

1 JAN I. GOLDSMITH, City Attorney
2 ANDREW JONES, Assistant City Attorney
3 KATHY J. STEINMAN, Deputy City Attorney
4 California State Bar No. 221344
5 Office of the City Attorney
6 1200 Third Avenue, Suite 1100
7 San Diego, California 92101-4100
8 Telephone: (619) 533-5800
9 Facsimile: (619) 533-5856

6 Attorneys for Defendant
7 CITY OF SAN DIEGO

Exempt from fees per Gov't Code § 6103
To the benefit of the City of San Diego

F I L E D
Clerk of the Superior Court

FEB 15 2013

By: _____
Deputy
FEB 15 2013
A SEAMONS, Deputy

FEB 15 '13 AM 1:36

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

9 MELVIN SHAPIRO,
10 Plaintiff and Petitioner,
11 v.
12 CITY OF SAN DIEGO, ALL PERSONS
13 INTERESTED IN THE MATTER OF THE
14 NOVEMBER 26, 2012 ACTION OF THE CITY
15 OF SAN DIEGO ADOPTING A
16 RESOLUTION TO RENEW THE SAN DIEGO
17 TOURISM MARKETING DISTRICT AND
18 LEVY ASSESSMENTS FOR A PERIOD OF 39
19 ½ YEARS, and DOES ONE through TWO
20 THOUSAND,
21 Defendants and Respondents.
22 SAN DIEGO TOURISM MARKETING
23 DISTRICT CORPORATION, a California non-
24 profit corporation; and DOES TWO
25 THOUSAND ONE through FOUR
26 THOUSAND, inclusive,
27 Real Party in Interest.
28 AND RELATED ACTION

) Case No. 37-2012-000X87765-CU-MC-CTL
)
) **DEFENDANT CITY OF SAN DIEGO'S**
) **NOTICE OF MOTION AND MOTION**
) **TO CONSOLIDATE RELATED**
) **CASES**
)
) I/C Judge: Hon. Steven R. Denton
) Date: March 29, 2013
) Time: 10:30 a.m.
) Dept.: 73
) Complaint filed: December 19, 2012
) Trial: Not Set

1 SAN DIEGANS FOR OPEN GOVERNMENT,) Case No. 37-2012-00088065-CU-MC-CTL
 2 Plaintiff,)
 3 v.)
 4 CITY OF SAN DIEGO; and ALL PERSONS)
 5 INTERESTED IN THE MATTER OF THE)
 6 RENEWAL OF THE SAN DIEGO TOURISM) I/C Judge: Hon. Steven R. Denton
 7 MARKETING DISTRICT, THE LEVYING OF) Dept.: 73
 8 ASSESSMENTS UPON THE ASSESSED) Complaint filed: December 19, 2012
 9 BUSINESSES FOR A PERIOD OF THIRTY-) Trial: Not Set
 10 NINE AND ONE-HALF YEARS, AND THE)
 11 PRESCRIBING OF A METHOD FOR)
 12 COLLECTION OF ASSESSMENTS)
 13 Defendants.

14 PLEASE TAKE NOTICE THAT ON March 29, 2013, at 10:30 a.m. in the San Diego
 15 Superior Court, Department 73, located at 330 West Broadway, San Diego, California, 92101,
 16 Defendant City of San Diego will move the court pursuant to Code of Civil Procedure section
 17 1048, California Rules of Court, Rule 3.350, and Local Rule 5.2.5, for an order consolidating the
 18 following cases:

19 (1) *Melvin Shapiro v. City of San Diego, et al.*, San Diego Superior Court Case No.
 20 37-2012-00087765-CU-MC-CTL, assigned to Department 73, in which the following parties
 21 have appeared: Plaintiff/Petitioner Melvin Shapiro, through his counsel of record, Craig A.
 22 Sherman, Esq., of the Law Office of Craig A. Sherman; Defendant/Respondent City of San
 23 Diego, through its counsel of record, Kathy J. Steinman, Office of the City Attorney; and Real
 24 Party in Interest San Diego Tourism Marketing District Corporation, through its counsel of
 25 record, Michael G. Colantuono and David J. Ruderman, of Colantuono & Levin, PC.

26 (2) *San Diegans for Open Government v. City of San Diego, et al.*, San Diego
 27 Superior Court Case No. 37-2012-00088065-CU-MC-CTL, assigned to Department 73, in which
 28 the following parties have appeared: Plaintiff San Diegans for Open Government, by and through
 its counsel, Cory J. Briggs, of Briggs Law Corporation; and Defendant City of San Diego, by and
 through its counsel of record, Kathy J. Steinman, Office of the City Attorney.

1 Consolidation is requested for all purposes. This motion is made on the grounds that the
2 issues of fact and law are common to both actions and that there may be only “one-judgment.”
3 A single trial will avoid unnecessary costs and delays and will serve the interests of economy and
4 convenience.

5 This motion will be based upon this notice, the attached points and authorities, the
6 declaration of Kathy J. Steinman, the notice of lodgment, the files and records in this action, and
7 any further evidence and argument that the Court may receive at or before the hearing.

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Dated: February 15, 2013

JAN I. GOLDSMITH, City Attorney

By 
Kathy J. Steinman

Attorneys for Defendant
City of San Diego

1 JAN I. GOLDSMITH, City Attorney
2 ANDREW JONES, Assistant City Attorney
3 KATHY J. STEINMAN, Deputy City Attorney
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Clerk of the Superior Court

FEB 15 2013

By: A. SEAMONS, Deputy

6 Attorneys for Defendant
7 CITY OF SAN DIEGO

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 MELVIN SHAPIRO,
11 Plaintiff and Petitioner,
12 v.
13 CITY OF SAN DIEGO, ALL PERSONS
14 INTERESTED IN THE MATTER OF THE
15 NOVEMBER 26, 2012 ACTION OF THE CITY
16 OF SAN DIEGO ADOPTING A
17 RESOLUTION TO RENEW THE SAN DIEGO)
18 TOURISM MARKETING DISTRICT AND)
19 LEVY ASSESSMENTS FOR A PERIOD OF 39)
20 ½ YEARS, and DOES ONE through TWO)
21 THOUSAND,)

Case No. 37-2012-00087765-CU-MC-CTL
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT CITY OF SAN DIEGO'S
MOTION TO CONSOLIDATE
RELATED CASES

I/C Judge: Hon. Steven R. Denton
Date: March 29, 2013
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23 SAN DIEGO TOURISM MARKETING
24 DISTRICT CORPORATION, a California non-
25 profit corporation; and DOES TWO
26 THOUSAND ONE through FOUR
27 THOUSAND, inclusive,

28 Real Party in Interest.

AND RELATED ACTION

1 SAN DIEGANS FOR OPEN GOVERNMENT,)

Case No. 37-2012-00088065-CU-MC-CTL

2 Plaintiff,)

3 v.)

4 CITY OF SAN DIEGO; and ALL PERSONS)
INTERESTED IN THE MATTER OF THE)
5 RENEWAL OF THE SAN DIEGO TOURISM)
MARKETING DISTRICT, THE LEVYING OF)
6 ASSESSMENTS UPON THE ASSESSED)
BUSINESSES FOR A PERIOD OF THIRTY-)
7 NINE AND ONE-HALF YEARS, AND THE)
PRESCRIBING OF A METHOD FOR)
8 COLLECTION OF ASSESSMENTS

I/C Judge: Hon. Steven R. Denton
Dept.: 73
Complaint filed: December 19, 2012
Trial: Not Set

9 Defendants.

10
11 Defendant City of San Diego (hereinafter "City") hereby respectfully submits the
12 following memorandum of points and authorities in support of its Motion to Consolidate Related
13 Cases.

14 I

15 **CASES SOUGHT TO BE CONSOLIDATED**

16 The City seeks to consolidate the following related matters:

17 (1) *Melvin Shapiro v. City of San Diego, et al.*, San Diego Superior Court Case No.
18 37-2012-00087765-CU-MC-CTL, assigned to Department 73, in which the following parties
19 have appeared: Plaintiff/Petitioner Melvin Shapiro, through his counsel of record, Craig A.
20 Sherman, Esq., of the Law Office of Craig A. Sherman; Defendant/Respondent City of San
21 Diego, through its counsel of record, Kathy J. Steinman, Office of the City Attorney; and Real
22 Party in Interest San Diego Tourism Marketing District Corporation, through its counsel of
23 record, Michael G. Colantuono and David J. Ruderman, of Colantuono & Levin, PC.

24 (2) *San Diegans for Open Government v. City of San Diego, et al.*, San Diego
25 Superior Court Case No. 37-2012-00088065-CU-MC-CTL, assigned to Department 73, in which
26 the following parties have appeared: Plaintiff San Diegans for Open Government, by and through
27 its counsel, Cory J. Briggs, of Briggs Law Corporation; and Defendant City of San Diego, by and
28 through its counsel of record, Kathy J. Steinman, Office of the City Attorney.

1 The City seeks to consolidate both of these matters with *Shapiro v. City of San Diego, et*
2 *al*, Case No. 37-2012-000887765-CU-MC-CTL, as the leading case.

3 II

4 STATEMENT OF FACTS AND PROCEDURAL HISTORY

5 Both of the matters sought to be consolidated are challenges to City of San Diego City
6 Council Resolution No. R-307843 and other subsequent and dependent acts or resolutions related
7 to the renewal of the San Diego Tourism Marketing District (the District), a special assessment
8 district which funds collective marketing for San Diego's hotel industry. Both Plaintiffs allege
9 that the challenged resolution violates California law, including Article XIII of the California
10 Constitution. Both Plaintiffs filed their cases on the same day, December 19, 2012. However,
11 Mr. Shapiro's case is the low order number case.

12 The City of San Diego has filed demurrers in both cases, which are scheduled to be heard
13 on March 29, 2013.

14 III

15 STATUTORY AUTHORITY

16 Code of Civil Procedure section 1048(a) provides:

17 When actions involving a common question of law or fact are
18 pending before the court, it may order a joint hearing or trial of any
19 or all the matters in issue in the actions; it may order all the actions
20 consolidated and it may make such orders concerning proceedings
therein as may tend to avoid unnecessary costs or delay.

21 In validation actions, the validation statutes, Code of Civil Procedure sections 860
22 through 870.5 apply. Section 865 of the validation statutes states that "[i]f more than one action
23 is pending concerning similar contests which may be brought under this chapter, *they shall be*
24 *consolidated* for trial." (Emphasis added.)

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1 IV

2 CONSOLIDATION IS WARRANTED

3 The City respectfully requests the consolidation of the Shapiro and San Diegans for Open
4 Government matters, as both actions involve “common questions of law or fact” which would
5 “tend to avoid unnecessary costs or delay.” Cal. Code Civ. Proc. § 1048. Both cases challenge
6 the same City Council resolution and are subject to the “one-judgment rule.”

7 The California Supreme Court concluded that a trial court has authority to “consolidate”
8 in order to avoid conflicting rulings on a common issue of law or fact. *Mercury Insurance*
9 *Group v. Superior Court*, 19 Cal. 4th 332, 337 (1998). Since all actions arise out of the issue, the
10 common issues of law and fact are established. Consolidation will avoid unnecessary costs or
11 delay, and minimize the cost for the Superior Court as well as the parties. Consolidation will
12 require only one trial of this matter.

13 California law has held that consolidation is appropriate where issues of a case are
14 essentially the same. In *Todd-Stenberg v. Dalkon Shield Claimants Trust*, 48 Cal. App. 4th 976
15 (1996), plaintiffs alleged that they had suffered injuries resulting from the use of an intrauterine
16 device and six actions were filed arising out of the same alleged defect. The court granted the
17 plaintiffs’ motions to consolidate on the grounds that the parties would be able to use the same
18 witnesses to discuss both damages and causation. *Id.* at 979. The court determined that if there
19 had been three separate trials, many of the same expert witnesses would have been called and
20 much of the same evidence would have been presented. As a result, the consolidation was
21 upheld on appeal. *Id.* at 979.

22 The City is moving to consolidate the Shapiro and San Diegans for Open Government
23 matters because both cases challenge the same Council resolution and involve identical legal
24 issues. The costs to the Court and parties will be reduced by consolidation. In addition,
25 determinations from one action will not be re-litigated or inconsistent with findings of a second.

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V

CONCLUSION

For the foregoing reasons, Defendant City of San Diego respectfully requests that this Court consolidate *Melvin Shapiro v. City of San Diego, et al.*, San Diego Superior Court Case No. 37-2012-00087765-CU-MC-CTL and *San Diegans for Open Government v. City of San Diego, et al.*, San Diego Superior Court Case No. 37-2012-00088065-CU-MC-CTL, with the Shapiro case as the lead case.

Dated: February 15, 2013

JAN I. GOLDSMITH, City Attorney

By  _____
Kathy J. Steinman

Attorneys for Defendant
City of San Diego

1 JAN I. GOLDSMITH, City Attorney
2 ANDREW JONES, Assistant City Attorney
3 KATHY J. STEINMAN, Deputy City Attorney
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By: A. SEAMONS, Deputy

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18 TOURISM MARKETING DISTRICT AND
19 LEVY ASSESSMENTS FOR A PERIOD OF 39
20 ½ YEARS, and DOES ONE through TWO
21 THOUSAND,

) Case No. 37-2012-00087765-CU-MC-CTL
)
) **DECLARATION OF KATHY J.**
) **STEINMAN IN SUPPORT OF**
) **DEFENDANT CITY OF SAN DIEGO'S**
) **MOTION TO CONSOLIDATE**
) **RELATED CASES**

) I/C Judge: Hon. Steven R. Denton
) Date: March 29, 2013
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AND RELATED ACTION

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 11 PRESCRIBING OF A METHOD FOR)
 12 COLLECTION OF ASSESSMENTS)
 13 Defendants.

11 I, Kathy J. Steinman, declare as follows:

12 1. I am an attorney at law, duly licensed to practice before all the courts in the State
 13 of California. I am a Deputy City Attorney in the Office of the City Attorney, attorney of record
 14 for Defendants City of San Diego. I am familiar with the matters contained within this
 15 declaration, and could competently testify about those matters, if required.

16 2. *Melvin Shapiro v. City of San Diego, et al.*, San Diego Superior Court Case No.
 17 37-2012-00087765-CU-MC-CTL, was filed on December 19, 2012. This matter was assigned to
 18 Department 73. The following parties have appeared: Plaintiff/Petitioner Melvin Shapiro,
 19 through his counsel of record, Craig A. Sherman, Esq., of the Law Office of Craig A. Sherman;
 20 Defendant/Respondent City of San Diego, through its counsel of record, Kathy J. Steinman,
 21 Office of the City Attorney; and Real Party in Interest San Diego Tourism Marketing District
 22 Corporation (TMD Corp.), through its counsel of record, Michael G. Colantuono and David J.
 23 Ruderman, of Colantuono & Levin, PC. The City and TMD Corp. have filed demurrers, which
 24 are scheduled to be heard on March 29, 2013.

25 3. *San Diegans for Open Government v. City of San Diego, et al.*, San Diego
 26 Superior Court Case No. 37-2012-00088065-CU-MC-CTL, was filed on December 19, 2012.
 27 This matter was also assigned to Department 73. The following parties have appeared: Plaintiff
 28 San Diegans for Open Government, by and through its counsel, Cory J. Briggs, of Briggs Law

1 Corporation; and Defendant City of San Diego, by and through its counsel of record, Kathy J.
2 Steinman, Office of the City Attorney. The City has filed a demurrer in this action, which is also
3 scheduled to be heard on March 29, 2013. I am informed and believe that TMD Corp. also
4 intends to enter an appearance as an interested party in this matter and will be represented by
5 Michael G. Colantuono and David J. Ruderman, of Colantuono & Levin, PC.

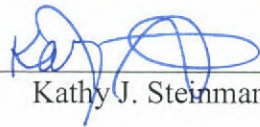
6 4. Both of these cases involve a challenge to City of San Diego Council Resolution
7 R-307843, which involved the renewal of the San Diego Tourism Marketing District.

8 5. Consolidation of these actions will avoid the risk of inconsistent judgments,
9 reduce the costs and delays resulting from multiple trials, and conserve judicial resources.

10 6. Consolidation will not unduly delay the trial of any of the cases in none has been
11 set for trial.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.

14 Executed on February 15, 2013, at San Diego, California.

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17 _____
18 Kathy J. Steinman
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