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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO--CENTRAL DIVISION

11	SAN DIEGANS FOR OPEN GOVERNMENT,	} CASE NO. 37-2014-00028149-CU-MC-CTL } VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER THE CALIFORNIA CONSTITUTION AND OTHER LAWS AND PETITION FOR WRIT OF MANDATE
12	Plaintiff,	
13	vs.	
14	CITY OF SAN DIEGO; COUNTY OF SAN DIEGO; and DOES 1 through 1,000,	
15	Defendants.	

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18 Plaintiff SAN DIEGANS FOR OPEN GOVERNMENT alleges as follows:

19 **Parties**

20 1. Plaintiff is a non-profit taxpayer and voter organization formed and operating under the
21 laws of the State of California. Plaintiff's members reside in or near the City of San Diego, California,
22 and have an interest in ensuring open, accountable, responsive government, and the protection of their
23 rights as taxpayers and voters.

24 2. Defendants CITY OF SAN DIEGO and COUNTY OF SAN DIEGO are "local
25 governments" under Section 1(b) of Article XIII C of the California Constitution.

26 3 The true names and capacities of the Defendants identified as DOES 1 through 1,000
27 are unknown to Plaintiff, who will seek the Court's permission to amend this pleading in order to allege
28 the true names and capacities as soon as they are ascertained. Plaintiff is informed and believes and on

1 that basis alleges that each of the fictitiously named Defendants 1 through 1,000 has jurisdiction by law
2 over one or more aspects of the actions and omissions that are the subject of this proceeding or has
3 some other cognizable interest in the actions and omissions.

4 **Background Information**

5 4. This lawsuit challenges Defendants' authorization of a variety of "tax" levies and
6 collections--euphemistically labeled "assessments" by Defendants in order to avoid public scrutiny--
7 without first obtaining the requisite approval of the voters of the City of San Diego. In particular, this
8 lawsuit challenges the following two illegal taxation schemes (in addition to those challenged in related
9 lawsuits):

10 A. The first illegal tax scheme was approved on or about July 22, 2014, in order to
11 generate revenues for Fiscal Year 2015 of the Downtown Property and Business Improvement District
12 ("PBID"). The scheme was approved by Defendants' city council through Resolution no. 309149
13 ("2015 PBID Resolution") and based on an Engineer's Report purporting to justify the amount of taxes
14 to be levied and collected for Fiscal Year 2015 ("2015 PBID Engineer's Report."). The 2015 PBID
15 Resolution points out that California Streets and Highways Code section 36625(b) provides that the
16 Resolution of Formation constituted the levy of the assessments in each of the Fiscal Years referred to
17 in the Downtown PBID Engineer's Report and Management Plan. The 2015 PBID Resolution further
18 provides that pursuant to California Streets and Highways Code section 36650, the engineer's report
19 is the report for Fiscal Year 2015. Thus, the resolution constitutes the levy of assessments for Fiscal
20 Year 2015, which would not be authorized absent this resolution. In prior years, the levy for each fiscal
21 year was more explicit, but the legal effect is the same.¹

22 B. The second illegal tax scheme involves Maintenance Assessment Districts for
23 Fiscal Year 2015. On or around July 1, 2014, the City Council approved Resolution nos. 309105 and
24 309107 declaring the City Council's intention to continue the levy and collection of assessments for
25

26 ¹ The levy for Fiscal Year 2006 was authorized pursuant to Resolution no. 300684; for Fiscal Year
27 2007, pursuant to Resolution no. 301834; for Fiscal Year 2008, pursuant to Resolution no. 302859; for
28 Fiscal Year 2009, pursuant to Resolution no. 303872; for Fiscal Year 2010, pursuant to Resolution no.
305074; for Fiscal Year 2011, pursuant to Resolution no. 306027; and for Fiscal Year 2012, pursuant
to Resolution no. 306964. Even before the PBID was renewed, Defendants would annually authorize
the levy; for example, they did so for Fiscal Year 2005 pursuant to Resolution no. 299498.

1 each of the MADs for Fiscal Year 2015. The updated engineer's reports and diagram were confirmed
2 by the City Council on July 29, 2014 through Resolution nos. 309180 and 309181 ("2015 MAD
3 Resolutions") and based on the corresponding Engineer's Reports and purporting to justify the amount
4 of taxes to be levied and collected for Fiscal Year 2015 ("2015 MAD Engineer's Reports").

5 5. Concerned about excessive government revenue-raising, the voters of California began
6 to enact a series of constitutional amendments intended to curb state and local taxation starting in the
7 1970's. After local governments creatively exploited loopholes in earlier amendments, the voters took
8 back control over the government's ability to raise revenues by passing Proposition 218 in 1996 and
9 then tightening down even further with the passage of Proposition 26 in 2010. The key question in this
10 lawsuit is whether the PBID and MAD levies and collections are being imposed in accordance with the
11 provisions of Article XIII D of the California Constitution, which came into existence with the passage
12 of Proposition 218. If not imposed in accordance with Article XIII D, these levies constitute "taxes"
13 under Article XIII C. Taxes require a vote of the electorate before they may be imposed. Specifically:

14 A. Under Section 4 of Article XIII A, cities (including charter cities) may only
15 impose special taxes by a two-thirds vote of qualified electors.

16 B. Under Section 1(e) of Article XIII C, "tax" means any "levy, charge, or exaction
17 of any kind by a local government, except the following: (1) A charge imposed for a specific benefit
18 conferred or privilege granted directly to the payor that is not provided to those not charged, and which
19 does not exceed the reasonable costs to the local government of conferring the benefit or granting the
20 privilege. (2) A charge imposed for a specific government service or product provided directly to the
21 payor that is not provided to those not charged, and which does not exceed the reasonable costs to the
22 local government of providing the service or product. (3) A charge imposed for the reasonable
23 regulatory costs to a local government for issuing licenses and permits, performing investigations,
24 inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and
25 adjudication thereof. (4) A charge imposed for entrance to or use of local government property, or the
26 purchase, rental, or lease of local government property. (5) A fine, penalty, or other monetary charge
27 imposed by the judicial branch of government or a local government, as a result of a violation of law.
28 (6) A charge imposed as a condition of property development. (7) Assessments and property-related

1 fees imposed in accordance with the provisions of Article XIII D. The government bears the burden
2 of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the
3 amount is no more than necessary to cover the reasonable costs of the governmental activity, and that
4 the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the
5 payor's burdens on, or benefits received from, the governmental activity."

6 C. Under Section 2 of Article XIII C, "(a) All taxes imposed by any local
7 government shall be deemed to be either general taxes or special taxes. Special purpose districts or
8 agencies, including school districts, shall have no power to levy general taxes. (b) No local government
9 may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate
10 and approved by a majority vote. A general tax shall not be deemed to have been increased if it is
11 imposed at a rate not higher than the maximum rate so approved. The election required by this
12 subdivision shall be consolidated with a regularly scheduled general election for members of the
13 governing body of the local government, except in cases of emergency declared by a unanimous vote
14 of the governing body. (c) Any general tax imposed, extended, or increased, without voter approval,
15 by any local government on or after January 1, 1995, and prior to the effective date of this article, shall
16 continue to be imposed only if approved by a majority vote of the voters voting in an election on the
17 issue of the imposition, which election shall be held within two years of the effective date of this article
18 and in compliance with subdivision (b). (d) No local government may impose, extend, or increase any
19 special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote.
20 A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the
21 maximum rate so approved."

22 D. Section 4 of Article XIII D is titled, "Procedures and Requirements for All
23 Assessments." Section 4(a) of Article XIII D provides: "An agency which proposes to levy an
24 assessment shall identify all parcels which will have a special benefit conferred upon them and upon
25 which an assessment will be imposed. The proportionate special benefit derived by each identified
26 parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the
27 maintenance and operation expenses of a public improvement, or the cost of the property related service
28 being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of

1 the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an
2 agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within
3 a district that are owned or used by any agency, the State of California or the United States shall not be
4 exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those
5 publicly owned parcels in fact receive no special benefit.” Section 4(b) of Article XIII D provides: “All
6 assessments shall be supported by a detailed engineer’s report prepared by a registered professional
7 engineer certified by the State of California.” Section 4(f) of Article XIII D provides: “In any legal
8 action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that
9 the property or properties in question receive a special benefit over and above the benefits conferred on
10 the public at large and that the amount of any contested assessment is proportional to, and no greater
11 than, the benefits conferred on the property or properties in question.”

12 E. Section 5 of Proposition 218 states as follows: “The provisions of this act shall
13 be liberally construed to effectuate its purposes of limiting local government revenue and enhancing
14 taxpayer consent.”

15 6. Plaintiff is informed and believes and on that basis alleges:

16 A. None of the levies approved by the 2015 PBID Resolution constitutes an
17 “assessment” within the meaning of Section 2(b) of Article XIII D.

18 B. None of the levies approved by the 2015 PBID Resolution was intended by
19 Defendant CITY OF SAN DIEGO, at the time of the Resolution’s approval, to constitute an
20 “assessment” within the meaning of Section 2(b) of Article XIII D.

21 C. None of the levies approved by the 2015 PBID Resolution constitutes a “fee” or
22 “charge” within the meaning of Section 2(e) of Article XIII D.

23 D. None of the levies approved by the 2015 PBID Resolution was intended by
24 Defendant CITY OF SAN DIEGO, at the time of the Resolution’s approval, to constitute a “fee” or
25 “charge” within the meaning of Section 2(e) of Article XIII D.

26 E. None of the monies collected pursuant to the 2015 PBID Resolution may be used
27 to pay for a “property-related service” within the meaning of Section 2(h) of Article XIII D.
28

1 F. None of the monies collected pursuant to the 2015 PBID Resolution was intended
2 by Defendant CITY OF SAN DIEGO, at the time of the Resolution's approval, to be used to pay for
3 a "property-related service" within the meaning of Section 2(h) of Article XIII D.

4 G. None of the levies approved by the 2015 MAD Resolutions constitutes an
5 "assessment" within the meaning of Section 2(b) of Article XIII D.

6 H. None of the levies approved by the 2015 MAD Resolutions was intended by
7 Defendant CITY OF SAN DIEGO, at the time of the Resolutions' approval, to constitute an
8 "assessment" within the meaning of Section 2(b) of Article XIII D.

9 I. None of the levies approved by the 2015 MAD Resolutions constitutes a "fee"
10 or "charge" within the meaning of Section 2(e) of Article XIII D.

11 J. None of the levies approved by the 2015 MAD Resolutions was intended by
12 Defendant CITY OF SAN DIEGO, at the time of the Resolutions' approval, to constitute a "fee" or
13 "charge" within the meaning of Section 2(e) of Article XIII D.

14 K. None of the monies collected pursuant to the 2015 MAD Resolutions may be
15 used to pay for a "property-related service" within the meaning of Section 2(h) of Article XIII D.

16 L. None of the monies collected pursuant to the 2015 MAD Resolutions was
17 intended by Defendant CITY OF SAN DIEGO, at the time of the Resolutions' approval, to be used to
18 pay for a "property-related service" within the meaning of Section 2(h) of Article XIII D.

19 M. No portion of the 2015 PBID Engineer's Report separates and quantifies the
20 general and special benefits to be provided by the PBID during Fiscal Year 2015.

21 N. No provision in Defendant CITY OF SAN DIEGO's contract with the engineer
22 who prepared the 2015 PBID Engineer's Report required the engineer to separate and quantify the
23 general and special benefits to be provided by the PBID during Fiscal Year 2015.

24 O. Prior to the 2015 PBID Resolution's approval, Defendants had not prepared any
25 "writing" as defined by Evidence Code Section 250 that separates and quantifies the general and special
26 benefits to be provided by the PBID during Fiscal Year 2015.

27 P. No portion of the 2015 MAD Engineer's Reports separates and quantifies the
28 general and special benefits to be provided by the MADs during Fiscal Year 2015.

1 Q. No provision in Defendant CITY OF SAN DIEGO's contract with the engineers
2 who prepared the 2015 MAD Engineer's Reports required the engineers to separate and quantify the
3 general and special benefits to be provided by the MADs during Fiscal Year 2015.

4 R. Prior to the 2015 MAD Resolutions' approval, Defendants had not prepared any
5 "writing" as defined by Evidence Code Section 250 that separates and quantifies the general and special
6 benefits to be provided by the MADs during Fiscal Year 2015.

7 S. The amount of money to be collected pursuant to the 2015 PBID Resolution is
8 not sufficient to pay for all the special benefits to be provided by the PBID during Fiscal Year 2015.
9 A portion of the money necessary to pay for the special benefits is coming from funding sources of
10 Defendant CITY OF SAN DIEGO that (i) were not authorized to be levied and collected pursuant to
11 the 2015 PBID Resolution and (ii) could lawfully be spent on services or improvements other than the
12 special benefits to be provided by the PBID during Fiscal Year 2015.

13 7. Fundamentally, this is a lawsuit about voters' rights. Propositions 13, 218, and 26 are
14 voter-approved initiatives that amend the California Constitution and aimed at the right to vote on
15 measures designed to increase government revenues. Proposition 218, which is central to this dispute,
16 is officially known as the "Right to Vote on Taxes Act." The statement of purpose for Proposition 218
17 included the following language: "Proposition 13 was intended to provide effective tax relief and to
18 require voter approval of tax increases."

19 **Notice Requirements and Time Limitations**

20 8. This proceeding is being commenced not more than 30 days after the date on which the
21 2015 PBID Resolution and the 2015 MAD Resolutions were approved by Defendants.

22 **Jurisdiction and Exhaustion of Administrative Remedies**

23 9. Plaintiff seeks review by and relief from this Court under Code of Civil Procedure
24 Sections 1060 *et seq.* and 1084 *et seq.*, as applicable, among other provisions of law.

25 10. Defendants did not hold a public hearing or publish any notice of public hearing on the
26 2015 PBID Resolution.

27 11. Petitioner submitted a written opposition prior to the adoption of the 2015 PBID
28 Resolution.

1 12. Petitioner submitted a written opposition prior to the adoption of the 2015 MAD
2 Resolutions.

3 13. The other allegations in this pleading notwithstanding, Defendant COUNTY OF SAN
4 DIEGO did not approve the 2015 PBID Resolution or 2015 MAD Resolutions but will be collecting
5 the taxes levied thereunder on behalf of and remitting them to Defendant CITY OF SAN DIEGO.
6 Defendant COUNTY OF SAN DIEGO is therefore a willing, indispensable instrumentality of
7 Defendant CITY OF SAN DIEGO in its unconstitutional scheme to collect taxes without the required
8 vote of the electorate.

9 14. Plaintiff has no plain, speedy, adequate remedy in the ordinary course of law, since its
10 members and others will suffer irreparable harm as a result of Defendants' violations of the California
11 Constitution and other laws. Defendants' approval of the 2015 PBID Resolution and the 2015 MAD
12 Resolutions also rests on the failure to satisfy a clear, present, ministerial duty to act (or in some cases
13 to refrain from acting) in accordance with those laws. Even when Defendants are permitted or required
14 by law to exercise their discretion in acting (or refraining from acting) under those laws, they remain
15 under a clear, present, ministerial duty to exercise their discretion within the limits of and in a manner
16 consistent with those laws. Defendants have had and continue to have the capacity and ability to
17 approve the 2015 PBID Resolution and the 2015 MAD Resolutions within the limits of and in a manner
18 consistent with those laws, but Defendants have failed and refuse to do so and have exercised their
19 discretion beyond the limits of and in a manner that is not consistent with those laws.

20 15. Plaintiff has a beneficial right and interest in Defendants' fulfillment of all their legal
21 duties, as alleged in this pleading.

22 A. Plaintiff has members who are registered voters who reside in the City of San Diego and were
23 denied the opportunity to vote at a general or special election on any of the challenged taxes. Revenue-
24 generating schemes are of interest to Plaintiff's because, among other reasons:

25 i. Some members are concerned about how Defendant CITY OF SAN
26 DIEGO goes about taxing and spending. Some members are concerned that tax schemes like those
27 being challenged in this lawsuit cause voters who have the tax attached to their real-property bill to be
28 more reluctant to vote in favor of revenue-raising measures that would benefit a substantial majority

1 of the residents of the City of San Diego or would otherwise be favored by a sufficient majority of
2 voters to have such measures take effect. Some members are concerned about the gradual erosion of
3 constitutional protections and believe that the public should be vigilant in taking a zero-tolerance
4 approach to any actions by local government that could contribute even slightly to such an erosion.

5 ii. Registered voters have interests in government revenue-generating
6 schemes even if they are not the ones directly paying the tax, assessment, charge or fee. For example,
7 the City of San Diego electorate has defeated attempts to increase the local transient occupancy tax even
8 though the tax is imposed only on hotel guests and not on voters (except to the extent they book a hotel
9 room). The concern of those voting against the increase included but was not limited to issues such as
10 all taxes being passed on to consumers, other tourism-related businesses being effected by an increased
11 cost for tourist accommodations, and how the money would be used.

12 iii. Plaintiff's position in this lawsuit seeks to defend the California
13 Constitution and the democratic process. Only a small percentage of registered voters own property in
14 the PBID and MAD areas. If the PBID and MAD programs are as beneficial as Defendants claim them
15 to be, then it should not be difficult to convince the electorate to vote in favor of the PBID and MAD
16 taxes. As the system is currently operating, however, only a small percentage of voters has a say in this
17 approach to raising local revenue and the impact it has not only on which neighborhoods get certain
18 services but also on how Defendant CITY OF SAN DIEGO's general fund will be impacted, the
19 increased cost on housing, the overall business climate, and other broader questions that impact the
20 residents and governance of Defendant CITY OF SAN DIEGO.

21 iv. An increase in the amount of an annual property-tax bill that owners of
22 real property who rent their properties must pay will have a tendency to drive up the overall rental price
23 of the properties because increased costs of owning real property within a given market area typically
24 result in increased costs of renting real property within that market area.

25 v. The levies and collections approved by the 2015 PBID Resolution and
26 prior resolutions for PBID levies and collections have caused the rental price for some residential
27 properties within the PBID to increase more than they would have increased in the absence of the levies
28 and collections.

1 vi. The levies and collections approved by the 2015 PBID Resolution and
2 prior resolutions for PBID levies and collections have caused the rental price for some non-residential
3 properties within the PBID to increase more than they would have increased in the absence of the levies
4 and collections.

5 vii. None of the levies and collections approved by the 2015 PBID Resolution
6 and prior resolutions for PBID levies and collections has caused the rental price for residential
7 properties within the PBID to decrease more than they would have decreased in the absence of the levies
8 and collections.

9 viii. None of the levies and collections approved by the 2015 PBID Resolution
10 and prior resolutions for PBID levies and collections has caused the rental price for non-residential
11 properties within the PBID to decrease more than they would have decreased in the absence of the levies
12 and collections.

13 ix. The levies and collections approved by the 2015 MAD Resolutions and
14 prior resolutions for MAD levies and collections have caused the rental price for some residential
15 properties within the MADs to increase more than they would have increased in the absence of the
16 levies and collections.

17 x. The levies and collections approved by the 2015 MAD Resolutions and
18 prior resolutions for MAD levies and collections have caused the rental price for some non-residential
19 properties within the MADs to increase more than they would have increased in the absence of the
20 levies and collections.

21 xi. None of the levies and collections approved by the 2015 MAD
22 Resolutions and prior resolutions for MAD levies and collections has caused the rental price for
23 residential properties within the MADs to decrease more than they would have decreased in the absence
24 of the levies and collections.

25 xii. None of the levies and collections approved by the 2015 MAD
26 Resolutions and prior resolutions for MAD levies and collections has caused the rental price for non-
27 residential properties within the MAD to decrease more than they would have decreased in the absence
28 of the levies and collections.

1 B. Plaintiff has at least one member who has been assessed or whose property has
2 been assessed and in the absence of a favorable ruling in this lawsuit will have to pay the taxes that are
3 the subject of the 2015 PBID Resolution.

4 C. Plaintiff has at least one member who has been assessed for one or more of the
5 taxes that are the subject of the 2015 MAD Resolutions or who or is refraining from purchasing real
6 property located within one of the MADs in substantial part because of the increased ownership cost
7 posed by the taxes that are the subject of the 2015 MAD Resolutions.

8 D. Plaintiff has members who pay taxes to Defendant CITY OF SAN DIEGO. As
9 general-fund money is spent to provide services and improvements to the PBID and MADs in an
10 amount that exceeds the value of the general benefits of those services and improvements, such money
11 is not available to pay for services and improvements other than those being provided to the PBID and
12 MADs. The resolutions authorize the Chief Financial Officer of Defendant CITY OF SAN DIEGO to
13 expend funds from the General Fund and Gas Tax Funds. In addition, many of the MADs are managed
14 by Defendant CITY OF SAN DIEGO, thereby using its taxpayer resources.

15 E. Plaintiff and its members have concerns about affordable housing, including but
16 not limited to the following:

17 i. Defendant CITY OF SAN DIEGO has declared an affordable-housing
18 state of emergency at least once during each fiscal year since the PBID was renewed and a majority of
19 the MADs were created. The declaration has usually been done at least once per month since the PBID
20 was renewed and a majority of the MADs were created, has been made at least once this lawsuit was
21 initiated, and has even been made or will have been made within three months of this amended
22 pleading's filing.

23 ii. Policy HE-H-4 of Defendant CITY OF SAN DIEGO's Housing Element
24 states that Defendant will do the following (among other things) as part of its efforts to ensure that there
25 is an adequate supply of affordable housing within Defendant's geographic jurisdiction: "Consider the
26 impact on housing affordability of all proposed regulatory changes, fee changes and policy changes, and
27 consider means of mitigating adverse impacts which are identified."
28

1 iii. The Housing Element recognizes that property-related fees are included
2 when considering housing affordability.

3 iv. At least one of Plaintiff's members has had difficulty finding affordable
4 housing within Defendant CITY OF SAN DIEGO's geographic jurisdiction and cannot afford to live
5 in locations where the PBID and MAD taxes are imposed due in large part to higher housing prices
6 there.

7 v. The overall rental prices that the owners of residential rental property in
8 the PBID and MADs charge to their tenants are higher than they would be in the absence of the levies
9 and collections that are the subject of the 2015 PBID Resolution and the 2015 MAD Resolutions and
10 prior resolutions approving levies and collections for the PBID and MADs.

11 F. Plaintiff has at least one member who legally or beneficially owns residential
12 rental units within the geographic jurisdiction of Defendant CITY OF SAN DIEGO. This member
13 would like to purchase residential rental units within the PBID and MADs but avoids doing so due to
14 increased ownership costs attributable to the PBID and MAD levies and collections that are the subject
15 of this lawsuit. This member did not get an opportunity to vote or protest the PBID or MAD levies and
16 collections.

17 G. Plaintiff has at least one member who legally or beneficially owns a business in
18 Defendant CITY OF SAN DIEGO's geographic jurisdiction who is subjected to more than one tax
19 imposed by Defendant. For example, if you own a "hotel" (as defined by the City of San Diego) in
20 downtown San Diego, the business is liable for the PBID, has to collect a transient occupancy tax, could
21 have to pay the forthcoming Convention Center tax, and must pay the tourism marketing district tax in
22 addition to other taxes, assessments and fees, such as business taxes and sales tax.

23 H. Plaintiff has an interest in land use and sustainable development. Taxes, levies,
24 and fees have an impact on land use. Transit-oriented development is favored by Plaintiff. The PBID,
25 in particular, is located in a transit hub. Increasing the cost of housing and the cost to businesses like
26 those providing groceries and other needs for residents in the PBID through the imposition of additional
27 taxes, assessments, and other levies impedes the land-use goals that Plaintiff advocates for and even
28 impedes land-use goals that Defendant CITY OF SAN DIEGO has set for itself.

1 **FIRST CAUSE OF ACTION:**
2 **Violation of the California Constitution with 2015 PBID Resolution**
3 **(Against All Defendants)**

4 16. Paragraphs 1 through 15 are fully incorporated into this paragraph.

5 17. The levies and collections authorized by the 2015 PBID Resolution constitute a "tax"
6 within the meaning of Section 1(e) of Article XIII C of the California Constitution.

7 18. The levies and collections authorized by the 2015 PBID Resolution do not qualify for
8 any of the exceptions to the "tax" definition under Section 1(e) of Article XIII C of the California
9 Constitution. In particular, the levies and collections did not comply with the provisions of Article XIII
10 D of the California Constitution.

11 19. There has been no vote of the electorate of the City of San Diego on the levies and
12 collections authorized by the 2015 PBID Resolution, in violation of the California Constitution.

13 20. Plaintiff and its members have been harmed insofar as the "tax" authorized by the 2015
14 PBID Resolution violates the California Constitution's requirement that it be approved by a vote of the
15 electorate. None of Plaintiff's members has been given the opportunity to vote on the "tax" authorized
16 by the 2015 PBID Resolution.

17 **SECOND CAUSE OF ACTION:**
18 **Declaratory Relief on 2015 PBID Resolution**
19 **(Against All Defendants)**

20 21. Paragraphs 1 through 20 are fully incorporated into this paragraph.

21 22. Plaintiff desires a judicial determination and declaration as to whether Defendants' levy
22 and collection of any tax for the PBID for Fiscal Year 2015 is lawful and whether any collected taxes
23 must be refunded to those who paid them (with lawful interest).

24 23. Plaintiff is informed and believes and on that basis alleges that an actual controversy
25 exists between Plaintiff, on the one hand, and Defendants, on the other hand, concerning their respective
26 rights and duties under the California Constitution and the California Streets and Highways Code. In
27 particular, and as an alternative to the First Cause of Action, Plaintiff contends that there is no
28 resolution authorizing any tax levy or collection for the PBID for Fiscal Year 2015, that such a
resolution is a legal prerequisite to the lawful levy and collection of any tax for the PBID for Fiscal Year
2015, and that Defendants nevertheless intend to require property owners to pay the tax as part of their

1 other *ad valorem* property-tax bills for Fiscal Year 2015; whereas Plaintiff is informed and believes and
2 on that basis alleges that Defendants dispute its contentions.

3 **THIRD CAUSE OF ACTION:**
4 **Violation of the California Constitution with 2015 MAD Resolutions**
5 **(Against All Defendants)**

6 24. Paragraphs 1 through 23 are fully incorporated into this paragraph.

7 25. The levies and collections authorized by the 2015 MAD Resolutions constitute a “tax”
8 within the meaning of Section 1(e) of Article XIII C of the California Constitution.

9 26. The levies and collections authorized by the 2015 MAD Resolutions do not qualify for
10 any of the exceptions to the “tax” definition under Section 1(e) of Article XIII C of the California
11 Constitution. In particular, the levies and collections did not comply with the provisions of Article XIII
12 D of the California Constitution.

13 27. There has been no vote of the electorate of the City of San Diego on the levies and
14 collections authorized by the 2015 MAD Resolutions, in violation of the California Constitution.

15 28. Plaintiff and its members have been harmed insofar as the “tax” authorized by the 2015
16 MAD Resolutions violates the California Constitution’s requirement that it be approved by a vote of
17 the electorate. None of Plaintiff’s members has been given the opportunity to vote on the “tax”
18 authorized by the 2015 MAD Resolutions.

19 **Prayer**

20 FOR ALL THESE REASONS, Plaintiff respectfully prays for the following relief against
21 Defendants (and any and all other parties who may oppose Plaintiff in this proceeding):

22 A. *On the First Cause of Action:*

23 1. A judgment or other order determining or declaring that the 2015 PBID
24 Resolution violated the California Constitution and is therefore invalid;

25 2. A judgment or other order determining or declaring that the taxes authorized by
26 the 2015 PBID Resolution were not approved by the electorate, in violation of the California
27 Constitution, and are therefore invalid;

1 3. Injunctive relief prohibiting Defendants (and any and all persons acting at the
2 request of, in concert with, or for the benefit of one or more of them) from taking any action to levy or
3 collect any of the taxes authorized by the 2015 PBID Resolution;

4 4. Injunctive relief directing Defendants (and any and all persons acting at the
5 request of, in concert with, or for the benefit of one or more of them) to refund any and all taxes levied
6 and collected under the 2015 PBID Resolution to the persons who paid the taxes, plus any applicable
7 interest;

8 5. A writ of mandate directing Defendants to rescind the 2015 PBID Resolution and
9 directing Defendants to comply with all applicable provisions of law prior to re-levying the 2015 PBID
10 tax, along with any other mandamus relief that the law allows; and

11 6. Any and all other relief that may be authorized by law but is not explicitly or
12 specifically requested elsewhere in this Prayer.

13 B. *On the Second Cause of Action:*

14 1. A judgment or other order determining and declaring that Defendants' levy and
15 collection of any tax for the PBID for Fiscal Year 2015 is lawful and/or that any collected taxes must
16 be refunded to those who paid them (with lawful interest);

17 2. Preliminary and permanent injunctive relief directing Defendants (and any and
18 all persons acting at the request of, in concert with, or for the benefit of one or more of them) to refrain
19 from levying and collecting any tax for the PBID for Fiscal Year 2015; and

20 3. Any and all other relief that may be authorized by law but is not explicitly or
21 specifically requested elsewhere in this Prayer.

22 C. *On the Third Sixth Cause of Action:*

23 1. A judgment or other order determining or declaring that the 2015 MAD
24 Resolutions violated the California Constitution and are therefore invalid;

25 2. A judgment or other order determining or declaring that the taxes authorized by
26 the 2015 MAD Resolutions were not approved by the electorate, in violation of the California
27 Constitution, and are therefore invalid;

1 3. Injunctive relief prohibiting Defendants (and any and all persons acting at the
2 request of, in concert with, or for the benefit of one or more of them) from taking any action to levy or
3 collect any of the taxes authorized by the 2015 MAD Resolutions;

4 4. Injunctive relief directing Defendants (and any and all persons acting at the
5 request of, in concert with, or for the benefit of one or more of them) to refund any and all taxes levied
6 and collected under the 2015 MAD Resolutions to the persons who paid the taxes, plus any applicable
7 interest;

8 5. A writ of mandate directing Defendants to rescind the 2015 MAD Resolutions
9 and directing Defendants to comply with all applicable provisions of law prior to re-levying the 2015
10 MAD taxes, along with any other mandamus relief that the law allows; and

11 6. Any and all other relief that may be authorized by law but is not explicitly or
12 specifically requested elsewhere in this Prayer.

13 D. All legal fees and other expenses incurred in connection with this proceeding, including
14 but not limited to reasonable attorney fees as authorized by the Code of Civil Procedure.

15 E. Any and all further relief that this Court may deem appropriate.

16 Date: August 20, 2014.

Respectfully submitted,

BRIGGS LAW CORPORATION

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19 By:


Mekaela M. Gladden

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21 Attorneys for Plaintiff San Diegans for Open
22 Government
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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Diego

I have read the foregoing Complaint for Declaratory and Injunctive Relief Under the California Constitution and Other Laws and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a of San Diegans for

Open Government

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on August 20, 2014, at San Diego, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Pedro Quiroz, Jr. Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of State of California. I am over the age of 18 and not a party to the within action; my business address is,

On, 20, I served the foregoing document described as

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list: by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL I deposited such envelope in the mail at California. The envelope was mailed with postage thereon fully prepaid.

As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on, 20, at, California.

*(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on, 20, at, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I (Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

(By MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG) *(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

