeding: Motion for Preliminary Injunction (Taken Under Submission 1/17/13)

TENTATIVE RULING

Plaintiffs City of Pasadena ("City"), *et al.*'s (collectively "Plaintiffs") application for preliminary injunction is GRANTED because Plaintiffs have established a reasonable likelihood of prevailing on the merits of their declaratory relief at trial and in the absence of the requested injunctive relief, they will suffer irreparable harm which cannot be adequately compensated with mere money damages.

"[T]he issuance of an injunction involves '...the exercise of a delicate power, requiring great caution and sound discretion, and rarely, if ever, should [it] be exercised in a doubtful case. [Citations.]'" (*Paiva v. Nichols* (2008) 168 Cal.App.4th 1007, 1021-1022 (citing *Fleishman v. Sup. Court* (2002) 102 Cal.App.4th 350, 355-356).) Among the factors to be considered when injunctive relief is sought is whether the moving party will, absent such relief, suffer great or irreparable harm for which pecuniary compensation would not afford adequate relief. (See, *e.g.*, Code Civ. Proc. §526(a)(2), (4); *Jessen v. Keystone Sav. & Loan* (1983) 142 Cal.App.3d 454, 457.)

This litigation fundamentally arises out of a 1986 Reimbursement Agreement ("1986 Agreement") between the City and the Pasadena Community Development Commission ("RDA") wherein the RDA agreed to make payments through 2014 from its available funds, including but not limited to tax increments accruing to the RDA pursuant to Health and Safety ("H&S") Code §33670 *et seq.* and the California Constitution, to reimburse the City for various costs the latter incurred in connection with various public improvements. The RDA was recently dissolved and the City has now become the RDA's "successor agency" pursuant to H&S Code §34173. Plaintiffs now contend that defendants have improperly failed and refused to acknowledge that certain payments by the former RDA to the City which are about to come due under the 1986 Agreement fall within H&S Code §34171's definition of "enforceable obligation" ("E.O.") such that these payments owed by the RDA to the City should and must be included on the RDA's "Recognized Obligation Payment Schedule" ("ROPS") for the period of January 1 through June 30, 2013. Defendants dispute this and maintain that the subject payments do not meet the E.O. definition for various reasons.

Defendants' objections to evidence are sustained except for those relating to Paragraphs 11 (p.3:22-26 only) and 19 of the Erganian Declaration, both of which are overruled.

According to the moving papers, the 1986 Agreement between the City and the RDA was along with related agreements and bond issuances "validated" by statute in H&S §33608 pursuant to Senate Bill 481 ("SB 481") in 1987, by court judgment in 1999 and by operation of law in 2004. Plaintiffs further point out that in prior ROPS cycles defendants did not assert that similar earlier payments due under the 1986 Agreement failed to constitute an E.O. under H&S Code §34171. Finally, plaintiffs insist that unless the requested injunctive relief is granted, they will be irreparably harmed inasmuch as the SB 481 receipts will be released to other taxing entities and the City will be unable not only to pay the bondholders but also to contribute to the low income housing fund.

Defendants' initial opposition argues that the payments under the 1986 Agreement do not under H&S §34171 qualify as an E.O. which can be approved for the current ROPS because, although the financing arrangement was validated by SB 481, the 1986 Agreement is between the City and the former RDA and because the 1986 Agreement was not entered into at the same time as the issuance of bonds in 1999 and 2004. Additionally, defendants contend that such agreements between a city and its (former) RDA have been invalidated by Assembly Bill 26, First Extraordinary Session of 2011 ("ABx1-26") and that the debt service obligations of the bonds are the City's, not the former RDA. Defendants further point out that the City has failed to show that it "pledged" the income otherwise due under the 1986 Agreement for paying this bond debt and that because the bond obligations belong to the City, the upcoming payments on the bonds do not belong on the ROPS for the RDA. The initial opposition next asserts that the 1987 statutory validation of the 1986 Agreement was effectively withdrawn by virtue of ABx1-26, which made numerous provisions of the H&S Code "inoperative" and as a result, the 1986 Agreement cannot be considered an E.O. under H&S Code §34171. Similarly, defendants insist that the City's 1999 validation action did not actually validate the 1986 Agreement itself but rather only the RDA's assignment of property tax revenues to the City to pay for the bonds, especially since the validation action was brought more than a decade after the 1986 Agreement was signed and long after the 60 day deadline for such actions expired. Moreover, defendants maintain that the 1999 validation action simply could not resolve the one question presented here (*i.e.*, whether the upcoming payments owed to the City by the former RDA are an E.O. which must be included on the ROPS) since this question did not exist until the enactment of ABx1-26 but regardless, the judgment never guaranteed the City would receive payments from the RDA, only authorized the use of amounts received for payment of the bond obligations.

The primary issue presented here is whether the payments owed by the former RDA to the City pursuant to the 1986 Agreement constitute an E.O. within the meaning of H&S Code §34171 and defendants' focus on the ultimate purposes for which the City intends to use the funds owed to the City by the RDA under the 1986 Agreement (*i.e.*, service the City's pension bonds and provide a housing for those low to moderate income) misses the mark. While defendants are correct that the former RDA itself was not obligated to fund directly either the City's pension bonds or its housing set asides, this is not the crux of the present dispute. Instead, the heart of the matter is actually whether the payments to which the RDA agreed in the 1986 Agreement constitute an E.O. of the RDA that inures in this case to the benefit of the City and that should therefore be placed on the RDA's ROPS for the January - June 2013 period. For these reasons, defendants' contention that neither the pension bonds not the housing fund is an E.O. of the RDA is nugatory and need not be discussed further here.

With respect to the primary issue identified above, plaintiffs maintain that the payments owed by the RDA to the City pursuant to the 1986 Agreement fall within the broad, seven-part definition of an E.O. found in H&S Code §34171(d)(1), including subparts (C) ["[P]reexisting...obligations imposed by state law, other than passthrough payments...made...pursuant to Section 34183, ..."]; (D)

["Judgments...entered by a competent court of law...against the former redevelopment agency, other than passthrough payments...made...pursuant to Section 34183. ..."]; and (E) ["Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy. ..."].

The Court notes that although defendants claim the 1986 Agreement falls for various reasons within the exclusionary language found in H&S Code §34171(d)(2), defendants do not appear to have directly addressed in any of their opposition papers plaintiffs' affirmative contention that the 1986 Agreement fits within the definition of an E.O. pursuant to the subparts (C), (D) or (E) of §34171(d)(1). Defendants' failure to address this key point could itself be construed as a concession on the merits of plaintiffs' position but the Court finds the latter's assertion is well taken.

First, the Court is persuaded that the payments due under the 1986 Agreement easily fall within the broad definition found in H&S Code §34171(d)(1)(C) since the amounts which the former RDA promised in the 1986 Agreement to pay to the City appear on their face to be payments on a "[P]reexisting...obligation[ ] imposed by state law." Specifically, it cannot be disputed that in 1999 the City commenced a court action which expressly sought to validate the City's proposal to fund its police and fire system via a complex arrangement. One key aspect of this arrangement was the money the RDA was to pay to the City pursuant to the same 1986 Agreement at issue in the present case, although the agreement was in that complaint referred to as "the Funding Agreement." (City's 1999 Compl. for Validation, ¶8.) The June 1999 judgment in that validation action expressly stated, "This judgment binds all parties to the Funding Agreement." (6/9/1999 Judgment, ¶9.) Because defendants have failed to demonstrate that this particular judgment was actually vacated or even could have been vacated by the state legislature in light of the separation of powers doctrine (see, *e.g. Mandel v. Meyers* (1981) 29 Cal.3d 531, 547), the 1999 judgment effectively obligates pursuant to California law those payments by the RDA to the City under the 1986 Agreement. Coupled with the fact that no one here has suggested that the amounts owed by the RDA pursuant to the 1986 Agreement or the 1999 validation judgment constitute "passthrough payments...made...pursuant to [H&S] Section 34183" (which payments are explicitly excepted from the definition of an E.O.), the Court must sustain plaintiffs' reliance on H&S Code §34171(d)(1)(C).

For essentially the same reasons cited in the preceding paragraph, the Court must also agree with plaintiffs that the 1986 Agreement and the payments due thereunder from the RDA satisfy the plain terms of H&S Code §34171(d)(1)(D). This subpart of §34171 provides that "Judgments...entered by a competent court of law...against the former redevelopment agency, other than passthrough payments...made...pursuant to Section 34183. ..." As noted above, the judgment in the City's 1999 validation action stated, "This judgment binds all parties to the Funding Agreement" and essentially transformed the RDA's obligations to make payments to the City to a formal judgment. In the absence of any meaningful evidence that the 1999 Judgment for Validation has been duly vacated, this Court finds that the former RDA's obligation to make certain payments to the City pursuant to the 1986 Agreement can be enforced as a "Judgment...against the former redevelopment agency under the provisions of H&S §34171(d)(1)(d).

Likewise, plaintiffs' assertion that the payments owed to the City by the former RDA under the 1986 Agreement constitute an E.O. within the meaning of H&S Code §34171(d)(1)(E) seems justified by the concise, straightforward language of this statutory provision. This subpart of §34171 defines an E.O. as "Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy." As noted above, the 1999 validation action resulted in a judgment which left no reasonable doubt that the 1986 Agreement between the RDA and the City was legally valid, binding and enforceable and there is in this case no allegation that the 1986 Agreement is void as a result of violating either the debt limit or public policy. Accordingly, notwithstanding defendants' failure to address directly the language of this subpart, it is very difficult for this Court to conceive of how or why the 1986

Agreement should not be construed as an E.O. of the former RDA under §34171(d)(1)(E).

Based on the foregoing, plaintiffs have demonstrated at least three separate and independent grounds for holding that the 1986 Agreement and the payments due thereunder from the former RDA constitute an E.O. within the plain meaning of the H&S Code §34171(d)(1)(C), (D) and/or (E). Coupled with defendants' failure to address in any meaningful fashion, if at all, any of these express statutory provisions, the Court finds that plaintiffs have sufficiently demonstrated at least a reasonable likelihood of prevailing on their claims that defendants have incorrectly determined that payments owed by the RDA under the 1986 Agreement are not an E.O. and are not properly included on the upcoming ROPS for the former RDA.

On the other hand, defendants insist that payments due from the former RDA pursuant to the 1986 Agreement are not E.O. given the express language of H&S Code §34171(d)(2), which provides in pertinent part:

" '[E]nforceable obligation' does not include any agreements, contracts, or arrangements between the city...that created the redevelopment agency and the former redevelopment agency. However, written agreements entered into (A) at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations, and (B) solely for the purpose of securing or repaying those indebtedness obligations may be deemed enforceable obligations for purposes of this part. ..."

Defendants, of course, first point out that the 1986 Agreement at the heart of the present dispute is undeniably an agreement between a city that created an RDA and that former RDA itself and as a result, the 1986 Agreement cannot constitute an E.O. under §34171 unless it also satisfies the two conditions stated in the second sentence. Defendants further assert that plaintiffs cannot satisfy these two conditions because the 1986 Agreement was entered into solely for the purpose of securing or repaying bonds issued by the former RDA and because the 1986 Agreement was not entered into at the same time the bonds were issued in 1999 and 2004. Assuming *arguendo* that defendants are correct that the 1986 Agreement cannot satisfy the two conditions stated in the second sentence of H&S Code §34171(d)(2), then it would appear the payments owed by the RDA under the 1986 Agreement are not an E.O. of the RDA and should not be included on the ROPS.

However, it is impossible for the 1986 Agreement to be an E.O. under H&S Code §34171(d)(1)(C), (D) and/or (E) while it is simultaneously not an E.O. pursuant the exclusionary language of §34171(d)(2). Unfortunately, neither side has provided an adequate discussion of how this inherent conflict can or should be resolved but clearly, the legislature could not have intended such diametrically opposed outcomes under §34171. Consequently, this Court is left to ascertain what was intended to be accomplished by the enactment of H&S Code §34171 in 2011. It is worth noting here that §34171(d)(1) broadly states an E.O. includes any obligation, payment, judgment, agreement, *etc.* which falls into any one or more of the seven (7) definitions contained in subparts (A) through (G), whereas the legislation provides in subpart (d)(2) only a singular, narrowly tailored definition of what shall not be an E.O. under §34171. Thus, this legislation on its face goes to great lengths to broaden the scope of obligations which are to be deemed "enforceable" under §34171 while at the same time deliberately excluding from the E.O. definition only one specifically identified, limited category of "agreements, contracts, or arrangements between the city...and the former redevelopment agency." Even then, the second sentence of §34171(d)(2) provides an exemption whereby an agreement between a city and former redevelopment agency may still be determined to be an E.O. These facts persuade the Court that the legislature more likely than not intended the definition of an E.O. to be construed broadly and the exclusionary language in §34171(d)(2) to be construed narrowly. This provides a strong indication as to how this Court should resolve the present dispute between the parties relating to the payments due under the 1986 Agreement.

Additionally, plaintiffs' supplemental points & authorities represent that prior to its enactment, AB 26 went through numerous iterations and did not include the exclusionary language found in H&S Code §34171(d)(2) until the very late stages, barely two weeks before its passage on 6/14/2011. (Supp. Memo. P&A, p.8:14-27.) According to plaintiffs' characterization of AB 26's history, some legislators became concerned about some last minute transfers of assets from some redevelopment agencies about to be dissolved by AB 26 to the cities that created them, which transfers appeared to be nothing more than an artifice to circumvent the imminent legislation. (*Id.*, at p.9:1-4.) Like other key aspects of plaintiffs' application, defendants neither disputed nor otherwise responded to plaintiffs' recitation and explanation of the legislative history relating to AB 26. As such, the Court finds the foregoing to be undisputed and there is no legitimate basis on which to reject the substantive points made by plaintiffs.

In light of the legislative history discussed in the preceding paragraph, the Court concludes that the intent of the exclusionary language found in H&S Code §34171(d)(2) and on which defendants' opposition primarily relies is fundamentally to nullify the aforementioned last minute agreements to transfer assets from redevelopment agencies to their respective cities. Because there is no legitimate way to characterize the 1986 Agreement at issue here as a last minute attempt by the RDA or the City to circumvent the implications of AB 26, the apparent motivation for adding the language now found in §34171(d)(2), this Court is reluctant to conclude here that the narrow exclusionary language in §34171(d)(2) actually trumps the broad inclusionary language found in §34171(d)(1)(C), (D) and/or (E). But for the happenstance that the City itself is a party to the 1986 Agreement at issue here, there would be no dispute that §34171(d)(2) is inapplicable or that the former RDA's contractual obligation to pay sums due under the 1986 Agreement is an E.O. pursuant to §34171(d)(1) and those sums should therefore be placed on the ROPS for payment. For all these reasons, this Court now holds that defendants' reliance on §34171(d)(2) is misplaced and thus, defendants have also failed to show that plaintiffs are not reasonably likely to prevail on the merits of their claims in this case.

The Court acknowledges that it remains entirely possible defendants could ultimately prevail in this action and may even do so based primarily on the exclusionary language in H&S Code §34171(d)(2) but the inquiry relevant to this application for preliminary injunction is merely whether plaintiffs, as the moving parties, have established a reasonable probability of prevailing on the merits. For the reasons explained above, plaintiffs have satisfied this burden by showing at least three separate and independent grounds for why the payments owed by the former RDA pursuant to the 1986 Agreement constitute an E.O. under §34171 and should therefore be placed on the ROPS.

Turning to the remaining inquiry of the relative balance of harms likely to occur if the injunction is or is not granted, the Court first notes that defendants are unlikely to suffer any real harm as a result of prohibiting through trial the release of the funds previously sequestered pursuant to the Court's 1/2/2013 Temporary Restraining Order ("TRO"). Any suggestion to the contrary would be seriously undermined by the fact that defendants previously consented to placing on the ROPS two virtually identical payments owed by the former RDA to the City under the 1986 Agreement. Moreover, defendants have failed to present any admissible evidence which tends to show they might suffer any substantial or irreparable harm as the result of granting injunctive relief here.

On the other hand, it is readily apparent that plaintiffs will almost certainly suffer both significant and irreparable harm if defendants are permitted to release the sequestered funds to the taxing entities. Although the dispute here can essentially be characterized as one over mere money, the Court finds that plaintiffs are likely to suffer irreparable non-monetary harm if the defendants are not required to maintain the funds needed to pay at least in part the former RDA's obligations to the City. First, if the funds presently sequestered were released to the taxing entities, there appears to be no mechanism by which these funds can be recouped and used to satisfy the RDA's contractual obligation to make periodic payments to the City. Second, the purposes for which the City intends to put the RDA payments will likely either go unfunded or force the City to redirect funds intended for other purposes which will, in turn,

go unfunded. Third, inasmuch as the funds due from the RDA under the 1986 Agreement is primarily earmarked for payment of the pension bonds issued by the City in 1999 and 2004, the release of the now-sequestered funds to the taxing entities would effectively trigger a material default of the City's obligation to service its pension bonds and this will likely cause additional consequences, such as damage to the City's credit rating, difficulties in obtaining financing in the future and increased costs for future financing which can be obtained, all of which can be reasonably expected to reduce the funds the City can dedicate to other uses.

Based on the preceding paragraphs, the harm likely to be suffered by plaintiffs if injunctive relief is denied clearly outweighs by a large margin the minimal harm defendants can be expected to suffer if injunctive relief is granted. Accordingly, the balance of harms necessarily weighs in favor of plaintiffs and reinforces the claim that injunctive relief is needed to prevent irreparable harm. Additionally, the Court finds that because the balance of harms weighs so heavily in plaintiffs' favor that their burden to a likelihood of prevailing on merits of their action is proportionally reduced. (See, *O'Connell v. Superior Court (Valenzuela)* (2006) 141 Cal.App.4th 1452, 1463.) Regardless, as detailed above, plaintiffs have made a solid showing on their probability of ultimately prevailing on the merits of this case.

Although defendants' opposition asserts that the present declaratory relief action is procedurally improper and that a petition for writ of mandate to overturn defendants' administrative decision of characterizing the payments due under the 1986 Agreement as not an E.O., defendants have identified no statutory provision which requires plaintiffs' action take such form. Since the legislature undeniably knows how to impose such a limitation and could do so in just a few words, the legislature's failure to include such language indicates there was no intent to require a petition rather than an action for declaratory relief. Thus, defendants' contention regarding the form of plaintiffs' challenge here is rejected.

Similarly, the Court must reject defendants' claim that plaintiffs failed to name in this action other indispensible parties, specifically the taxing entities to whom the defendants apparently intended to release the funds at issue here. However, given that the primary issue presented here is whether the payments from the former RDA to the City pursuant to the 1986 Agreement constitute an E.O. under H&S Code §34171, this Court cannot agree that any of the taxing entities referenced by defendants are either necessary or even indispensible parties. Additionally, it appears that the Department of Finance ("DOF") has the exclusive authority under H&S Code §34179(h) to determine whether an obligation is an E.O. under H&S Code §34171's definitions and DOF has heretofore proceeded without the involvement of such taxing entities, which are typically not necessary to actions like this one that are essentially challenging the distribution of property tax revenues. Finally, the Court finds that any interests the taxing entities may have in this action are adequately represented by the named defendants and their counsel, the Attorney General of California.

In support of their claim that plaintiffs lack standing to prosecute this action, defendants cite H&S Code §34179 and specifically subdivisions (h) and (i). However, neither of these two statutory provisions expressly indicates that standing to bring an action such as this lies exclusively with the City's, as the successor agency, oversight board and the Court can find no other language anywhere in §34179 which even suggests the legislature had such an intent. In fact, when read as a whole, the provisions of §34179 lead to a conclusion opposite to that advanced by defendants. Moreover, since the City itself is expressly designated as the recipient of the payments specified in the 1986 Agreement and has demonstrated it will be harmed by defendants' determination that they are not E.O. under §34171, it certainly appears that the City is the real party in interest with standing to pursue this challenge to defendants' refusal to approve payments owing from the former RDA under the 1986 Agreement constitute an E.O. under H&S Code §34171 and their refusal to include such payments on the ROPS for the period of January 1 through June 30, 2013.

In light of the foregoing, the Court finds good cause to grant a preliminary injunction prohibiting defendants from making any disbursement of the funds previously sequestered pursuant to this Court's 1/2/2013 TRO except as was expressly provided therein for county and successor agency administrative fees, passthrough payments to taxing entities and enforceable obligations approved by DOF on ROPS III. The Order to Show Cause issued on 1/2/2013 and directed to defendants is hereby discharged.

Plaintiffs to post an injunction bond in favor of defendants in the amount of $25,000 no later than 1/28/2013.

Pursuant to CRC Rule 3.1312, counsel for plaintiffs to prepare a formal order.

COURT RULING

The matter was argued and submitted. The matter was taken under submission.

SUBMITTED MATTER RULING

Having taken the matter under submission on 01/17/2013, the Court now rules as follows:

After taking this matter under submission, the Court hereby AFFIRMS the tentative ruling with the following additions.

At oral argument, defendants asserted that the 1986 Agreement between the City and the former RDA was rendered void pursuant to the enactment of H&S Code §34178. While defendants' Table of Authorities to their initial and supplemental oppositions failed to cite H&S Code §34178, the Court did on its own find a brief reference to this statute at Page 7, Lines 11-13 of defendants' initial opposition but defendants failed to meaningfully develop their argument on this point. Even if defendants had fully developed this argument, the Court finds it is doubtful under the separation of powers doctrine that the Legislature possesses the authority to declare invalid and unenforceable all prior agreements between cities and their redevelopment agencies which, like the 1986 Agreement at issue in this case, had been expressly validated and made forever conclusive and binding through judicial decree. (See, *e.g. Mandel v. Meyers* (1981) 29 Cal.3d 531, 547.)

Defendants also insisted that the amount of funds sequestered pursuant to the Court's 1/2/2013 TRO and which remain so under the tentative ruling granting the preliminary injunction is inaccurate and/or inappropriate. More specifically, defendants contend that if the 1986 Agreement is an E.O under H&S Code §34171, then the amount to which the City is arguably entitled is the amount due from the former RDA pursuant to the 1986 Agreement rather than the amount the City may owe under the pension bonds. While this may be correct in theory, defendants' failure to timely raise this issue in their initial or supplemental opposition papers precludes the Court from considering this previously undisclosed argument advanced for the first time at oral argument.

Additionally, defendants urge that the exclusionary provisions of H&S Code §34171(d)(2) is very specific while the inclusionary provisions of §34171(d)(1) is more general and thus, the specific provisions §34171(d)(2) prevail over the general provisions of §34171(d)(1). However, the Court cannot agree with this characterization of these competing statutory provisions. At first glance §34171(d)(2) may appear specific but the second sentence of this subpart then explicitly exempts from its exclusionary scope all pre-2011 agreements entered into at the time indebtedness obligations were issued and solely for the purpose of securing or repaying those obligations. Thus, it is difficult to label §34171(d)(2) as truly "specific." Moreover, although §34171(d)(1)'s definition of what constitutes an E.O. is broad in its scope in that it consists of seven (7) subparts (*i.e.*, (A) - (G)), none of these subparts is fairly described as being "general." Instead, each subpart is quite explicit and specifically describes each of the seven

types of obligations the legislature intended to be encompassed within the E.O. definition. Because the provisions of §34171(d)(1) are not really any less "specific" or "explicit" than the language found in §34171(d)(2), the Court finds no legitimate basis on which to hold that the latter exclusionary provision should prevail over the former inclusionary provisions.

Similarly, defendants argued that the plain language of H&S Code §34171(d)(2) demonstrates its exclusionary provision is not limited solely to "last minute" transactions by redevelopment agencies and that the Court's interpretation renders §34171(d)(2) as "surplusage." However, the interpretation of §34171(d)(2) advanced by defendants itself renders the entirety §34171(d)(1), and its seven (7) explicit subparts, "surplusage." As pointed out in the tentative ruling, neither defendant's initial nor supplemental opposition provided any analysis of how the apparent conflict between the inclusionary language of §34171(d)(1) and the exclusionary language of §34171(d)(2) could or should be resolved. Instead, defendants merely insisted that §34171(d)(2) applied without ever explaining how or why the inclusionary provisions cited by plaintiffs were inapplicable.

Finally, defendants maintained that the Court's reliance on the separation of powers doctrine as discussed in *Mandel v. Meyers* (1981) 29 Cal.3d 531 is misplaced because the tentative ruling, to the extent it is essentially compelling the legislature to continue funding the City's pension obligations and housing fund, is itself violating the separation of powers doctrine. As discussed in the tentative ruling and at oral argument, the crux of the issue presented here is not the purpose for which the City intends to put the funds otherwise owed by the former RDA but rather only whether the 1986 Agreement is an E.O. under H&S Code §34171 such that the payments due thereunder to the City must be placed on the RDA's ROPS. The ROPS procedure was specifically created by the legislature pursuant to AB1x-26 so that certain payments owed by former redevelopment agencies which fit the definition of an E.O. would be included on the ROPS and in fact made thereafter to the proper recipient. Thus, this Court is not attempting to compel any funding to the City but merely enforcing the established provisions of §34171 which, in pertinent part, define what obligations of the former RDA are and are not "enforceable." Moreover, the grant of a preliminary injunction here is not compelling any funding whatsoever to the City but is only precluding through trial defendants' disbursement of the funds in dispute. Consequently, the Court can find no violation of the separation of powers doctrine.

For these reasons as well as those set forth in the tentative ruling, plaintiffs' application for preliminary injunction is granted and the Order to Show Cause issued on 1/2/2013 is discharged.

Plaintiffs to post an injunction bond in favor of defendants in the amount of $25,000 no later than 2/8/2013.

Pursuant to CRC Rule 3.1312, counsel for plaintiffs to prepare a formal order.

Declaration of Mailing
I hereby certify that I am not a party to the within action and that I deposited a copy of this document in sealed envelopes with first class postage prepaid, addressed to each party or the attorney of record in the U.S. Mail at 720 Ninth Street, Sacramento, California.
Dated: January 29, 2013

E. Higginbotham, Deputy Clerk **/s/ E. Higginbotham**

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