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6 COLLEGE DISTRICT, SEQUOIA UNION  
HIGH SCHOOL DISTRICT, AND SAN  
7 CARLOS ELEMENTARY SCHOOL  
DISTRICT

8  
9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF SAN MATEO

11  
12 SAN MATEO COUNTY COMMUNITY COLLEGE  
DISTRICT, SEQUOIA UNION HIGH SCHOOL  
13 DISTRICT, AND SAN CARLOS ELEMENTARY  
SCHOOL DISTRICT

Case No. 489368

**~~PROPOSED~~ STATEMENT OF DECISION**

Trial Date: October 25, 2011  
Hearing Date: December 15, 2011  
Courtroom: Judge Scott, (2M)  
Time: 9:00 a.m.

14 Petitioners,

15 vs.

16 REDEVELOPMENT AGENCY OF THE CITY OF  
17 SAN CARLOS AND DOES 1-10

18 Respondent.  
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20 **I. INTRODUCTION**

21 This case is about the proper allocation of property tax dollars – public funds – between  
22 Petitioners SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT (the “College  
23 District”), SEQUOIA UNION HIGH SCHOOL DISTRICT (“Sequoia”), and SAN CARLOS  
24 ELEMENTARY SCHOOL DISTRICT (“San Carlos Elementary”) and Respondent  
25 Redevelopment Agency of the City of San Carlos (the “Agency”). This matter was heard before  
26 this Court on October 25, 26, 27, and 28, 2011.

27 Pursuant to Cause of Action One for a Writ of Mandamus, Petitioners seek an Order  
28 directing the Agency to comply with its ministerial duty and pay to Petitioners annual statutory

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1 payments, pursuant to former Health & Safety Code § 33676(a) (“2% Payments”), due since  
2 1985-86, and current Health & Safety Code §§ 33676(b), 33607.5 and 33607.7 (“AB1290  
3 Payments”), due since 2007-2008.

4 Pursuant to Cause of Action Two for Declaratory Relief, Petitioners seek judgment on the  
5 issue of Petitioners’ entitlement to the annual 2% Payments and AB1290 Payments, in each year  
6 that payments are not made pursuant to agreements entered into between Petitioners and  
7 Respondent Agency on July 14, 1986 (the “Make Whole Agreements”). See Exhibits 1 to 3.  
8 Petitioners further seek a declaration that, under the Make Whole Agreements, a “basic aid”<sup>1</sup>  
9 school district’s loss of property tax dollars to the Agency – the diversion of tax increment –  
10 constitutes “financial burden or detriment” and entitles such a school district to recover from the  
11 Agency the full amount of diverted property tax revenue.

## 12 II. DISCUSSION

### 13 A. Statute of Limitations

#### 14 *The Failure to Make 2% Payments and AB1290 Payments*

15 Petitioner’s seek the payment of a statutory liability, which has a three year statute of  
16 limitations. See California Code of Civil Procedure § 338(a); *City of Scotts Valley v. County of*  
17 *Santa Cruz*, 2011 WL 5062456, (Cal.App.1.Dist. 2011) October 26, 2011.

#### 18 *Failure to Make Payments to Sequoia pursuant to the Make Whole Agreement*

19 For Sequoia’s claims under the Make Whole Agreements, the applicable statute of  
20 limitations is 4 years pursuant to Code of Civil Procedure § 337.

### 21 B. First Cause of Action – Writ of Mandate

22 Pursuant to the Writ of Mandate, Petitioners request that this Court direct the Agency to  
23 perform its ministerial duties defined by statute to pay to Petitioners the sums of money due in  
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25 <sup>1</sup> A basic aid school district is one for which funding from local property tax dollars exceeds the  
26 “revenue limit” set for the district by the State of California. For community college districts,  
27 the equivalent designation is “self-supporting” and refers to those college districts for which  
28 funding from the combination of local property tax dollars and student fees exceeds the “revenue  
level” set by the State of California. In each case, these districts would be permitted to retain all  
of the property tax dollars they would receive above the revenue limit/level.

1 connection with the 2% Payments and AB1290 Payments described below. Petitioners seek  
2 retroactive payments within the limitations period as well as an Order requiring these statutory  
3 payments moving forward, in each year that a Petitioner does not receive a payment pursuant to  
4 a Make Whole Agreement with the Agency.

5 **1. Annual 2% Payments pursuant to former Health & Safety Code § 33676**

6 Pursuant to former Section 33676(a) of the California Health and Safety Code, taxing  
7 entities, such as school districts, are entitled to receive the annual inflationary increase allowed  
8 under Article XIII A of the California Constitution, the “2% Payments.” As explained by  
9 Petitioners’ experts Dante Gumucio<sup>2</sup> and Don Fraser<sup>3</sup>, these statutory payments correspond to  
10 the automatic increase in the assessed value of property in the project area allowed under  
11 Proposition 13 (and contained in Section 110.1 of the Revenue and Taxation Code). As the  
12 experts explained, the legislature intended for redevelopment agencies to make these payments  
13 to taxing entities because the annual inflationary growth in assessed values was unrelated to  
14 redevelopment and thus should be passed along to taxing entities such as school districts.  
15 Respondent Agency did not present any evidence to dispute Mr. Gumucio’s or Mr. Fraser’s  
16 testimony.

17 Former section 33676(a), which was in effect when the Agency adopted its plan,  
18 provides:

19 Prior to the adoption by the legislative body of a redevelopment plan providing  
20 for tax-increment financing. . . and ***unless an agreement is entered into or***  
21 ***payments are otherwise distributed by the agency in accordance with section***  
22 ***33401***, any affected taxing agency may elect, ***and every school and community***  
***college district shall elect***, to be allocated . . . all or any portion of the tax  
23 revenues allocated to the agency. . . attributable to one of more of the  
24 following:

25 (1) Increases in the rate of tax imposed for the benefit of the taxing agency which  
26 levy occurs after the tax year in which the ordinance adopting the redevelopment  
27 plan becomes effective. . .

28 <sup>2</sup> Mr. Gumucio was qualified as an expert in redevelopment and school finance. Respondent Agency did not object.

<sup>3</sup> Mr. Fraser was qualified as an expert in redevelopment, AB1290, and the calculation of statutory payments (2% Payments and AB1290 Payments). Respondent Agency did not object.

1 (2) Increases in the assessed value of the taxable property in the redevelopment  
2 project areas . . .calculated annually pursuant to subdivision (f) of Section 110.1  
of the Revenue and Taxation Code.

3 **2. Annual payments pursuant to AB1290<sup>4</sup>**

4 Assembly Bill 1290 (“AB1290”), which became law on January 1, 1994, requires  
5 redevelopment agencies to make payments to school districts pursuant to Health & Safety Code  
6 §§ 33676(b) (for basic aid districts) and, 33607.5 and 33607.7 (for revenue limit districts)  
7 (collectively, “AB1290 Payments”). As explained by Mr. Fraser, the Agency triggered its  
8 obligation to make AB1290 Payments when it amended its redevelopment plan on March 13,  
9 2006 and eliminated the time limit on the incurrence of debt pursuant to Ordinance 1370. *See*  
10 Exhibit 74. As Mr. Fraser explained, under AB1290, the first payments to Petitioners were due at  
11 the end of the 2007-08 fiscal year.

12 This Court notes that Mr. Fraser is among the State of California’s leading experts on the  
13 interpretation and application of AB1290 *on behalf of redevelopment agencies*. Mr. Fraser has  
14 spent the last 20-plus years of his career working for redevelopment agencies and was selected  
15 by the Community Redevelopment Association, the association of California redevelopment  
16 agencies, to be a member of a technical committee that prepared a compliance manual for  
17 AB1290. *See* Exhibit 41. Respondent Agency has presented no evidence to dispute Mr. Fraser’s  
18 expert opinion. Accordingly, Mr. Fraser’s testimony was given great weight.

19 According to the plain statutory language AB1290 Payments are required to be made  
20 unless payments are being made pursuant to an agreement. Health & Safety Code § 33676(b)(3),  
21 for basic aid districts such as Sequoia, currently provides (emphasis added):

22 (3) Any local education agency that is a basic aid district or office at the time the  
23 ordinance amending a redevelopment plan is adopted pursuant to Section  
24 33607.7 and that receives no state funding, other than that provided pursuant to  
25 Section 6 of Article IX of the California Constitution, pursuant to Section 2558,  
26 42238, or 84751, as appropriate, of the Education Code, shall receive either of  
the following:

27 <sup>4</sup> This is currently codified as Health & Safety Code 33676, but to avoid confusion Petitioners  
28 will refer to it as AB1290.

1 ***(A) If an agreement exists that requires payments to the basic aid district, the***  
2 ***amount required to be paid by an agreement between the agency and the basic***  
3 ***aid district entered into prior to January 1, 1994.***

4 (B) If an agreement does not exist, the percentage share of the increase in  
5 property taxes from the project area allocated among all of the affected taxing  
6 entities during the fiscal year the funds in the project area are allocated, derived  
7 from 80 percent of the growth in assessed value that occurs within the portion of  
8 the district within the redevelopment project area from the year in which the  
9 amendment takes effect pursuant to subdivision (c) of Section 33607.7

10 Health & Safety Code §§ 33607.5 and 33607.7(b), for revenue limit districts such as the  
11 College District and San Carlos Elementary, provide:

12 (b) If a redevelopment agency adopts an amendment that is governed by the  
13 provisions of this section, it shall pay to each affected taxing entity either of the  
14 following:

15 ***(1) If an agreement exists that requires payments to the taxing entity, the***  
16 ***amount required to be paid by an agreement between the agency and an***  
17 ***affected taxing entity entered into prior to January 1, 1994.***

18 (2) If an agreement does not exist, the amounts required pursuant to subdivisions  
19 (b), (c), (d), and (e) of Section 33607.5, until termination of the redevelopment  
20 plan, calculated against the amount of assessed value by which the current year  
21 assessed value exceeds an adjusted base year assessed value. The amounts shall  
22 be allocated between property taxes and educational facilities according to the  
23 appropriate formula in paragraph (3) of subdivision (a) of Section 33607.5. In  
24 determining the applicable amount under Section 33607.5, the first fiscal year  
25 shall be the first fiscal year following the fiscal year in which the adjusted base  
26 year value is determined.

27 **3. Petitioners are entitled to both 2% Payments and AB1290 Payments in years**  
28 **when no payments are made pursuant to their respective Make Whole**  
**Agreements**

Under the plain language of former § 33676(b) and AB1290, Petitioners are entitled to  
the 2% Payments and AB1290 Payments, respectively, because payments are not being made

1 pursuant to the Make Whole Agreements.<sup>5</sup> Although there is no statutory requirement for  
2 Petitioners request these payments in order to receive them, they have repeatedly done so.  
3 Following the publication of the *Santa Ana* decision, on September 23, 2002, the College District  
4 wrote a letter to the City Manager of the City of San Carlos requesting the 2% Payments. *See*  
5 Exhibit 5. As Ms. Christensen explained in her testimony, Mr. Averett of the Agency promised  
6 to make the 2% Payments if the College District adopted a resolution requesting payments. On  
7 February 26, 2003, the Board of Trustees of the College District adopted Resolution No. 03-03  
8 Electing to Receive All or Any Portion of Tax Increment Revenues Pursuant to Health & Safety  
9 Code Section 33676. *See* Exhibit 6. In 2009, San Carlos Elementary adopted a similar  
10 resolution. *See* Exhibit 20. Yet, in spite of submitting these superfluous requests – given that the  
11 2% Payments were mandatory as of 1993 as stated by the court in *Santa Ana*—the Agency  
12 continued to deny Petitioners’ requests for 2% Payments. *See, e.g.,* Exhibits 9 and 10. No 2%  
13 Payments have ever been made in spite of the fact that as early as 1993 the Agency was advised  
14 by its counsel that it could make the 2% Payments. *See* Exhibit 76 (Internal Agency  
15 Memorandum).

16 This Court is not persuaded by Respondent Agency’s argument that the mere existence of  
17 the Make Whole Agreements, pursuant to which it makes no payments, somehow exempts the  
18 Agency from making the 2% Payments and AB1290 Payments. First, no agreement payments  
19 have ever been made despite numerous requests. *See* Exhibits 12, 13, 14, 16, 17, 18. Second,  
20 the Agency makes some form of payments – either pursuant to an agreement or statute – to every  
21 other taxing entity in its jurisdiction: it has inexplicably singled out Petitioners to not receive  
22 payments. Third, Petitioners receive some form of payments from every other redevelopment  
23 agency that operates in the respective jurisdictions of Petitioners. There is no reason why  
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25 <sup>5</sup> In 1993 the statutory language was amended and the 2% Payments were supposed to be  
26 automatically made to school districts. *See Santa Ana Unified School District v. Orange County*  
27 *Redevelopment Agency* (2001) 90 Cal.App.4th 404, 411 (“This amendment did eliminate school  
28 districts’ option to elect, but it did not eliminate any requirement to pay the 2 percent funds.  
Instead it mandated their allocation, as did the previous version of the section. This was a  
clarification of the statute’s true intent: mandatory payment of the funds to school districts.”).

1 Petitioners should be treated any differently under the statutes. The statutory scheme is clear: if  
2 payments are not being made pursuant to an agreement, then the statutory payments are the  
3 default and must be made to Petitioners.<sup>6</sup>

4 **C. Second Cause of Action – Declaratory Relief**

5 Pursuant to the request for Declaratory Relief, Petitioners request that this Court declare  
6 their rights to the 2% Payments and AB1290 Payments, as well as their rights under the Make  
7 Whole Agreements.

8 **1. Annual 2% Payments and AB1290 Payments are required in years when no  
9 agreement payments are made.**

10 As explained above, Petitioners are entitled to the annual 2% Payments and AB1290  
11 Payments in years when no payments are being made under the Make Whole Agreements. This  
12 is clearly required by the applicable statutory language and consistent with legislature’s intent to  
13 require redevelopment agencies to redirect some of the property tax funds they receive to school  
14 districts.

15 Accordingly, this Court declares that in any year when payments are not made pursuant  
16 to the Make Whole Agreements, Petitioners are entitled to both the annual 2% Payments and  
17 AB1290 payments, to be calculated in accordance with the applicable statutes described above.  
18 Further, because such payments are mandate by statute, no request for such payments must be  
19 made.

20 **2. Pursuant to the Make Whole Agreements, when a Petitioner becomes “Basic  
21 Aid”, such as Sequoia, Petitioner is entitled to receive each property tax dollar  
22 that is diverted to the Agency because that is the “financial burden or  
23 detriment” caused by the Agency**

24 As testified to in detail by Ms. Christensen, in 1986, the City of San Carlos proposed to  
25 adopt a Redevelopment Plan for the City of San Carlos (“Redevelopment Plan”), pursuant to the  
26 California Community Redevelopment Law. Ms. Christensen explained that in order to avoid

27 <sup>6</sup> Although Petitioners’ experts, in testifying to their qualifications and providing background  
28 information about the conditions under which 2% Payments and AB1290 are made statewide,  
stated that these payments should be made to Petitioners, this Court did not rely on the experts  
interpretations of the law to reach its own conclusion.

1 possible legal challenges to adoption of the Redevelopment Plan because the proposed  
2 redevelopment area was not blighted, and recognizing that the Agency would divert substantial  
3 tax revenues from the public school entities that were located within the jurisdictional boundaries  
4 of the redevelopment project area, the Agency entered into Make Whole Agreements with  
5 Petitioners. According to Ms. Christensen, whose recollection was refreshed by the review of  
6 her contemporaneous notes from 1986, the clear purpose of these agreements was two-fold: (1)  
7 to make sure that if the affected school districts ever lost any property tax revenue as a result of  
8 the creation of the Agency, the Agency would make them whole by paying back that money; and  
9 (2) to avoid a lawsuit brought by the schools to stop the formation of the Agency by challenging  
10 the Agency's finding that there was blight in the project area. These were clearly settlement  
11 agreements. *See, e.g.* Exhibit 1 at 3, ¶8 (district promise not to sue to challenge creation of the  
12 Agency). In sum, Petitioner school districts were willing to cooperate with the City of San  
13 Carlos to ensure that the Agency would be created so long as the Agency promised to make up  
14 for any losses that Petitioners might suffer. Respondent Agency did not introduce any evidence  
15 to rebut Ms. Christensen's testimony.

16         Prior to entering into the Make Whole Agreements, the Agency adopted Resolution  
17 RDA-19 pursuant to which it concluded that "financial burden or detriment" consisted of a future  
18 loss of "property tax revenues." *See* Exhibit 1, Resolution No. RDA-19, ¶2 dated July 7 1986.  
19 This was entirely consistent with Petitioners' understanding of financial burden or detriment at  
20 the time Petitioners entered into the Make Whole Agreements with the Agency *one week later*,  
21 on July 14, 1986. Petitioners were entitled to rely on this formal action of the Agency and have  
22 done so to their detriment. As Ms. Christensen explained, Petitioners never would have entered  
23 into the agreements without the guarantee that every property tax dollar they lost would either be  
24 made up for by the State or, in the absence of backfilled funds by the State, by the Agency itself  
25 pursuant to the Make Whole Agreements.

26         The Agency – twenty five years after the adoption of the Make Whole Agreements – now  
27 argues that former Health & Safety Code § 33012, which defined the term "financial burden or  
28 detriment", applies to the Make Whole Agreements. It is worth noting that the Agency has



1 table below, which is derived from Exhibit 22. The Agency did not introduce any evidence to  
 2 dispute Mr. Fraser's calculations nor did it introduce any evidence to support a different  
 3 calculation of the 2% Payments.

	San Carlos Elementary		College District		Sequoia UHSD	
	2% Payment	Interest	2% Payment	Interest	2% Payment	Interest
2006-2007	\$ 215,990.00	\$96,396.63	\$ 79,376.00	\$35,425.62	\$ 182,781.00	\$81,575.41
2007-2008	\$ 229,191.00	\$79,306.37	\$ 84,227.00	\$29,144.85	\$ 193,953.00	\$67,113.05
2008-2009	\$ 242,656.00	\$59,700.02	\$ 89,176.00	\$21,939.74	\$ 205,348.00	\$50,521.23
2009-2010	\$ 256,391.00	\$37,440.11	\$ 94,223.00	\$13,759.14	\$ 216,971.00	\$31,683.71
2010-2011	\$ 254,731.00	\$11,724.60	\$ 93,613.00	\$4,308.76	\$ 215,566.00	\$9,921.94
	\$ 1,198,959	\$ 284,568	\$ 440,615	\$ 104,578	\$ 1,014,619	\$ 240,815
<b>Total 2% Payment Damages</b>	<b>\$ 1,483,527</b>		<b>\$ 545,193</b>		<b>\$ 1,255,434</b>	

10 **1. AB1290 Payments**

11 This Court orders that for the three year limitations period beginning November 2006,  
 12 Respondent Agency retroactively make the annual AB1290 Payments that should have been  
 13 made and in future years make the AB1290 Payments in accordance with AB1290 (current §  
 14 33676). Based on Mr. Fraser's undisputed expert testimony, AB1290 Payments were first due to  
 15 each Petitioner in 2007-2008. Petitioners are also entitled to prejudgment interest at the legal  
 16 rate of 10% from the date the payments were due (the end of each fiscal year) through the date of  
 17 judgment, December 15, 2011.

18 The amounts this Court orders the Agency to pay Petitioners for the AB1290 payments  
 19 due from 2007-2008 through 2010-11, as calculated and explained by Mr. Fraser, are set forth in  
 20 the table below, which is calculated based on the data presented in Exhibit 23. The Agency did  
 21 not present any evidence to dispute Mr. Fraser's calculations nor did it introduce any evidence to  
 22 support a different calculation of the AB1290 Payments.

	San Carlos Elementary		College District	
	AB1290 Payment	Interest	AB1290 Payment	Interest
2007-2008	\$ 20,393.11	\$7,056.57	10316.96	\$3,569.95
2008-2009	\$ 37,035.35	\$9,111.71	15976.14	\$3,930.57
2009-2010	\$ 52,536.58	\$7,671.78	20357.25	\$2,972.72
2010-2011	\$ 58,090.06	\$2,673.73	21197.64	\$975.67
Subtotal	\$ 168,055.10	\$ 26,513.79	\$ 67,847.99	\$ 11,448.91
<b>Total AB1290 Damages</b>	<b>\$ 194,568.89</b>		<b>\$ 79,296.90</b>	

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	Sequoia UHSD			
	AB1290 Payment	AB1290 Basic Aid Payment	Total AB1290 Payments	Interest
2007-2008	23758.12	84745.23	108503.35	\$37,545.13
2008-2009	36790.2	131230.63	168020.83	\$41,337.73
2009-2010	46879.11	167217.77	214096.88	\$31,264.01
2010-2011	48814.39	174120.92	222935.31	\$10,261.13
Subtotal			\$ 713,556.37	\$ 120,408.00


Total AB1290 Damages \$ 833,964.37

IV. CONCLUSION

Respondent Agency is hereby ordered to pay: (1)the San Carlos Elementary School District the sum of \$1,678,095.62; (2) the San Mateo County Community College District the sum of \$624,490.01, and (3) the Sequoia Union High School District the sum of \$2,089,398.71.

This Court further orders that in any year which Respondent Agency does not make payments pursuant to the Make Whole Agreements, the Agency must make 2% Payments and AB1290 Payments in accordance with the applicable statutes.

Finally, this Court further orders that the term "financial burden or detriment", as used in the Make Whole Agreements entered into between Petitioners and the Agency, means that loss of property tax dollars that are not backfilled by the State as described in this Decision.

 Dec. 15, 2011

JUDGE OF THE SUPERIOR COURT

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