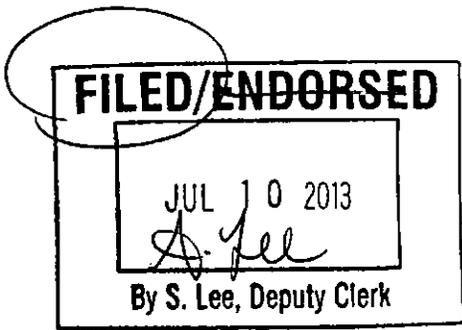


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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

**LEAGUE OF CALIFORNIA CITIES,
CITY OF VALLEJO, SUCCESSOR
AGENCY TO THE FORMER
VALLEJO REDEVELOPMENT
AGENCY, and CHRISTOPHER K.
MCKENZIE,**

Plaintiffs and Petitioners,

v.

**ANA J. MATOSANTOS in her official
capacity as Director of the State of
California Department of Finance, et al.,**

Defendants and Respondents.

COUNTY OF SOLANO, et al.,

Real Parties in Interest.

**COUNTY OF SANTA CLARA, SANTA
CLARA UNIFIED SCHOOL
DISTRICT,**

Interveners.

Case No. 34-2012-80001275-CU-WM-GDS

**RULING ON SUBMITTED MATTER:
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE**

1 Introduction

2 In this action, plaintiffs League of California Cities, the City of Vallejo, the Successor Agency to
3 the former Vallejo Redevelopment Agency and Christopher K. McKenzie challenge various aspects of the
4 wind-down of redevelopment agency affairs under AB 1484.¹ The Legislature enacted AB 1484 in June,
5 2012, at least in part to address the fact that implementation of the original dissolution and wind-down
6 provisions enacted in 2011 through AB 1x26 was stayed while the California Supreme Court decided a
7 number of constitutional challenges to those laws.

8 As relevant to this action, AB 1484 enacted new statutes governing the so-called “true-up” and
9 “due diligence review” processes.² These processes are complex. In essence, both involve administrative
10 determinations of amounts due from successor agencies for distribution to local taxing entities. AB 1484
11 enacted certain enforcement provisions related to those processes. Those enforcement provisions are the
12 principal subject of plaintiffs’ challenge. In particular, plaintiffs challenge the following statutes:

- 13
- 14 • Section 34183.5(b)(2)(C), which provides that if a successor agency does not make a true-up
15 up payment as required, “...any city, county or city and county that created the
16 redevelopment agency that fails to make the required payment under this paragraph by
17 July 12, 2012, shall not receive the distribution of sales and use tax scheduled for July 18,
18 2012, or any subsequent payment, up to the amount owed to taxing entities, until the
19 payment required by this paragraph is made”.
 - 20 • Section 34179.6(h)(1)(C), which provides that if a successor agency does not make a due
21 diligence review payment as required, and the governmental body which created the
22 redevelopment agency is also performing the duties of the successor agency, the
23
- 24

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26 ¹ For the sake of convenience, the complaining parties will be referred to as “plaintiffs” rather than “plaintiffs and
27 petitioners”, while recognizing that their pleading combines a complaint for declaratory and injunctive relief with a
28 petition for writ of mandate under Code of Civil Procedure section 1085.

² All of the provisions of AB 1484 at issue in this matter were enacted as part of the Health and Safety Code.
Accordingly, all references to statutes are to that Code unless otherwise indicated.

1 Department of Finance³ may order an offset of the distribution provided to the sales and
2 use tax revenue to the successor agency, or, if DOF does not do so, the County Auditor-
3 Controller may reduce the property tax allocations of the governmental body.

4 Plaintiffs have asserted a facial constitutional challenge to those provisions of AB 1484, arguing
5 that they violate Article XIII, Sections 24(b), 25.5(a)(1), 25.5(a)(2)(A) and 25.5(a)(3) of the California
6 Constitution, regardless of how they may be applied in practice.⁴

7 In addition, plaintiffs challenge various other provisions of AB 1484 on the ground that they
8 represent an unconstitutional delegation of legislative power to DOF in its administration of the wind-
9 down process. Finally, plaintiffs contend that DOF has enacted general rules governing the wind-down
10 process under AB 1484 which amount to unlawful underground regulations because DOF did not enact
11 them through formal rule-making procedure set forth in the Administrative Procedure Act.

12 The petition and complaint in this action essentially seeks declaratory relief in the form of a
13 judgment declaring that all of the challenged provisions of AB 1484 are unconstitutional and may not be
14 enforced, and that the alleged underground regulations are unlawful and may not be enforced. Plaintiffs
15 also seek issuance of an injunction and a writ of mandate under Code of Civil Procedure section 1085
16 directing respondents not to enforce any and all enforcement provisions of AB 1484 declared to be
17 unconstitutional, unlawful and unenforceable.⁵

18 The petition and complaint names DOF, the State Board of Equalization and the State Controller
19 as respondents, along with the Auditor-Controller of Solano County. The petition and complaint also
20 names the County of Solano and a number of taxing entities in Solano County as real parties in interest.
21 The Court previously issued an order permitting the County of Santa Clara, the Auditor-Controller of the
22 County of Santa Clara, and the Santa Clara Unified School District to file a complaint in intervention in
23

24 _____
25 ³ The Department of Finance, which is named in this action as a respondent in the name of its director, is referred to
in this ruling as “respondent DOF”.

26 ⁴ Plaintiffs also asserted a constitutional challenge to the true-up process as a whole in the petition and complaint, but
have elected not to pursue that challenge, and have dismissed the causes of action asserting it without prejudice.

27 ⁵ The petition and complaint does not seek issuance of a writ of mandate with regard to those provisions of AB 1484
28 challenged on the basis that they represent an unconstitutional delegation of legislative power, or with regard to the
alleged unlawful underground regulations.

1 order to appear in opposition to the petition and complaint.

2 The Court heard oral argument in this matter on April 19, 2013. At the close of the hearing, the
3 Court took the matter under submission for the issuance of a written ruling. The following shall constitute
4 the final ruling of the Court.⁶

5 **Discussion**

6 **AB 1484 Enforcement Provisions:**

7 As described above, plaintiffs seek a declaration that the enforcement provisions of AB 1484 are
8 unconstitutional and may not be enforced as a matter of law, without regard to the facts of any individual
9 case. Plaintiffs' request for injunctive relief and petition for writ of mandate are requests for alternative
10 forms of relief which are entirely dependent upon the declaratory relief claim.

11 The Court's authority to render declaratory relief, which is provided for by statute⁷, also includes
12 the authority to decline to render such relief in certain cases. As provided in Code of Civil Procedure
13 section 1061: "The court may refuse to exercise the power granted by this chapter in any case where its
14 declaration or determination is not necessary or proper at the time under all the circumstances."

15 The Court finds that this is a case in which its declaration or determination that the enforcement
16 provisions of AB 1484 are unconstitutional is not necessary or proper at the time under all the
17 circumstances. Notably, none of the plaintiffs in this case have demonstrated that they have been subject
18 to any of the challenged enforcement provisions by having their sales, use, or property tax revenues
19 withheld, reduced or offset as part of either the true-up or the due diligence review process.⁸ Nor have any
20 of the plaintiffs in this case demonstrated that they have been threatened with such action as part of either
21 process. Any dispute between the plaintiffs in this case and the respondents regarding the constitutionality
22

23 _____
24 ⁶ Plaintiffs' two Requests for Judicial Notice filed on February 1, 2013 and March 29, 2013 are granted. Plaintiffs'
25 Evidentiary Objections to Opposition Briefing by Respondents and Interveners are sustained, primarily on the basis
26 that the matters objected to constitute inadmissible hearsay or matters not within the personal knowledge of the
27 declarants.

28 ⁷ Code of Civil Procedure section 1060.

⁸ In referring to "the plaintiffs in this case", the Court is also referring to members of plaintiff League of California
Cities, which has brought this action on its own behalf and as a representative for the benefit of California cities. The
League has not identified any of its members that have been subjected to the enforcement provisions of AB 1484.
(See, Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, par. 1.)

1 and enforceability of the enforcement provisions of AB 1484 is therefore merely abstract and theoretical.

2 Moreover, plaintiffs have not demonstrated that the challenged enforcement provisions of AB
3 1484 have been used against any local governmental body in California. In their reply brief, plaintiffs
4 argue, at most, that such action is possible because an official of respondent DOF stated, at a March 13,
5 2013 meeting of the State Board of Equalization, that DOF likely would order the Board to begin diverting
6 sales and use taxes from some cities starting in May.⁹

7 The fact that there may be a continuing threat of enforcement does not persuade the Court that
8 declaratory relief is necessary or appropriate in this case. Plaintiffs have not shown that any of the
9 threatened enforcement action by DOF involves any of the plaintiffs in this case. The dispute over the
10 constitutionality of the enforcement provisions of AB 1484 therefore remains more abstract than real as
11 regards the parties in this case.

12 To the extent that there is a real possibility of enforcement against any other local governmental
13 body or successor agency arising out of the true-up or due diligence review processes, and to the extent
14 that any such action actually has been taken since the hearing in this matter, the Court concludes that an
15 action brought by one of those bodies, after enforcement action is actually threatened or taken, would be a
16 more appropriate vehicle for deciding whether the enforcement provisions of AB 1484 are constitutional,
17 either on their face or as applied. As plaintiffs argue, the Court may take judicial notice that numerous
18 actions are now pending in this Court asserting claims arising out of the redevelopment dissolution laws.¹⁰
19 A significant proportion of those actions involve challenges to administrative determinations made by
20 respondent DOF as part of either the true-up or the due diligence review processes. An action challenging
21 a specific true-up or due diligence review determination, and enforcement action stemming from such
22 determination, would be the appropriate place for a reviewing court to address the constitutional issues
23 regarding the enforcement provisions of AB 1484 on a practical, factually-grounded basis, rather than on a
24

25
26 ⁹ See, plaintiffs' Reply to Opposition Briefing by State and Santa Clara, p. 24:9-11; Request for Judicial Notice #26.
27 Since the hearing in this matter on April 19, 2013, no evidence has been submitted to the Court that would tend to
28 show that DOF actually has diverted sales and use taxes from any local governmental body.

¹⁰ At last count, as of June 24, 2013, over 100 redevelopment cases were pending in this Court.

1 merely abstract basis, as the Court would have to do in this case.

2 The Court therefore concludes that this is a proper case in which to decline to exercise its authority
3 to grant declaratory relief as provided in Code of Civil Procedure section 1061. Plaintiffs' request for a
4 declaratory judgment that the enforcement provisions of AB 1484 are unconstitutional on their face and
5 therefore unenforceable is denied. Plaintiffs' request for injunctive relief and issuance of a writ of
6 mandate under Code of Civil Procedure section 1085, each of which would direct respondents not to
7 utilize the enforcement provisions of AB 1484, is also denied. The issue of whether those enforcement
8 provisions may be utilized based on certain facts, or at all, should be decided in another case, brought by a
9 party actually subject, or threatened to be subject, to those provisions.

10 **Unconstitutional Delegation:**

11 In the Seventh Cause of Action of the petition and complaint, plaintiffs allege that six separate
12 provisions of AB 1484 which grant administrative authority to respondent DOF over the redevelopment
13 wind-down process should be declared invalid because no standards have been provided to govern DOF's
14 application of them in individual cases.¹¹ In addition, plaintiffs allege that at least three provisions of AB
15 1484 are "internally inconsistent and are inconsistent with other laws, thereby presenting even greater
16 opportunity for disparate and inconsistent actions".¹²

17
18 In their opening brief, plaintiffs elected to limit their argument to just four of the challenged
19 provisions of AB 1484. Those four provisions are:

- 20
- 21 • Section 34179.6, which permits respondent DOF to adjust unobligated balance amounts
22 determined by accountants employed by successor agencies in the due diligence review
23 process.
 - 24 • Section 34179.6(h)(3), which authorizes respondent DOF to decide unilaterally whether it
25 is feasible for a successor agency to make a due diligence review payment, and, if not, to
26 agree to an installment payment plan.

27 ¹¹ The specific provisions challenged in the petition and complaint are listed on pages 33-35.

28 ¹² See, petition and complaint, page 35.

- 1 • Section 34191.5, which authorizes respondent DOF to approve a successor agency’s long-
2 range management plan addressing disposition of real property of a former redevelopment
3 agency.
- 4 • Section 34183.5(b), which imposes penalties on local governmental bodies and successor
5 agencies automatically, without providing for an administrative review process.

6 In their reply brief, plaintiffs expanded their argument regarding unconstitutional delegation of
7 legislative authority to include several more provisions of AB 1484 not previously briefed.¹³ Plaintiffs
8 also added a significant new argument. They contend that the entire framework of the redevelopment
9 dissolution laws represents an unconstitutional delegation of legislative authority to respondent DOF to
10 resolve a conflict between “...two equally important but conflicting policies in the Dissolution Act. First,
11 the assets and revenues of former redevelopment agencies must be maximized for the benefit of affected
12 taxing entities. [...] Second, assets and revenues of the former redevelopment agencies must be
13 maintained and disbursed for the benefit of holders of enforceable obligations of the former redevelopment
14 agencies.”¹⁴

15
16 In their opposition briefs, the State respondents and the Santa Clara County intervening parties
17 briefed only the four provisions of AB 1484 that were addressed in plaintiffs’ opening brief. The general
18 rule is that claims raised for the first time in a reply brief will not be considered. (See, *Reichardt v.*
19 *Hoffman* (1997) 52 Cal. App. 4th 754, 764.) Application of that rule is appropriate here, because
20 respondents and interveners have not had the opportunity to address the additional arguments raised for the
21 first time in plaintiffs’ reply brief. The Court’s ruling therefore will address only the specific provisions of
22 AB 1484 argued in plaintiffs’ opening brief.

23 As was the case with plaintiffs’ claims regarding the enforcement provisions of AB 1484, the
24 Court concludes that it should also decline to grant declaratory relief on plaintiffs’ unconstitutional
25 delegation claims, as provided in Code of Civil Procedure section 1061. Plaintiffs have not demonstrated
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27 ¹³ See, plaintiffs’ Reply to Opposition Briefing by State and Santa Clara, pages 16-20.

28 ¹⁴ *Id.*, page 14.

1 that any of the plaintiffs in this case have been subjected to the specific provisions of AB 1484 addressed
2 in their opening brief. Moreover, they have not demonstrated that these provisions have been applied to
3 any other local governmental body or successor agency in connection with the facts of a particular case.
4 Any dispute regarding the application of these provisions is therefore more abstract than real, both in
5 regard to the parties to this case and in general.

6 The Court therefore concludes that an action brought by a local governmental body or a successor
7 agency, after one of the challenged provisions of AB 1484 is applied in an actual case, would be a more
8 appropriate vehicle for deciding whether any of those provisions should be invalidated. As plaintiffs
9 argue, the Court may take judicial notice that numerous actions are now pending in this Court asserting
10 claims arising out of the redevelopment dissolution laws. A significant proportion of those actions involve
11 challenges to administrative determinations made by respondent DOF as part of either the true-up or the
12 due diligence review processes. An action challenging a specific determination made in either process
13 would permit the reviewing court to address unconstitutional delegation issues regarding AB 1484 on a
14 practical, factually-grounded basis, rather than on a merely abstract basis, as it would have to do in this
15 case.
16

17 Plaintiffs' request for a declaratory judgment that the challenged provisions of AB 1484 represent
18 an unconstitutional delegation of legislative authority to respondent DOF accordingly is denied. The issue
19 of whether an unconstitutional delegation has occurred should be decided in another case, brought by a
20 party actually subject, or threatened to be subject, to an administrative determination implicating such
21 delegation.¹⁵

22 **Alleged Underground Regulations:**

23 Plaintiffs contend that respondent DOF, acting as the state agency responsible for administering
24 the implementation of AB1x26 and AB1484, has implemented, interpreted and made specific the
25 provisions of those statutes by establishing rules by mere administrative *fiat*, and not by promulgating
26

27 ¹⁵ Although the Court's ruling addresses only those provisions of AB 1484 argued in plaintiff's opening brief, the
28 Court observes that its ruling would be the same with regard to the issues raised in the reply brief because any dispute
regarding those additional provisions of AB 1484 is more abstract than real as regards the parties in this case.

1 formal regulations under the Administrative Procedure Act as the law requires. Specifically, plaintiffs
2 contend that respondent DOF has done so by issuing general communications, directions, guidance, and
3 the like; by publishing answers to frequently asked questions; and by establishing internal guidelines and
4 procedures affecting successor agencies, cities and others.¹⁶ Plaintiffs ask the Court to declare that all such
5 rules constitute improper underground regulations and therefore are unlawful and unenforceable.

6 For reasons similar to those described above in connection with plaintiffs' other claims, the Court
7 concludes that it should also decline to grant declaratory relief on plaintiffs' underground regulation
8 claims, as provided in Code of Civil Procedure section 1061. Plaintiffs have not demonstrated that DOF
9 actually has applied or enforced any of the alleged underground regulations described in its briefing
10 against the plaintiffs in this action, or, for that matter, against any local governmental body or successor
11 agency in California. Any dispute over the validity of the alleged underground regulations is therefore
12 more abstract than real. To the extent that DOF actually does apply or enforce any of the challenged
13 provisions against any local governmental body or successor agency, an action by that body or agency
14 alleging the specific facts and circumstances of such application or enforcement is a more appropriate
15 vehicle for determining whether those provisions indeed amount to unlawful underground regulations.

16 Plaintiffs' request for a declaratory judgment that the DOF has engaged in unlawful rule-making
17 without compliance with the Administrative Procedure Act accordingly is denied. The issue of whether
18 DOF has engaged in underground rulemaking should be decided in another case, brought by a party
19 actually subject, or threatened to be subject, to such rules.

20 Conclusion

21 In this action, plaintiffs challenge various provisions of AB 1484 on constitutional grounds, and
22 allege that respondent DOF has engaged in improper underground rule-making. Plaintiffs have not
23 demonstrated, however, that any of the challenged provisions of AB 1484, or the alleged underground
24 regulations, have been applied to any of the plaintiffs in this case, or, indeed, to any local governmental
25 body or successor agency subject to the redevelopment dissolution and wind-down process.
26

27
28 ¹⁶ Plaintiffs list examples of such actions in their opening brief at pages 17:21-20:2.

1 In the recent case of *California Redevelopment Association v. Matosantos* (2013) 212 Cal. App.
2 4th 1457, 1493, the Third District Court of Appeal addressed impairment of contract and takings claims
3 arising out of the Legislature's enactment of AB 4X 26, which required redevelopment agencies
4 throughout the state to contribute portions of their property tax increment funding for the 2009-2010 and
5 2010-2011 fiscal years into supplemental educational revenue augmentation funds (SERAF's) to be used
6 for financing K-12 education in redevelopment areas. The appellate court concluded that those claims
7 were premature where the challenged legislative action had not been shown to cause any present inability
8 to meet redevelopment agency obligations.

9 The lesson to be drawn from this case is that the courts should refrain from addressing abstract
10 disputes over the effect of legislative action. Instead, courts should wait to act until the disputes are ripe,
11 i.e., when the challenged legislative action is actually applied to a person or entity and causes some actual
12 detriment. Applying that lesson to this case, the Court concludes that the present dispute is not sufficiently
13 ripe to support declaratory, injunctive, or mandate relief.
14

15 The Court accordingly finds that it should exercise its authority to decline declaratory relief in this
16 case pursuant to Code of Civil Procedure section 1061. If available, relief may be granted in a case in
17 which the plaintiff or petitioner demonstrates that one of the challenged provisions of AB 1464, or an
18 alleged underground regulation, has been applied in its individual case. Plaintiffs' request for declaratory
19 relief, and for all other relief related to that request, such as injunctive relief and issuance of a writ of
20 mandate, is therefore denied, and judgment should be entered in favor of respondents.

21 In accordance with Local Rules 2.07 and 2.15, counsel for respondent DOF is directed to prepare a
22 formal order denying declaratory and injunctive relief and the petition for writ of mandate, incorporating
23 this Court's ruling as an exhibit; and a separate judgment; submit the order and judgment to all other
24 counsel for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit them to
25 the Court for signature and entry of judgment in accordance with Rule of Court 3.1312(b).
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1
2 DATED: July 10, 2013


3 Judge MICHAEL P. KENNY
4 Superior Court of California,
5 County of Sacramento

6 **CERTIFICATE OF SERVICE BY MAILING**
7 **(C.C.P. Sec. 1013a(4))**

8 I, the undersigned deputy clerk of the Superior Court of California, County of
9 Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-
10 entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or
11 their counsel of record as stated below, with sufficient postage affixed thereto and deposited the
12 same in the United States Post Office at 720 9th Street, Sacramento, California.

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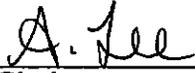
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