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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

CITY OF SANTA ANA, a municipal corporation; SUCCESSOR AGENCY TO THE FORMER COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF SANTA ANA, a local public entity; HOUSING AUTHORITY OF THE CITY OF SANTA ANA, public body corporate and politic,

Case No. 34-2013-80001477

Petitioners and Plaintiffs,

v.

**RULING ON SUBMITTED
MATTER & ORDER**

ANA J. MATOSANTOS, Director of the State of California Department of Finance; CALIFORNIA STATE BOARD OF EQUALIZATION; JAN GRIMES, Auditor-Controller of the County of Orange; DOES 1-30,

Hon. Eugene L. Balonon
Department 14

Respondents and Defendants.

The parties appeared on August 15, 2013 for oral argument on Petitioner's *Motion for Temporary Restraining Order, Preliminary Injunction and/or Stay.*

Petitioners were represented at the hearing by their counsel, Iris P. Yang and Ethan Walsh; Respondent, Ana J. Matosantos, Director of the State of California Department of Finance (DOF), was represented by Supervising Deputy Attorney General, Peter K.

1 Southworth and Deputy Attorney General, Jonathan Eisenberg (CourtCall); Respondent
2 Jan Grimes, Auditor-Controller of Orange County was represented by Marianne Van
3 Riper (County Counsel's Office, Orange County - CourtCall); and Real Party in Interest
4 Evangelina Avalos was represented at the hearing by Craig Castellanet (California
5 Affordable Housing Law Project.)

6 Petitioners are seeking an injunction requiring that, "...Defendants and
7 Respondents...cease all efforts to collect sums alleged to be due from Petitioners...under
8 Health and Safety Code §34179.6 pending further [court] order..." Specifically,
9 Petitioners request an order that would preclude DOF from directing the Board of
10 Equalization to withhold sales and use taxes from Petitioners and from requesting the
11 Orange County Auditor-Controller from withholding property taxes from Petitioners.

12 At the conclusion of oral argument, the court took the matter under submission.
13 The court having considered the briefs and arguments of counsel issues this ruling and
14 order.

15 Although the total amount in dispute is in excess of \$33 million, the amount
16 subject to the requested relief is \$2,580,847.00. It is this latter amount that DOF notified
17 Petitioners by letter dated August 5, 2013, that it would direct the Board of Equalization to
18 withhold an equivalent amount in Petitioner, City of Santa Ana's sale and use tax.
19 Moreover, although there are different remedies available to it, DOF has asserted only the
20 sales and use tax withholding pursuant to Health and Safety Code §34179.6(h) to occur in
21 September 2013. (Gorospe Decl., Exhibit 9)

22 23 Standard for Obtaining Relief Sought

24 Petitioners bears the burden here and in deciding whether or not to grant injunctive
25 relief, a trial court must evaluate two interrelated factors: (1) the likelihood petitioners will
26 prevail on the merits of the action, and (2) the interim harm that the plaintiff is likely to
27 sustain if the injunction were denied as compared to the harm the respondents are likely to
28 suffer if the court grants injunctive relief. Both factors must be satisfied in petitioners'

1 favor before relief can be granted. The court in *Tahoe Keys Property Owners' Association*
2 *v. State Water Resources Control Board* (1994) 23 Cal.App. 4th 1459, citing other cases,
3 noted that, "In general, if the plaintiff may be fully compensated by payment of damages
4 in the event he or she prevails, then preliminary injunctive relief should be denied.
5 Moreover, where the defendants are public agencies and the plaintiff seeks to restrain
6 them in the performance of their duties, public policy considerations also come into play.
7 There is a general rule against enjoining public officers or agencies from performing their
8 duties. This rule would not preclude a court from enjoining unconstitutional or void acts,
9 but to support a request for this relief the plaintiff must make a significant showing of
10 irreparable injury."

11 12 Ruling and Order

13 Although the Court agrees with Petitioners' assessment that the issues involved in
14 this matter are numerous and complex, it does not necessarily follow that the likelihood
15 Petitioners will prevail on the merits has been established. The resolution of the merits
16 involves statutory construction of the Dissolution Law, as well as potential
17 constitutionally-related questions. After consideration of the facts and legal issues, the
18 Court cannot conclude based upon the present record that Petitioners have established a
19 likelihood that they will prevail on the merits.

20 Moreover, even had Petitioners met the "likelihood of prevailing on the merits"
21 factor, the "balance of harms" do not favor Petitioner. It has been shown that Petitioner,
22 City of Santa Ana, has sufficient budget reserves to absorb the approximately \$2.581
23 million amount that DOF has demanded be remitted.

24 Finally, the Court observes that Health and Safety Code §34179.6(i)(2) provides
25 the City of Santa Ana a remedy in the event the sales and use tax withholding is found
26 improper, which includes a penalty equal to 10 percent of the amount of funds improperly
27 offset. And there has been no showing that this remedy is inadequate.
28

1 **THEREFORE**, Petitioners' motion for a temporary restraining order and
2 preliminary injunction is **DENIED**.

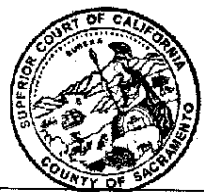
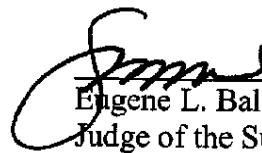
3 Petitioners also request a 14-day stay in the event the Court denies injunctive
4 relief. The purpose of the stay is to allow Petitioners "...time to seek relief in the Court of
5 appeal or the Supreme Court." The request for a stay is **DENIED**. The challenged sales
6 and use tax withholding will not occur until September 2013. Consequently, Petitioners
7 have this time period in which to seek appellate review.

8 Counsel for Respondent, DOF, is directed to prepare a formal order incorporating
9 this ruling, submit it to opposing counsel for approval as to form; and thereafter submit
10 them to the Court for signature in accordance with *California Rules of Court*, rule 3.1312.

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12 **IT IS SO ORDERED.**

13 Dated: August 19, 2013

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Eugene L. Balonon
Judge of the Superior Court