

## NOTICE OF SIGNIFICANT EVENT

| Name of Bonds  | Governing Document   |
|--|--|
| \$31,940,000 Culver City Redevelopment Agency Tax Allocation Refunding Bonds, 1999 Series A (Culver City Redevelopment Project)  | Indenture, dated as of October 1, 1999, between the Culver City Redevelopment Agency and U.S. Bank, National Association |
| \$28,20,000 Culver City Redevelopment Agency Tax Allocation Bonds, 2002 Series A (Culver City Redevelopment Project)   | First Supplemental Indenture, dated as of April 1, 2002  |
| \$83,470,000 Culver City Redevelopment Agency Tax Allocation Refunding Bonds, 2004 Series A (Culver City Redevelopment Project)  | Second Supplemental Indenture, dated as of April 1, 2004   |
| \$17,315,000 Culver City Redevelopment Agency Tax Allocation Refunding Bonds, 2005 Series A (Culver City Redevelopment Project)  | Third Supplemental Indenture, dated as of November 1, 2005   |
| \$13,827,887.15 (Initial Principal Amount) Culver City Redevelopment Agency Tax Allocation Capital Appreciation Bonds, 2011 Series A (Culver City Redevelopment Project) | Fifth Supplemental Indenture, dated as of March 1, 2011  |
| \$33,585,000 Culver City Redevelopment Agency Taxable Tax Allocation Bonds, 2011 Series B (Culver City Redevelopment Project)  | Fifth Supplemental Indenture, dated as of March 1, 2011  |

### Introduction

The above-captioned bonds (the “Bonds”) were issued by the Culver City Redevelopment Agency (the “Redevelopment Agency”) pursuant to the Indenture, dated as October 1, 1999, as subsequently amended and supplemented (collectively, the “Indenture”). The Bonds are secured on a parity basis by a lien and charge upon Tax Revenues (as defined in the Indenture).

### Purpose of Notice

***Prior Disclosure Notices.*** This notice updates information in seven notices (collectively, the “Prior Disclosure Notices”) filed by the Successor Agency to the Culver City Redevelopment Agency (the “Successor Agency”):

- Notice of Significant Event dated December 27, 2013 (the “December 27, 2013 Notice”)
- Notice of Significant Event dated January 7, 2014 (the “January 7, 2014 Notice”)
- Notice of Significant Event dated February 10, 2014 (the “February 10, 2014 Notice”).
- Notice of Significant Event dated April 8, 2014 (the “April 8, 2014 Notice”).
- Notice of Significant Event dated June 6, 2014 (the “June 6, 2014 Notice”).
- Notice of Significant Event dated July 7, 2014 (the “July 7, 2014 Notice”)

- Notice of Significant Event dated October 29, 2014 (the “October 29, 2014 Notice”)

**December 27, 2013 Notice.** The December 27, 2013 Notice contained information about a dispute between the Successor Agency and the California Department of Finance (“DOF”) and the County of Los Angeles (the “County”) and a First Amended Petition for Writ of Mandate and Complaint for Declaration and Injunctive Relief (the “Petition”) filed by the Successor Agency in the Superior Court of the State of California, State of Sacramento; the Petition is attached to the December 27, 2013 Notice.

**January 7, 2014 Notice.** The January 7, 2014 Notice contains information about the Superior Court’s issuance of a temporary restraining order. The court’s order is attached to the January 7, 2014 Notice.

**February 10, 2014 Notice.** The February 10, 2014 Notice contains information about the Superior Court’s ruling on the Successor Agency’s petition for a preliminary injunction. The ruling is attached to the February 10, 2014 Notice.

**April 8, 2014 Notice.** The April 8, 2014 Notice contains information about (i) a Cross-Petition and a Cross-Complaint to the Successor Agency’s Petition filed by the DOF and (ii) a March 28, 2014 letter from DOF informing the Successor Agency that it would make another \$11.128 million adjustment to the Successor Agency’s ROPS 14-15A.

**June 6, 2014 Notice.** The June 6, 2014 Notice contains information about (i) a Meet and Confer with DOF about ROPS 14-15A and the DOF’s final determination letter, (ii) the Successor Agency’s filing of an Ex Parte Application for, among other things, (A) leave to file a supplemental pleading to the First Amended Petition and Complaint, (B) a temporary restraining order and (C) an alternative writ of mandate, (iii) the temporary restraining order granted by the Superior Court, and (iv) the June 2, 2014 distribution from the RPTTF.

**July 7, 2014 Notice.** The July 7, 2014 Notice contained new information about the ongoing litigation among the City of Culver City (the “City”), the Successor Agency, DOF and the County. It also contained information about moneys received by the Successor Agency related to ROPS 13-14B.

**October 29, 2014 Notice.** The October 29, 2014 Notice described the Superior Court’s ruling on the Successor Agency’s Petition and Supplemental Petition and the DOF’s Cross-Petition and Motion to Strike. A copy of the Ruling was attached to the October 29, 2014 Notice as Exhibit 1.

Capitalized terms used in this Notice but not defined in this Notice have the meaning given them in the Prior Notices.

## **Update**

**Litigation Update.** On October 31, 2014, the Superior Court issued its Order (a copy of which is attached as Exhibit 1) and its Writ of Mandate (the “Writ,” a copy of which is attached as Exhibit 2) and its Judgment was filed (a copy of which is attached as Exhibit 3). The Writ includes an order to distribute to the Successor Agency the \$10,473,745 sequestered by the County pursuant to the preliminary injunction. The \$10,473,745 represented the residual

RPTTF account balance after administration costs, pass-through distributions, and DOF approved enforceable obligation distributions were made.

Subsequently, on October 31, 2014, the DOF filed a Notice of Appeal (a copy of which is attached as Exhibit 4) and the County did not transfer the \$10,473,745 to the Successor Agency on the theory that the appeal acted as a stay of the Writ. As a result, the Successor Agency did not receive the disputed funds in time to use them to pay the November 1, 2014 debt service on the Bonds.

In response, on November 1, 2014, the Successor Agency served notice that it would seek on an ex parte basis: (i) an order compelling immediate compliance with and enforcement of the Writ, (ii) an order imposing penalties and sanctions for noncompliance with the Writ and (iii) an order to show cause re contempt for failure to comply with the Writ.

On November 3, 2014, the Superior Court denied the Successor Agency's request without explanation (a copy of which is attached as Exhibit 5). The Successor Agency was nevertheless able to pay debt service on the Bonds in full without reducing the balance in the Reserve Account to below the Reserve Account Requirement because the Trustee informed the Successor Agency that the amount held in the Reserve Account that was in excess of the Reserve Account Requirement was sufficient to make up the shortfall in property tax revenues (\$1,731,000) needed to pay debt service on the Bonds on November 1, 2014.

**Next Steps.** The Successor Agency expects to vigorously prosecute the DOF appeal.

The Successor Agency has submitted its Recognized Obligation Payment Schedule 14-15B ("ROPS 14-15B") to the County and DOF. The ROPS 14-15B includes, among other things:

- the amount of the May 1, 2015 debt service payment on the Bonds (\$3,922,220)
- a reserve for the November 1, 2015 debt service payment (\$15,882,220).

The statutory deadline for DOF to issue a determination letter is November 17, 2014. The Successor Agency cannot predict whether the DOF and/or the County will impose another prior period adjustment.

### **Further Information**

The Successor Agency would like to be responsive to requests for further information while providing the same information to all investors. Accordingly, please submit any requests for further information to Jeff Muir, Chief Finance Officer, by email: [jeff.muir@culvercity.org](mailto:jeff.muir@culvercity.org). The City will work to prepare timely Supplemental Information Releases and post them on the Electronic Municipal Market Access website hosted by the Municipal Securities Rulemaking Board. Please do not contact Mr. Muir by telephone.

*This information is subject to change. This notice speaks only of its date and does not imply that there has been no change in any other information relating to the Bonds.*

Dated: November 6, 2014

**EXHIBIT 1**

**Order**

1 KANE, BALLMER & BERKMAN  
Murray O. Kane, Bar No. 48082, [mkane@kbblaw.com](mailto:mkane@kbblaw.com)  
2 Guillermo A. Frias, Bar No. 201800, [gfrias@kbblaw.com](mailto:gfrias@kbblaw.com)  
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*Exempt from Filing Fees per Govt. Code §6103*

6 Attorneys for Petitioner and Plaintiff  
7 CITY OF CULVER CITY, a municipal corporation; and  
8 CITY OF CULVER CITY in its capacity as  
9 SUCCESSOR AGENCY TO THE CULVER CITY  
REDEVELOPMENT AGENCY

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF SACRAMENTO - MAIN COURTHOUSE**

12  
13 CITY OF CULVER CITY, a municipal corporation;  
14 and CITY OF CULVER CITY in its capacity as  
15 SUCCESSOR AGENCY TO THE CULVER CITY  
REDEVELOPMENT AGENCY,

16 Petitioner and Plaintiff,

17 vs.

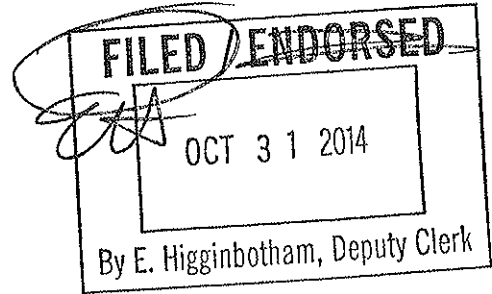
18 MICHAEL COHEN, in his official capacity as Director of  
19 the State of California Department of Finance; and  
20 WENDY WATANABE, in her official capacity as the  
Auditor-Controller of the County of Los Angeles; and  
DOES 1-50, inclusive,

21 Respondents and Defendants.

22 COUNTY OF LOS ANGELES, a taxing entity; et al.,

23  
24 Real Parties in Interest

25 AND RELATED CROSS-ACTION  
26  
27  
28



CASE NO. 34-2013-80001719

Assigned to Dept. 24  
Hon. Shelleyanne W. L. Chang

~~PROPOSED~~ ORDER

**Hearing Info:**

Date: October 24, 2014  
Time: 10:00 a.m.  
Dept.: 24  
Judge: Hon. Shelleyanne W. L. Chang

1 Upon consideration of all evidence admitted by the Court at the October 24, 2014 hearing on  
2 the merits of the above-captioned action, and of all written and oral argument presented by counsel,  
3 this Court hereby ORDERS that:

4 A. The First Amended Petition for Writ of Mandate and Supplemental Petition for Writ of  
5 Mandate is GRANTED for the reasons set forth the Court's Ruling on Submitted Matter issued  
6 October 27, 2014, which is attached hereto as Exhibit A, is hereby incorporated herein by reference.

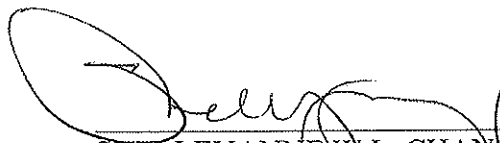

7 B. The First Amended Complaint for Declaratory and Injunctive Relief and Supplemental  
8 Complaint for Declaratory and Injunctive Relief is DENIED for the reasons set forth in the Court's  
9 Ruling on Submitted Matter issued October 27, 2014, which is attached hereto as Exhibit A, is hereby  
10 incorporated herein by reference.

11 C. DOF's Cross-Petition DENIED without prejudice for the reasons set forth in the  
12 Court's Ruling on Submitted Matter issued October 27, 2014, which is attached hereto as Exhibit A, is  
13 hereby incorporated herein by reference.

14 D. DOF's request for a stay of the Court's decision is DENIED for the reasons set forth in  
15 the Court's Ruling on Submitted Matter issued October 27, 2014, which is attached hereto as Exhibit  
16 A, is hereby incorporated herein by reference.

17  
18 IT IS SO ORDERED.

19  
20 Dated 10/31, 2014

21   
22 SHELLEYANNE W.L. CHANG  
23 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA  
24 COUNTY OF SACRAMENTO  
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*Approved as to form:*

Dated: October \_\_, 2014

OFFICE OF THE ATTORNEY GENERAL

By: \_\_\_\_\_

Sylvia A. Cates  
Deputy Attorney General  
Attorneys for Respondent Michael Cohen, in his  
capacity as Director of the California Department  
of Finance

*Approved as to form:*

Dated: October \_\_, 2014

LOS ANGELES COUNTY COUNSEL'S OFFICE

By: \_\_\_\_\_

Sangkee Peter Lee  
Attorneys for Respondent John Naimo, in his  
official capacity as Los Angeles Auditor-  
Controller and Real Parties in Interest, County of  
Los Angeles, Los Angeles County Fire District,  
Los Angeles County Flood Control District, and  
County of Los Angeles Library Services

*Submitted by:*

Dated: October \_\_, 2014

**KANE, BALLMER & BERKMAN**

By: \_\_\_\_\_

Murray O. Kane  
Guillermo A. Frias  
Edward B. Kang  
Attorney for Plaintiffs CITY OF CULVER CITY,  
a general law city and as SUCCESSOR AGENCY  
to the CULVER CITY REDEVELOPMENT  
AGENCY

# EXHIBIT A



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

|  |                              |  |                 |
|--|------------------------------|--|-----------------|
| <b>DATE:</b>   | October 27, 2014             | <b>DEP. NO.:</b>   | 24              |
| <b>JUDGE:</b>  | HON. SHELLEYANNE W. L. CHANG | <b>CLERK:</b>  | E. HIGGINBOTHAM |
| <p><b>CITY OF CULVER CITY</b>, a municipal corporation, and <b>CITY OF CULVER CITY</b> in its capacity as <b>SUCCESSOR AGENCY TO THE CULVER CITY REDEVELOPMENT AGENCY</b>,<br/>Petitioners and Plaintiffs,</p> <p>v.</p> <p><b>MICHAEL COHEN</b>, in his official capacity as Director of the State of California Department of Finance; and <b>WENDY WATANABE</b>, in her official capacity as the Auditor-Controller of the County of Los Angeles; and <b>DOES 1-50</b>, inclusive,<br/>Respondents and Defendants.</p> <p><b>COUNTY OF LOS ANGELES</b>, et al.,<br/>Real Parties in Interest.</p> |                              | <p>Case No. 34-2013-80001719</p>   |                 |
| <p><b>MICHAEL COHEN</b>, in his official capacity as Director of the California Department of Finance,<br/>Cross-Petitioner and Cross-Plaintiff,</p> <p>v.</p> <p><b>CITY OF CULVER CITY</b>, a municipal corporation, and <b>CITY OF CULVER CITY</b> in its capacity as <b>SUCCESSOR AGENCY TO THE CULVER CITY REDEVELOPMENT AGENCY</b>,<br/>Cross-Respondents and Cross-Defendants,</p> <p><b>COUNTY OF LOS ANGELES</b>, et al.,<br/>Real Parties in Interest.</p>   |                              |  |                 |
| <p>Nature of Proceedings:</p>  |                              | <p><b>RULING ON SUBMITTED MATTER: PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF MANDATE; CROSS-PETITION FOR WRIT OF MANDATE AND CROSS-COMPLAINT; MOTION TO STRIKE</b></p> |                 |

The Court issued a tentative ruling on October 23, 2014 in which it granted the Petition and Supplemental Petition, denied the Cross-Petition and denied the Motion to Strike. The matter came on for hearing on October 24, 2014, with the parties represented by counsel as stated on the record. After considering the oral arguments of all parties, the Court took the matter under submission and issues its ruling as follows.

The Court's ruling addresses: (1) Petitioners' Petition for writ of mandate and complaint for declaratory and injunctive relief (Petition) and Supplemental petition for writ of mandate and complaint for declaratory and injunctive relief (Supplemental Petition) and (2) Respondent Department of Finance's (DOF) Cross-Petition and Cross Complaint (Cross-Petition), and (3) DOF's motion to strike portions of Petitioners' Opening Brief and Declaration of Jeff Muir.

Petitioners, the City of Culver City (City) and the Successor Agency to the City's former redevelopment agency (Successor Agency) seek mandate relief against Respondents DOF and the Los Angeles County Auditor-Controller (Auditor-Controller). Petitioners seek a writ of mandate directing Respondents to set aside their decision withholding \$11,127,859 from the Successor Agency's January 1, 2014 distribution of monies from the Redevelopment Property Tax Trust Fund (RPTTF) for the ROPS 13-14B period. The Supplemental Petition seeks the same relief as to DOF's approval of a \$11,257,859 deduction from the Successor Agency's June 2, 2014 RPTTF distribution for the ROPS 14-15A period. The Petition and Supplemental Petition are **GRANTED**.

DOF has filed a Cross-Petition against Petitioners in this proceeding. DOF seeks a writ of mandate against the City, ordering "reversal" of a \$12.5 million transfer to the City from the RDA. DOF also seeks a writ of mandate directing the Successor Agency "to take action to recover the \$12.5 million cash assets from the City." The Cross-Petition also seeks related declaratory and injunctive relief. **The Cross-Petition is DENIED.**

## I. BACKGROUND

In June 2011, AB XI 26 became effective, which provided for the dissolution of all redevelopment agencies (RDA) and wind-up of their affairs.

In *California Redevelopment Assoc. v. Matosantos (CRA v. Matosantos)* (2011) 53 Cal.4th 231, the California Supreme Court upheld the constitutionality of AB 26 in December, 2011. The law's provisions went into full effect on February 1, 2012. (*Id.* at p. 276.) In June of 2012, the Legislature adopted AB 1484 to modify and "clean up" the provisions in AB 26. Together, AB 26 and AB 1484 constitute the "Dissolution Law."

The Dissolution Law is divided into two parts: Part 1.8, the "freeze" component, and Part 1.85, the dissolution component. The "freeze" component immediately froze RDA assets upon AB 26's enactment, including monies in the RDAs' accounts, prohibited their transfer, and prohibited RDAs from entering new business. (Health & Saf. Code, § 34163.) The intent of the "freeze" was to allow assets and revenues that were not needed for existing enforceable obligations to be used by local governments to fund core

governmental services, including police, fire protection services, and schools. (*Id.*, § 34167, subd. (a); *CRA v. Matosantos*, *supra*, 53 Cal.4<sup>th</sup> at p. 250.)

Part 1.85, the dissolution component, establishes "successor agencies" to wind down the affairs of the RDAs. (Health & Saf. Code, §§ 34173, 34177.) Successor agencies must submit to DOF for approval Recognized Obligations Payment Schedules (ROPS) listing the putative enforceable obligations of the RDA, for which the Successor Agency must make payment within the forthcoming six months. (Health & Saf. Code, §§ 34177, 34179(h), 34180.)

If DOF determines that a ROPS item is an enforceable obligation, a successor agency may receive monies from the county auditor-controller to pay for those items. (Health & Saf. Code, §§ 34182, 34183.) Additionally, a successor agency may not make payment on an item unless DOF determines that it is an enforceable obligation. After DOF's determination, each county-auditor controller disburses monies from the RPTTF twice a year to successor agencies to enable them to pay enforceable obligations. (*Id.* § 34183.)

On February 1, 2012, all RDAs dissolved and the successor agencies took their place.

**a. Prior Litigation: *Culver City I***

On or about December 2011, during the "freeze period," the RDA reimbursed the City approximately \$12.5 million that the City temporarily loaned to the RDA. Petitioners aver that the RDA needed this loan from the City to make a bond debt service payment. (See, *City of Culver City, et al. v. Matosantos, et al.* Sacramento Superior Court Case No. 2013-80001446 (*Culver City I*) 2:7-15, Petitioners' Exhibit (Exh.) 43.)

After the RDA dissolved, the City became Successor Agency.

In August 2012, the Successor Agency submitted its ROPS III for the period of January 1, 2013 through June 30, 2013. The ROPS III submission stated that the Successor Agency must pay \$17,923,063 for enforceable obligations for this six-month period. (*Culver City I*, 3:1-3.)

The Auditor-Controller notified DOF that \$11,559,393<sup>1</sup> should be reduced from Petitioners' ROPS III distribution. This was because the Auditor-Controller made a "Prior Period Adjustment" pursuant to Health and Safety Code section 34186. It reviewed the Successor Agency's earlier ROPS I submission and compared the Successor Agency's estimated versus actual payments for enforceable obligations listed in the ROPS I submission. (*Culver City I*, 5:22-24.) The Auditor-Controller determined that the Successor Agency was actually paid \$12.5 million in RPTTF monies in a previous ROPS cycle, but did not list the City Loan on its prior ROPS submission (and did not use

<sup>1</sup> The Auditor-Controller's reduction of approximately \$11.5 million is based on (1) the \$12.5 million payment and (2) a determination that the Successor Agency was entitled to some additional monies for the January 2012 to June 2012 ROPS period. (*Culver City I*, 8:26-28.)

this money to pay an enforceable obligation). (See *Id.* 7:14-15.) After DOF agreed, the Auditor-Controller withheld \$11,559,393, and Petitioners received only \$3,106,429.37 for the ROPS III period. (*Id.* 3:11-20.)

Petitioners filed a petition for writ of mandate contesting this reduction of its ROPS III distribution in *Culver City I*. The Court denied the petition and held that the Auditor-Controller properly made the Prior Period Adjustment pursuant to Section 34186. (*Culver City I*, 8:7.)

#### b. The Instant Litigation

At issue in here are Respondents' decisions to reduce the RPTTF payable to the Successor Agency by the approximate amount of the ROPS III reduction in subsequent ROPS cycles (here, ROPS 13-14B<sup>2</sup> and ROPS 14-15A) until the Successor Agency recovers that amount from the City.

As to the ROPS 13-14B withholding, the Auditor-Controller recommended the deduction with DOF's approval; as to ROPS 14-15A, DOF made the withholding.

#### i. ROPS 13-14B Withholding

The Successor Agency submitted ROPS 13-14B for the January 1, 2014 through June 30, 2014 period. The ROPS 13-14B submission listed approximately \$21 million in enforceable obligations. (Declaration of Jeff Muir (Muir Decl.), ¶13, Exhs. 18, 26.) Of this amount, the Successor Agency averred that \$10,082,278 was required for "reserves" for the November 1, 2014 bond payment, and approximately \$4.5 million for bond payments due in May 1, 2014. (Muir Decl. ¶13, Exh. 18.)

In October 2013, the Auditor-Controller recommended to DOF that \$11,127,859 should be withheld from the ROPS 13-14B distribution. (Muir Decl., ¶14; Exh. 20.) This is because Auditor-Controller had conducted another "Prior Period Adjustment," reconciling the Successor Agency's actual versus estimated expenditures of RPTTF during the ROPS III period.<sup>3</sup>

DOF initially disagreed with the Auditor-Controller's recommendation, but then reversed itself. (Exh. 24.) On December 23, 2013, DOF issued a final determination letter for Petitioners' ROPS 13-14B submission, and ordered that that the ROPS distribution be reduced by \$11,127,859, in accordance with the Auditor-Controller's recommended "Prior Period Adjustment." (Exh. 25.)

<sup>2</sup> The ROPS titles were revised from Roman numerals to titles that reflected the fiscal year and whether it was the first or second payment thereof.

<sup>3</sup> The Auditor-Controller conducts "Prior Period Adjustments" once each year, or every other ROPS cycle.

The basis for the Auditor-Controller's "Prior Period Adjustment" to the ROPS 13-14B distribution is that it "reported a ROPS III distribution of \$14,665,768." (Exh. 26.) Thus, the Successor Agency should have had \$11.4 million "available" to it during the ROPS III period, plus the \$3.1 million in RPTTF it received.

On December 27, 2013, Petitioners filed the instant action challenging the Auditor-Controllers' decision (and DOF's approval thereof) to reduce the RPTTF for the ROPS 13-14B distribution. Petitioner sought a temporary restraining order (TRO) to enjoin Respondents from withholding and failing to distribute the \$11.1 million or alternatively not distribute these monies to the taxing entities.

This Court granted the TRO pending a preliminary injunction hearing. (Exh. 37.) In January 2014, the Court (Hon. Eugene Balonon) denied Petitioners' request for a preliminary injunction, finding that Petitioners had not shown evidence of irreparable harm. (Exh. 35.) Specifically, the Court found that (1) Petitioners had money available to make the May 2014 bond payment, (2) the bond indenture did not require that the funds be deposited into the debt service funds account because Petitioners had not yet "received" the funds and thus, could not deposit them, and (3) the \$11.1 million amount was insufficient to cover the November payment, and Petitioner could still request and receive monies for the November payment in the next ROPS cycle. Because the Court found that Petitioners had failed to demonstrate irreparable harm, the Court did not address the merits of the parties' arguments. (Exh. 37, p. 5:23-26.)

## ii. ROPS 14-15A Withholding

The Successor Agency then submitted ROPS 14-15A for the period of July 1, 2014-December 31, 2014, which listed approximately \$22 million in enforceable obligations. (Muir Decl., ¶33; Exh. 26.) This amount included bond debt service payments due November 1, 2014, totaling \$15,584.51. (*Ibid.*)

On May 16, 2014, DOF, without the Auditor-Controller's recommendation,<sup>4</sup> adjusted Petitioners' distribution of RPTTF for the ROPS 14-15A period by \$11,127,859. (Exh. 30.) The sole basis for DOF's adjustment was its belief that these funds were "available" to the Successor Agency. DOF adjusted the RPTTF by the above amount, because it found that the Successor Agency should first use funds available to it.

Petitioners filed a Supplemental Petition challenging DOF's ROPS 14-15A withholding. In June 2014, the Court issued a preliminary injunction enjoining the Auditor-Controller from distributing the \$11,127,859 to the taxing entities, and granting leave to Petitioners to file their proposed Supplemental Petition.

<sup>4</sup> The Auditor-Controller made no such recommendation because it did not make a Prior Period Adjustment for the ROPS 14-15A distribution.

## II. DISCUSSION

### a. Motion to Strike

DOF moves to strike all portions of Petitioner's Opening Brief and Muir Declaration that refer to the Supplemental Petition or ROPS 13-14A withholding. This motion is **DENIED**.

First, a motion to strike is available to strike any pleading, which means a demurrer, answer, complaint or cross-complaint. (Code Civ. Proc., § 435, subd. (a)(2).) This statute provides no authority to strike part of an opening brief or declaration. DOF argues that the Court has inherent authority to strike other papers. The Court declines to exercise this discretion here.

The basis for DOF's motion to strike is that Petitioners did not timely file the Supplemental Petition after the Court ordered that it be filed, and that DOF has been deprived of the opportunity to respond. DOF has shown no prejudice. DOF has been well-aware of Petitioner's challenges to the ROPS 14-15A withholding throughout the litigation. Additionally, the Supplemental Petition, filed September 16, 2014, is exactly the same as the proposed Supplemental Petition attached to Petitioners' exhibits in the proceedings for injunctive relief. Moreover, the Opening Brief is in support of both the Petition and Supplemental Petition, and DOF and the Auditor-Controller have responded to all of the arguments.

DOF also moves to strike the Opening Brief's use of the word "illegal" to describe the ROPS III adjustment. This motion is **DENIED**.

### b. The Petition and Supplemental Petition

#### i. Standard of Review

The applicable standard of review is abuse of discretion. The Court reviews the challenged administrative decision to determine if it was arbitrary, capricious, or entirely lacking in evidentiary support, or whether the agency failed to follow the procedure and give the notices the law requires. (*Shelden v. Marin County Employees' Ret. Ass'n* (2010) 189 Cal.App.4<sup>th</sup> 458, 463; see also, *Ridgecrest Charter School v. Sierra Sands Unified Sch. Dist.* (2005) 130 Cal.App.4<sup>th</sup> 986, 1003.)

Here, the material facts are generally undisputed, and the legality of the subsequent ROPS withholdings is a question of law. When an agency's action depends solely upon the correct interpretation of a statute, it is a question of law, upon which the Court exercises independent judgment. (*California Correctional Peace Officers' Assn. v. State* (2010) 181 Cal.App.4<sup>th</sup> 1454, 1460.)

In construing a statute, the court's fundamental task is to ascertain the intent of the Legislature. (*Guillemin v. Stein* (2002) 104 Cal.App.4<sup>th</sup> 156, 164.) To determine intent,

courts must first examine the statute's words, "because they are generally the most reliable indicator of intent." (*Wirth v. California* (2006) 142 Cal.App.4th 131, 139.) If the statute's language is clear and unambiguous, no construction is necessary and the court need not resort to other indicia of intent. (*Ibid.*)

### ii. Requests for Judicial Notice; Evidentiary Objections.

The Court grants the unopposed Requests for Judicial Notice (RJN) filed by (1) the Auditor-Controller and (2) DOF in support of the Opposition to the Petition and Supplemental Petition.

The Court grants Petitioners' RJN in support of the Opening Brief to the Petition and Supplemental Petition as to Exhibits 1-7 and 9-16. The Court takes judicial notice of Exhibit 16, the Declaration of Jeff Muir, excepting the portions thereof to which the Court in *Culver City I* sustained evidentiary objections.

The Court rules on DOF's objections to Petitioners' Declaration of Jeff Muir as follows: The Court **SUSTAINS** objection Nos. 1, 7, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 38, 41. The Court **OVERRULES** objection Nos. 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 32, 33, 34, 35, 36, 37, 39, 40, 42.

The Court rules on the Auditor-Controllers' objections to Petitioners' Declaration of Jeff Muir as follows: The Court **SUSTAINS** objection Nos. 1, 3, 7, 8, 9, 10, 11, 12, 13, 16, 18. The Court **OVERRULES** objection Nos. 2, 4, 5, 6, 14, 15, 17, 19.

The Court rules on Petitioners' objections to the Auditor-Controller's declaration of Kristina Burns as follows: The Court **SUSTAINS** objection No. 3. The Court **OVERRULES** objection Nos. 1, 2, 4, 5, 6, 7, 8.<sup>5</sup>

### iii. ROPS 13-14B Withholding

Because Respondents justify the subsequent ROPS withholdings on different grounds, the Court addresses the legality of each ROPS withholding separately.

DOF argues that the ROPS 13-14B withholding is proper "under the principles affirmed in *Culver City I*."<sup>6</sup> (DOF Opposition, p. 18.) However, the Court in *Culver City I* never

<sup>5</sup> The objections following No. 4 are not correctly numbered. Accordingly, the Court has numbered those objections 5-8.

<sup>6</sup> Petitioners assert in their reply brief for the first time in this litigation (and previous litigation) that the RDA's 2011 repayment to the City was lawful because the RDA opted to follow AB 27, the companion bill to AB 26. Petitioners also aver that they furnished the DOF with documents to show that the loaned money was used to repay bonds. The Court will not address these arguments as they were raised for the first time in Petitioner's reply brief. Moreover, the Court notes that in *Culver City I* never addressed Petitioners' arguments, because Petitioners did not raise them and/or support them in that litigation. Rather, *Culver City I* found that "[i]t is undisputed that after AB XI 26 passed, the City Loan and RDA's payment thereof was unauthorized." (*Culver City I*, 1:16-17.)

ruled on or considered the propriety of the "remedy" employed by Respondents by future RPTTF withholdings. The Court finds that the Dissolution Law does not permit the RPTTF withholding for the ROPS 13-14B period.

The Auditor Controller contends that it made the ROPS 13-14B adjustment pursuant to Section 34186, subdivision (a), the "Prior Period Adjustment Statute." That subdivision does not support the Auditor-Controller's adjustment. It provides:

- (a) Differences between actual payments and past estimated obligations on recognized obligation payment schedules shall be reported in subsequent recognized obligation payment schedules<sup>7</sup> and shall adjust the amount to be transferred to the Redevelopment Obligation Retirement Fund pursuant to this part. These estimates and accounts shall be subject to audit by county auditor-controllers and the Controller.

The Auditor-Controller avers that it is proper to adjust the ROPS 13-14B distribution to account for the differences between the actual ROPS III payments and past estimated obligations on the ROPS III schedule. This is not what the Auditor-Controller did here.

Rather, the Auditor-Controller reported to DOF that (1) it made a ROPS III distribution of \$14,665,768—or \$3,106,429 plus the \$11,559,339 Prior Period Adjustment (2) and that the Successor Agency did not use \$11,559,339 of these monies. (Exh. 25.)<sup>8</sup> Respondents aver that Petitioner only spent the \$3.1 million amount for estimated enforceable obligations in the ROPS III cycle. (Exh. 25.)

However, the Auditor-Controller did *not* make an "actual payment" of \$14,665,768 during the ROPS III period. It distributed approximately \$3 million of RPTTF, and assumed that \$11,559,339 was "available" to the Successor Agency. This \$14,665,768 amount does not represent an "actual" payment by the County Auditor Controller to the Successor Agency for the ROPS III period. Accordingly, if the Successor Agency only received \$3.1 million and spent \$3.1 million for the ROPS III period, there is nothing for the Auditor Controller to adjust in future ROPS distributions under Section 34186, subdivision (a).

The language of Section 34186 only permits a difference between "actual" payments and estimated obligations. It also does not invest the Auditor-Controller with the discretion to determine that an "actual" payment during a ROPS period reflects an earlier RPTTF payment or credit that "rolled over" and should still be available to the Successor Agency.

---

<sup>7</sup> Because the statute contemplates adjustments on payment "schedules," this language provides authority for the Auditor-Controller to make adjustments on numerous ROPS cycles. It does not limit the Auditor-Controller to a one-time adjustment.

<sup>8</sup> The Auditor-Controller determined that the \$11,559,339 Prior Period Adjustment "transferred over" to the next ROPS cycles, because it represented available RPTTF. (See Declaration of Kristina Burns, ¶¶8-9.)



Indeed, this argument contrasts the Auditor-Controller's earlier position that its application of Section 34186 is a purely ministerial adjustment based on payments and estimated obligations for a particular ROPS period. The Auditor-Controller's (and DOF's) changing position<sup>9</sup> suggests that Respondents are inventing this self-help remedy in the face of the Successor Agency's failure to recoup the monies from the City.

Further, the Auditor-Controller's decision to withhold RPTTF for the ROPS 13-14B period appears to be an attempt to "delay payments under this part to successor agencies...based on pending transactions, disputes, or for any other reason...." (Health & Saf. Code, § 34168, subd. (b).) The Auditor-Controller "shall not delay payments" for these reasons without a court order. (*Ibid.*)

Although the Court recognizes Respondents' burden of administering the Dissolution Law, the Court accords no deference to Respondents' interpretation of the Dissolution Law statutes in this case.<sup>10</sup> (*Yamaha Corp. of Am. v. State Bd. of Equal.* (1998) 19 Cal.4<sup>th</sup> 1, 12-14 ["The deference due an agency interpretation...turns on a legally informed commonsense assessment of [its] contextual merit," including the agency's consistency with earlier and later pronouncements].)

The Court finds that the plain language of Section 34186 does not support the Auditor-Controller's "adjustment" of RPTTF for the ROPS 13-14B period.

Respondents also contend that the ROPS 13-14B withholding was proper because the \$11,559,339 mistakenly paid to the Successor Agency in the ROPS I cycle is still "available" to it—e.g., the Successor Agency could recoup those monies from the City.

Respondents cite Section 34177, subdivision (1)(1)(E) in support of this argument. Subdivision (1) requires the Successor Agency to prepare a ROPS schedule for the upcoming ROPS period, and identify a "source of payment" for each listed enforceable obligation. "Sources of payment" may include the Low and Moderate Income Housing Fund, bond proceeds, the Successor Agency's reserve balances or administrative cost allowance, and RPTTF "but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation or by the provisions of this part." (Health & Saf. Code, § 34177, subd. (1)(1).)

<sup>9</sup> DOF has also changed its position. In *Culver City I*, it disclaimed any responsibility or authority to approve the Auditor-Controller's Prior Period Adjustments. However, in this case, DOF approved the Auditor-Controller's adjustment in the underlying administrative proceedings, supports its adjustment in this litigation, and also made a subsequent adjustment in the ROPS 14-15A distribution.

<sup>10</sup> Petitioners filed a October 14, 2014 "Sur-Reply and Sur-Opposition" arguing that the Court should accord DOF no deference because DOF treated the City of Galt differently under similar facts. DOF responded that it rescinded that determination as to the City of Galt. The Court already determined that it will accord no deference to DOF's interpretation of the Dissolution Law in this matter, and as explained in this ruling, it concludes that the Dissolution Law does not allow Respondents to employ the "self-help" remedy in this case. Accordingly, it need not consider these arguments when ruling on this case.

According to Respondents, the Successor Agency is entitled to RPTTF only "to the extent no other funding source is available." This interpretation of the Section 34177 is incorrect. Subdivision (d)(1)(E) also allows RPTTF when payment "is required by an enforceable obligation." The parties do not dispute that the RPTTF is needed to make the bond payment, and that such payment is an enforceable obligation. Thus, the Successor Agency is entitled to RPTTF for its enforceable obligations for each ROPS cycle.

Further, Respondents ask this Court to find under Section 34177 that the \$11,559,339 is "available" to the Successor Agency under the Dissolution Law, because the Successor Agency could get this money back from the City. The Court declines to make this finding.

First, the City and the Successor Agency are two legally distinct entities under the Dissolution Law. (Health & Saf. Code, § 34173, subd. (g); *see also Pacific States Enter., Inc. v. City of Coachella* (1993) 13 Cal.App.4<sup>th</sup> 1414, 1426 [RDA is separate and distinct from creating city].) Moreover, the Dissolution Law does not define the term "available." Respondents' broad reading of "available" would allow Respondents to deem money "available" to an RDA or successor agency any time (1) these entities improperly transferred monies to another entity, and (2) Respondents concluded that the successor agency should be able to get the money back. The Dissolution Law does not permit Respondents to make these assumptions. In the absence of any express statements within the Dissolution Law defining "available" in this context, or permitting the self-help remedy of continual ROPS deductions, the Court does not find that the moneys are "available" to the Successor Agency, and that its RPTTF allotments may be deducted *ad infinitum*.

Respondents argue that principles of fairness require the Court to find this self-help remedy in the Dissolution Law. This is because in each ROPS cycle, the Successor Agency will receive \$11.5 million that should go to taxing entities, because it has failed to recoup the \$11.5 million from the City. The Court rejects this argument.

The Dissolution law authorizes other means to recoup improperly transferred funds that may be distributed to the taxing entities, such as the Due Diligence Review (DDR) process, and the State Controller's Review. By enacting the DDR and State Controller Review processes, the Legislature was aware that the remitted monies would not immediately be returned to the taxing entities. In fact, Section 34167.5 governing the State Controller's Review, does not set a deadline by which these reviews must be completed.

Accordingly, the Court declines to infer that an additional self-help remedy of deducting future ROPS distributions exists on the basis that money is "available" because particular taxing entities may not immediately receive some amount of money during each ROPS cycle.

#### iv. ROPS 14-15A Withholding

Respondents first argue that the ROPS 14-15A withholding, the subject of the Supplemental Petition, cannot be heard, because Petitioners did not timely file and serve the Supplemental Petition. The Court rejects Respondents' arguments, as discussed in Section II (a), above, and will consider the merits of the ROPS 14-15A withholding.

Respondents contend that DOF has authority to "reclassify a payment source" under Section 34177, subdivision (m), because the Successor Agency failed to recoup the monies from the City. The Court is not persuaded.

That subdivision provides that DOF "shall make its determination of the enforceable obligations and the amounts and funding sources of the enforceable obligations" within 45 days after the Successor Agency submits its ROPS schedule. (Health & Saf. Code, § 34177, subd. (m).) However, this subdivision outlines DOF's procedural duties and authority in reviewing ROPS submissions. It says nothing about authorizing DOF to determine whether money held by another entity is, "available" to the Successor Agency, so that it can modify an RPTTF allocation.

Respondents also cite to Section 34179, subdivision (h), which gives DOF power to "eliminate or modify" a ROPS item on the schedule prior to DOF's approval. Here, DOF did not eliminate or modify a ROPS item. It reduced the Successor Agency's RPTTF distribution based on DOF's determination that the Successor Agency could recoup that amount from the City.

The Court has reviewed the Dissolution Law statutes cited by Respondents in support of their arguments that the ROPS 14-15A withholding was proper. The Dissolution Law does not permit or contemplate that DOF may use the "self-help" remedy it employed here.

Accordingly, the Court finds that Respondents made or authorized the ROPS 13-14B and 14-15A withholdings without legal basis, and that Petitioners are entitled to a writ of mandate setting aside these decisions.

#### v. Equitable Arguments

The parties discuss at length the "fairness" of the ROPS withholdings. Petitioners claim that the withholdings are unfair because the City was not unjustly enriched: it advanced the RDA \$12.5 million and the RDA quickly repaid it. Petitioners also claim that the taxing entities will be unjustly enriched because they, not the Successor Agency, will receive the RPTTF that the Successor Agency needs in each ROPS distribution cycle. Respondents counter that it is unfair that RPTTF must be paid to the Successor Agency in each ROPS cycle (and not the taxing entities) because the Successor Agency has not recouped the money. Because the Court resolves the Petition and Supplemental Petition on the basis of Respondents' legal authority to take actions under the Dissolution law, it does not reach the merits of these arguments.

#### vi. Declaratory Relief

Petitioners also assert causes of action for declaratory and injunctive relief in the Petition and Supplemental Petition. Petitioners seek (1) a judicial declaration that the ROPS 13-14B and 14-15A withholdings are “unlawful” and (2) an injunction to prevent Respondents from withholding \$11,127,859 from the ROPS 13-14B and 14-15A distributions. (Petition, p. 15:22-28; Supplemental Petition, p. 8:10-17.)

DOF argues that the Court should dismiss these causes of action, because the Court’s ruling denying the mandate claims would necessarily resolve Petitioners’ demands for declaratory and injunctive relief.<sup>11</sup> (*Griset v. Fair Political Practices Comm’n* (2001) 25 Cal.4<sup>th</sup> 688, 699-700.) Because the Court grants the claim for writ relief in the Petition and Supplemental Petition, this argument is unavailing. However, Petitioners’ prayers for declaratory relief essentially ask the Court to review Respondents’ administrative decisions and declare them unlawful. Petitioners *do not* ask the Court to declare the rights of the parties as to future ROPS determinations. Declaratory relief is not available to review an administrative decision. (*State of California v. Superior Court* (1974) 12 Cal.3d 237, 249.) Additionally, the Court has already reviewed the challenged administrative decisions in granting the writ claims in the Petition and Supplemental Petition, and Petitioners’ declaratory relief claims are duplicative.

Accordingly, the Court **DENIES** as moot Petitioner’s causes of action for declaratory and injunctive relief in the Petition and Supplemental Petition.

#### c. DOF’s Cross-Petition

DOF has filed the Cross-Petition seeking a writ of mandate against the City and Successor Agency. The Cross-Petition seeks an order “reversing” the RDA’s repayment to the City, and directing the City to pay the Successor Agency interest on the transferred monies. DOF also seeks a writ of mandate ordering the Successor Agency to take action to recover the funds from the City and a declaration that the Successor Agency either use those monies before using RPTTF on enforceable obligations or remit the monies to the taxing entities.

#### i. Standard of Review

A writ of mandate may issue to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station. (Code. Civ.

<sup>11</sup> DOF also cites *City of Pasadena v. Cohen* (2014) 228 Cal.App.4<sup>th</sup> 1461, to argue that a claim for declaratory relief cannot be joined with a writ of mandate claim reviewing an administrative decision. However, DOF undermines this argument by joining declaratory causes of action to its claims for writ of mandate in the Cross-Petition. Further, *Pasadena* is not final or precedential, in that a petition for review of that case is before the California Supreme Court. Because the Court denies Petitioners’ declaratory relief claims on the grounds that they seek review of an administrative decision, it does not address when declaratory relief claims may be appropriately joined with mandate claims.

Proc., § 1085; *City of Dinuba v. County of Tulare* (2007) 41 Cal.4<sup>th</sup> 859, 868.) To obtain writ relief, a party must establish a clear, present and usually ministerial duty on the part of respondent and a clear, present, and beneficial right of the petitioner to the performance of that duty. (*City of Dinuba, supra*, 41 Cal.4<sup>th</sup> at p. 868.) To obtain writ relief, the petitioner must not have any other plain speedy, or adequate remedy at law. (Code Civ. Proc., § 1086.)

**ii. Evidentiary Objections; Request for Judicial Notice**

DOF's request for judicial notice is granted.

DOF objects on the basis that Cross-Respondents refer to unspecified documents in their Opposition Brief to the Cross Petition. These documents include the "Muir Decl.," "RJN" and "Supp. RJN," and are cited as authority for background facts underlying this dispute. Petitioners have filed no separate declarations or requests for judicial notice to the Cross-Petition. Nor do Petitioners not identify the "Muir Decl." by the full title and date of execution, in violation of California Rules of Court, Rule 3.1110(d). The caption of the previously filed Declarations of Jeff Muir, do not also refer to this particular proceeding, in violation of Rule 3.1115.

The Court notes DOF's objections and admonishes Cross-Respondents for not complying with the applicable Rules of Court.

**d. Petition for Writ Relief Against the City**

Cross-Petitioners argue that mandate lies against the City because the Court in *Culver City I* already determined that the RDA's repayment of \$12.5 million to the City was unlawful. Cross-Petitioners further argue that if the City does not return the funds, *Culver City I's* ruling (which did not address this contention) will be of no force and effect. However, Cross-Petitioners have failed to allege that a clear and present duty exists compelling the City to return the monies. At the hearing, DOF argued that because the Court in *Culver City I* observed that the 2001 transfer was unlawful, a writ of mandate lies to reverse the transfer, regardless of whether DOF alleges a duty. Although DOF notes that mandate lies to compel an agency to rescind its void act, the cases cited by DOF do not discuss this fact pattern here: where a petitioner seeks mandate relief against the recipient of monies, and alleges no duty on the part of the recipient.

Additionally, as discussed below, Cross-Petitioners have failed to demonstrate that they are without a plain, speedy or adequate remedy at law. They are not entitled to mandate relief as to the City.

**e. Petition for Writ Relief Against Successor Agency**

Cross-Petitioners also seek a writ of mandate directing the Successor Agency to take efforts to recover these monies from the City. They argue that the Successor Agency has a duty to nullify and rescind the RDA's void acts, including the 2011 repayment to the

City, and a duty to “[e]nforce all former redevelopment agency rights for the benefit of the taxing entities.” (Health & Saf. Code, §§ 34173, subd. (b), 34177, subd. (f).) However, the Court does not reach the question of whether these statutes impose a ministerial duty upon the Successor Agency to recover the funds. This is because Cross-Petitioners’ claim for writ relief is premature.

To obtain writ relief, Cross-Petitioners must show that no other plain speedy or adequate remedy at law is available. (Code Civ. Proc., § 1086.) Section 34167.5 authorizes the State Controller to review transfers between the RDAs and sponsoring entities<sup>12</sup> or any other public agency made after January 1, 2011. If a transfer occurred during that period and the government agency that received the assets is not contractually committed to a third party to expend or encumber those funds, to the extent not prohibited by law, the State Controller shall order the available assets returned to the successor agency. (Health & Saf. Code, § 34167.5.)

The State Controller will review the RDA’s 2011 repayment to the City. No parties dispute that the State Controller has not completed his review of the RDA’s transactions.<sup>13</sup> If the State Controller orders that the repayment be remitted, Cross-Petitioners will not need to seek writ relief for a separate order directing the City to return funds or the Successor Agency to recover them.

DOF responds that the State Controller’s review is a “separate process” and that DOF has independent authority “to obtain injunctive or other appropriate relief”—e.g. an “order directing the City to return funds.” (Citing Health & Saf. Code, §§ 34167, 34177, subd. (a)(2).) This argument is unavailing.

The Dissolution Law does not further define “injunctive and other appropriate relief.” Here, DOF seeks an “order” compelling the City to return the funds or the Successor Agency to return funds. This is the subject of a writ of mandate, and a plain, speedy and adequate remedy exists—the State Controller’s review. While the Court acknowledges that the DOF and the State Controller are separate entities and the processes are separate, this is a distinction without a difference—the relief sought is identical: that is, reversal or return by the City of the funds to the Successor Agency.

At oral argument, DOF argued that it is immaterial that the State Controller has not completed his review. This is because DOF, as the *Petitioner*, does not have a remedy other than writ relief, that it can “pursue” at this moment. DOF cited *Flores v. Department of Corrections and Rehabilitation* (2014) 224 Cal.App.4<sup>th</sup> 199 for this proposition. *Flores* is inapposite, and the Court has not located other authority providing that the remedy of waiting, without actively pursuing, for another agency to make an

<sup>12</sup> The City is the RDA’s sponsoring entity.

<sup>13</sup> The State Controller has not undertaken review of the RDA’s transfers of funds to other entities. The State Controller notified Petitioners that it will begin its review in September 2014. (Declaration of Jeff Muir, ¶43; Exh. 34.)



### III. DISPOSITION

The claims for writ of mandate in the Petition and Supplemental Petition are **GRANTED**. The claims for declaratory relief in the Petition and Supplemental Petition are **DENIED**. The Cross-Petition and all claims therein are **DENIED**.

At the hearing, DOF requested a stay of the Court's decision, in the event that the Court decided to affirm the tentative ruling. DOF's request for a stay is **DENIED**, in light of the Court's ruling that the Dissolution Law does not authorize Respondents' RPTTF withholdings, and Petitioners' representation of the harm that would befall the Successor Agency if it defaulted on its bond obligations.

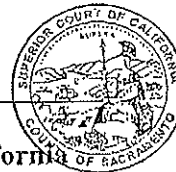
As to the Petition and Supplemental Petition, Counsel for Petitioner is directed to prepare formal order incorporating this ruling as an exhibit thereto, a judgment, and a separate writ of mandate; submit them to opposing counsel for approval as to form, and thereafter submit them to the Court for approval in accordance with the California Rules of Court, rule 3.1312. The writ of mandate shall be prepared for the signature of the Clerk of the Court.

As to the Cross-Petition, Counsel for Petitioners is directed to prepare a formal order incorporating this ruling as an exhibit, and judgment; submit them to opposing counsel for approval as to form, and thereafter submit them to the Court for approval in accordance with the California Rules of Court, rule 3.1312.

Date: October 27, 2014



Shelleyanne W.L. Chang  
Judge of the Superior Court of California  
County of Sacramento





**EXHIBIT 2**

**Writ of Mandate**

1 KANE, BALLMER & BERKMAN

*Exempt from Filing Fees per Govt. Code §6103*

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9 Attorneys for Petitioner and Plaintiff

10 CITY OF CULVER CITY, a municipal corporation; and

11 CITY OF CULVER CITY in its capacity as

12 SUCCESSOR AGENCY TO THE CULVER CITY

13 REDEVELOPMENT AGENCY

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF SACRAMENTO - MAIN COURTHOUSE**

16 CITY OF CULVER CITY, a municipal corporation;  
17 and CITY OF CULVER CITY in its capacity as  
18 SUCCESSOR AGENCY TO THE CULVER CITY  
19 REDEVELOPMENT AGENCY,

20 Petitioner and Plaintiff,

21 vs.

22 MICHAEL COHEN, in his official capacity as Director of  
23 the State of California Department of Finance; and  
24 WENDY WATANABE, in her official capacity as the  
25 Auditor-Controller of the County of Los Angeles; and  
26 DOES 1-50, inclusive,

27 Respondents and Defendants.

28 COUNTY OF LOS ANGELES, a taxing entity; et al.,

Real Parties in Interest

AND RELATED CROSS-ACTION

CASE NO. 34-2013-80001719

Assigned to Dept. 24  
Hon. Shelleyanne W. L. Chang

**[PROPOSED] WRIT OF  
MANDATE**

**Hearing Info:**

Date: October 24, 2014

Time: 10:00 a.m.

Dept.: 24

Judge: Hon. Shelleyanne W. L. Chang

1 To Respondent and Defendant Michael Cohen, in his official capacity as Director of the State  
2 of California Department of Finance ("DOF") and Respondent and Defendant John Naimo, in his  
3 official capacity as the Auditor-Controller for the County of Los Angeles ("Auditor-Controller"):

4 By Order of this Court, in accordance with this Court's Order Regarding First Amended  
5 Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and Supplemental  
6 Petition for Writ of Mandate and Supplemental Complaint for Declaratory and Injunctive Relief and  
7 with the Judgment entered in this action, you are hereby commanded to:

8 (1) Set aside your determinations ordering and approving the approximate \$11,127,859  
9 reduction from the Real Property Tax Trust Fund ("RPTTF") funds that were to have been distributed  
10 to the Successor Agency on January 2, 2014 for the payment of enforceable obligations;

11 (2) Distribute on future Recognized Obligation Payment Schedules ("ROPS") payment of  
12 approved ROPS 13-14B enforceable obligations that would have otherwise been paid, but for the  
13 ROPS 13-14B adjustment. However, there shall be no distributions that are inconsistent with the  
14 Dissolution Law, and there shall be no double payments of debt service or other enforceable  
15 obligations;

16 (3) Set aside your determinations ordering and approving the approximate \$11,127,859  
17 reduction from the RPTTF funds that were to have been distributed to the Successor Agency on June  
18 2, 2014 for the payment of enforceable obligations;

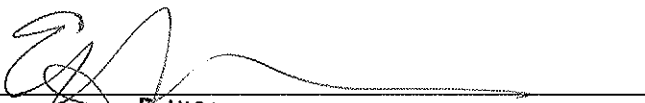
19 (4) Distribute to the Successor Agency to the Culver City Redevelopment Agency the  
20 \$10,473,745 sequestered pursuant to the Preliminary Injunction in this action to be used for the  
21 payment of enforceable obligations;

22 (5) To make a return on the writ to this Court, not later than sixty (60) days after service of  
23 this Writ of Mandate on you, informing the Court of your actions to comply with this Writ of  
24 Mandate.

25 Dated: 10-31-14

TIM AINSWORTH

Acting Clerk of the Court

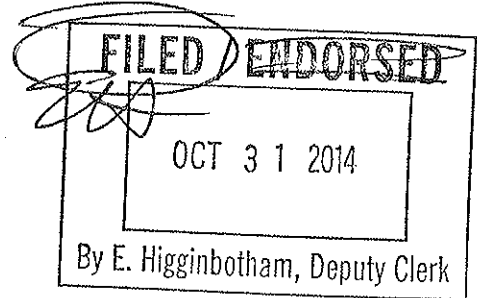
27 By:   
28 E. HIGGINBOTHAM

**EXHIBIT 3**

**Judgment**

1 KANE, BALLMER & BERKMAN  
Murray O. Kane, Bar No. 48082, [mkane@kbblaw.com](mailto:mkane@kbblaw.com)  
2 Guillermo A. Frias, Bar No. 201800, [gfrias@kbblaw.com](mailto:gfrias@kbblaw.com)  
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*Exempt from Filing Fees per Govt. Code §6103*



6 Attorneys for Petitioner and Plaintiff  
7 CITY OF CULVER CITY, a municipal corporation; and  
8 CITY OF CULVER CITY in its capacity as  
9 SUCCESSOR AGENCY TO THE CULVER CITY  
10 REDEVELOPMENT AGENCY

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SACRAMENTO - MAIN COURTHOUSE**

13 CITY OF CULVER CITY, a municipal corporation;  
14 and CITY OF CULVER CITY in its capacity as  
15 SUCCESSOR AGENCY TO THE CULVER CITY  
REDEVELOPMENT AGENCY,

16 Petitioner and Plaintiff,

17 vs.

18 MICHAEL COHEN, in his official capacity as Director of  
19 the State of California Department of Finance; and  
20 WENDY WATANABE, in her official capacity as the  
Auditor-Controller of the County of Los Angeles; and  
21 DOES 1-50, inclusive,

22 Respondents and Defendants.

23 COUNTY OF LOS ANGELES, a taxing entity; et al.,

24 Real Parties in Interest

25  
26 AND RELATED CROSS-ACTION  
27  
28

CASE NO. 34-2013-80001719

Assigned to Dept. 24  
Hon. Shelleyanne W. L. Chang

~~[PROPOSED]~~ JUDGMENT

Hearing Info:

Date: October 24, 2014  
Time: 10:00 a.m.  
Dept.: 24  
Judge: Hon. Shelleyanne W. L. Chang

1 On October 24, 2014, the Court held a hearing on the merits on the First Amended Petition for  
2 Writ of Mandate and Complaint for Declaratory and Injunctive Relief and Supplemental Petition for  
3 Writ of Mandate and Supplemental Complaint for Declaratory and Injunctive Relief (the "Petition")  
4 and the Cross-Petition and Cross-Complaint ("Cross-Petition) on file in the above-captioned action in  
5 Sacramento Superior Court, Department 24, the Honorable Shelleyanne W.L. Chang presiding.

6 Marc A. LeForestier, Supervising Deputy Attorney General, and Sylvia A. Cates, Deputy  
7 Attorney General, California Department of Justice, Office of the Attorney General, appeared on  
8 behalf of Respondents and Defendants MICHEL COHEN, in his official capacity as Director of the  
9 STATE OF CALIFORNIA DEPARTMENT OF FINANCE ("DOF"). Sangkee Peter Lee appeared on  
10 behalf of Defendant and Respondent JOHN NAIMO, in his official capacity as the Auditor-Controller of  
11 the County of Los Angeles ("Auditor-Controller"). Murray O. Kane and Guillermo A. Frias, Kane  
12 Ballmer & Berkman, appeared on behalf of Plaintiffs and Petitioners CITY OF CULVER CITY, a  
13 municipal corporation and SUCCESSOR AGENCY to the CULVER CITY REDEVELOPMENT  
14 AGENCY ("Petitioners").

15 On October 27, 2014, the Court issued a Ruling on Submitted Matter granting the Petition and  
16 denying the Cross-Petition. (A true and correct copy of the Court's Ruling is attached hereto as Exhibit A,  
17 and is incorporated herein by reference). The Court has entered an Order regarding the Petition and Cross-  
18 Petition adopting Exhibit A as its final ruling, (the "Order"). Based on that Order, IT IS ORDERED,  
19 ADJUDGED, AND DECREED:

20 1. The Court enters judgment for Petitioners and against Respondents and Defendants  
21 MICHAEL COHEN, in his official capacity as Director of the California Department of Finance, and JOHN  
22 NAIMO, in his official capacity as the Auditor-Controller of the County of Los Angeles, as follows:

23 A. A Writ of Mandate shall issue, under seal of this Court, directing Respondents  
24 to vacate their determinations ordering and approving the approximate \$11,127,859 reduction  
25 from the RPTTF funds that were to have otherwise been distributed to the Successor Agency  
26 on January 2, 2014 for the payment of enforceable obligations and to make a return to this  
27 Court within sixty (60) days.

28 B. A Writ of Mandate shall issue, under seal of this Court, directing Respondents

1 to distribute on future Recognized Obligation Payment Schedules ("ROPS") payment of  
2 approved ROPS 13-14B enforceable obligations that would have otherwise been paid, but for  
3 the ROPS 13-14B adjustment, and to make a return to this Court within sixty (60) days.  
4 However, there shall be no distributions that are inconsistent with the Dissolution Law, and  
5 there shall be no double payments of debt service or other enforceable obligations;

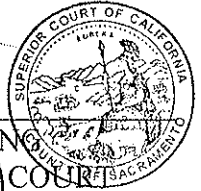
6 C. A Writ of Mandate shall issue, under seal of this Court, directing Respondents  
7 to distribute to the Successor Agency to the Culver City Redevelopment Agency the  
8 \$10,473,745 sequestered pursuant to the Preliminary Injunction in this action to be used for the  
9 payment of its enforceable obligations, and to make a return to this Court within sixty (60)  
10 days.

11 D. Petitioners' causes of action for declaratory and injunctive relief are DENIED.

12 E. The Cross-Petition is DENIED without prejudice.

13  
14 Dated 10/31, 2014

  
SHELLEYANNE W.L. CHANG  
JUDGE OF THE SUPERIOR COURT



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16  
17 *Approved as to form:*

18 Dated: October \_\_, 2014

OFFICE OF THE ATTORNEY GENERAL

19  
20  
21 By: \_\_\_\_\_

Sylvia A. Cates  
Deputy Attorney General  
Attorneys for Respondent  
Michael Cohen, in his official capacity as Director  
of the State of California Department of Finance

22  
23  
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25  
26 *Approved as to form:*

1 Dated: October \_\_, 2014

**LOS ANGELES COUNTY COUNSEL'S OFFICE**

2  
3 By: \_\_\_\_\_  
Sangkee Peter Lee  
4 Attorneys for Respondent John Naimo, in his  
official capacity as Los Angeles Auditor-  
5 Controller and Real Parties in Interest, County of  
Los Angeles, Los Angeles County Fire District,  
6 Los Angeles County Flood Control District, and  
County of Los Angeles Library Services  
7

8 *Submitted by:*

9 Dated: October \_\_, 2014

**KANE, BALLMER & BERKMAN**

10  
11 By: \_\_\_\_\_  
12 Murray O. Kane  
Guillermo A. Frias  
13 Edward B. Kang  
Attorney for Plaintiffs CITY OF CULVER CITY,  
14 a general law city and as SUCCESSOR AGENCY  
to the CULVER CITY REDEVELOPMENT  
15 AGENCY  
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# EXHIBIT A

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

|  |                              |   |                 |
|--|------------------------------|---|-----------------|
| <b>DATE:</b>   | October 27, 2014             | <b>DEP. NO.:</b>  | 24              |
| <b>JUDGE:</b>  | HON. SHELLEYANNE W. L. CHANG | <b>CLERK:</b>   | E. HIGGINBOTHAM |
| <p><b>CITY OF CULVER CITY</b>, a municipal corporation, and <b>CITY OF CULVER CITY</b> in its capacity as <b>SUCCESSOR AGENCY TO THE CULVER CITY REDEVELOPMENT AGENCY</b>,<br/>Petitioners and Plaintiffs,</p> <p>v.</p> <p><b>MICHAEL COHEN</b>, in his official capacity as Director of the State of California Department of Finance; and <b>WENDY WATANABE</b>, in her official capacity as the Auditor-Controller of the County of Los Angeles; and <b>DOES 1-50</b>, inclusive,<br/>Respondents and Defendants.</p> <p><b>COUNTY OF LOS ANGELES</b>, et al.,<br/>Real Parties in Interest.</p> |                              | <p>Case No. 34-2013-80001719</p>  |                 |
| <p><b>MICHAEL COHEN</b>, in his official capacity as Director of the California Department of Finance,<br/>Cross-Petitioner and Cross-Plaintiff,</p> <p>v.</p> <p><b>CITY OF CULVER CITY</b>, a municipal corporation, and <b>CITY OF CULVER CITY</b> in its capacity as <b>SUCCESSOR AGENCY TO THE CULVER CITY REDEVELOPMENT AGENCY</b>,<br/>Cross-Respondents and Cross-Defendants,</p> <p><b>COUNTY OF LOS ANGELES</b>, et al.,<br/>Real Parties in Interest.</p>   |                              |   |                 |
| <b>Nature of Proceedings:</b>  |                              | <b>RULING ON SUBMITTED MATTER: PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF MANDATE; CROSS-PETITION FOR WRIT OF MANDATE AND CROSS-COMPLAINT; MOTION TO STRIKE</b> |                 |

The Court issued a tentative ruling on October 23, 2014 in which it granted the Petition and Supplemental Petition, denied the Cross-Petition and denied the Motion to Strike. The matter came on for hearing on October 24, 2014, with the parties represented by counsel as stated on the record. After considering the oral arguments of all parties, the Court took the matter under submission and issues its ruling as follows.

The Court's ruling addresses: (1) Petitioners' Petition for writ of mandate and complaint for declaratory and injunctive relief (Petition) and Supplemental petition for writ of mandate and complaint for declaratory and injunctive relief (Supplemental Petition) and (2) Respondent Department of Finance's (DOF) Cross-Petition and Cross Complaint (Cross-Petition), and (3) DOF's motion to strike portions of Petitioners' Opening Brief and Declaration of Jeff Muir.

Petitioners, the City of Culver City (City) and the Successor Agency to the City's former redevelopment agency (Successor Agency) seek mandate relief against Respondents DOF and the Los Angeles County Auditor-Controller (Auditor-Controller). Petitioners seek a writ of mandate directing Respondents to set aside their decision withholding \$11,127,859 from the Successor Agency's January 1, 2014 distribution of monies from the Redevelopment Property Tax Trust Fund (RPTTF) for the ROPS 13-14B period. The Supplemental Petition seeks the same relief as to DOF's approval of a \$11,257,859 deduction from the Successor Agency's June 2, 2014 RPTTF distribution for the ROPS 14-15A period. The Petition and Supplemental Petition are **GRANTED**.

DOF has filed a Cross-Petition against Petitioners in this proceeding. DOF seeks a writ of mandate against the City, ordering "reversal" of a \$12.5 million transfer to the City from the RDA. DOF also seeks a writ of mandate directing the Successor Agency "to take action to recover the \$12.5 million cash assets from the City." The Cross-Petition also seeks related declaratory and injunctive relief. **The Cross-Petition is DENIED.**

## I. BACKGROUND

In June 2011, AB XI 26 became effective, which provided for the dissolution of all redevelopment agencies (RDA) and wind-up of their affairs.

In *California Redevelopment Assoc. v. Matosantos* (CRA v. Matosantos) (2011) 53 Cal.4th 231, the California Supreme Court upheld the constitutionality of AB 26 in December, 2011. The law's provisions went into full effect on February 1, 2012. (*Id.* at p. 276.) In June of 2012, the Legislature adopted AB 1484 to modify and "clean up" the provisions in AB 26. Together, AB 26 and AB 1484 constitute the "Dissolution Law."

The Dissolution Law is divided into two parts: Part 1.8, the "freeze" component, and Part 1.85, the dissolution component. The "freeze" component immediately froze RDA assets upon AB 26's enactment, including monies in the RDAs' accounts, prohibited their transfer, and prohibited RDAs from entering new business. (Health & Saf. Code, § 34163.) The intent of the "freeze" was to allow assets and revenues that were not needed for existing enforceable obligations to be used by local governments to fund core

governmental services, including police, fire protection services, and schools. (*Id.*, § 34167, subd. (a); *CRA v. Matosantos*, *supra*, 53 Cal.4<sup>th</sup> at p. 250.)

Part 1.85, the dissolution component, establishes "successor agencies" to wind down the affairs of the RDAs. (Health & Saf. Code, §§ 34173, 34177.) Successor agencies must submit to DOF for approval Recognized Obligations Payment Schedules (ROPS) listing the putative enforceable obligations of the RDA, for which the Successor Agency must make payment within the forthcoming six months. (Health & Saf. Code, §§ 34177, 34179(h), 34180.)

If DOF determines that a ROPS item is an enforceable obligation, a successor agency may receive monies from the county auditor-controller to pay for those items. (Health & Saf. Code, §§ 34182, 34183.) Additionally, a successor agency may not make payment on an item unless DOF determines that it is an enforceable obligation. After DOF's determination, each county-auditor controller disburses monies from the RPTTF twice a year to successor agencies to enable them to pay enforceable obligations. (*Id.* § 34183.)

On February 1, 2012, all RDAs dissolved and the successor agencies took their place.

**a. Prior Litigation: *Culver City I***

On or about December 2011, during the "freeze period," the RDA reimbursed the City approximately \$12.5 million that the City temporarily loaned to the RDA. Petitioners aver that the RDA needed this loan from the City to make a bond debt service payment. (*See, City of Culver City, et al. v. Matosantos, et al.* Sacramento Superior Court Case No. 2013-80001446 (*Culver City I*) 2:7-15, Petitioners' Exhibit (Exh.) 43.)

After the RDA dissolved, the City became Successor Agency.

In August 2012, the Successor Agency submitted its ROPS III for the period of January 1, 2013 through June 30, 2013. The ROPS III submission stated that the Successor Agency must pay \$17,923,063 for enforceable obligations for this six-month period. (*Culver City I*, 3:1-3.)

The Auditor-Controller notified DOF that \$11,559,393<sup>1</sup> should be reduced from Petitioners' ROPS III distribution. This was because the Auditor-Controller made a "Prior Period Adjustment" pursuant to Health and Safety Code section 34186. It reviewed the Successor Agency's earlier ROPS I submission and compared the Successor Agency's estimated versus actual payments for enforceable obligations listed in the ROPS I submission. (*Culver City I*, 5:22-24.) The Auditor-Controller determined that the Successor Agency was actually paid \$12.5 million in RPTTF monies in a previous ROPS cycle, but did not list the City Loan on its prior ROPS submission (and did not use

<sup>1</sup> The Auditor-Controller's reduction of approximately \$11.5 million is based on (1) the \$12.5 million payment and (2) a determination that the Successor Agency was entitled to some additional monies for the January 2012 to June 2012 ROPS period. (*Culver City I*, 8:26-28.)

this money to pay an enforceable obligation). (See *Id.* 7:14-15.) After DOF agreed, the Auditor-Controller withheld \$11,559,393, and Petitioners received only \$3,106,429.37 for the ROPS III period. (*Id.* 3:11-20.)

Petitioners filed a petition for writ of mandate contesting this reduction of its ROPS III distribution in *Culver City I*. The Court denied the petition and held that the Auditor-Controller properly made the Prior Period Adjustment pursuant to Section 34186. (*Culver City I*, 8:7.)

#### b. The Instant Litigation

At issue in here are Respondents' decisions to reduce the RPTTF payable to the Successor Agency by the approximate amount of the ROPS III reduction in subsequent ROPS cycles (here, ROPS 13-14B<sup>2</sup> and ROPS 14-15A) until the Successor Agency recovers that amount from the City.

As to the ROPS 13-14B withholding, the Auditor-Controller recommended the deduction with DOF's approval; as to ROPS 14-15A, DOF made the withholding.

#### i. ROPS 13-14B Withholding

The Successor Agency submitted ROPS 13-14B for the January 1, 2014 through June 30, 2014 period. The ROPS 13-14B submission listed approximately \$21 million in enforceable obligations. (Declaration of Jeff Muir (Muir Decl.), ¶13, Exhs. 18, 26.) Of this amount, the Successor Agency averred that \$10,082,278 was required for "reserves" for the November 1, 2014 bond payment, and approximately \$4.5 million for bond payments due in May 1, 2014. (Muir Decl. ¶13, Exh. 18.)

In October 2013, the Auditor-Controller recommended to DOF that \$11,127,859 should be withheld from the ROPS 13-14B distribution. (Muir Decl., ¶14; Exh. 20.) This is because Auditor-Controller had conducted another "Prior Period Adjustment," reconciling the Successor Agency's actual versus estimated expenditures of RPTTF during the ROPS III period.<sup>3</sup>

DOF initially disagreed with the Auditor-Controller's recommendation, but then reversed itself. (Exh. 24.) On December 23, 2013, DOF issued a final determination letter for Petitioners' ROPS 13-14B submission, and ordered that that the ROPS distribution be reduced by \$11,127,859, in accordance with the Auditor-Controller's recommended "Prior Period Adjustment." (Exh. 25.)

<sup>2</sup> The ROPS titles were revised from Roman numerals to titles that reflected the fiscal year and whether it was the first or second payment thereof.

<sup>3</sup> The Auditor-Controller conducts "Prior Period Adjustments" once each year, or every other ROPS cycle.

The basis for the Auditor-Controller's "Prior Period Adjustment" to the ROPS 13-14B distribution is that it "reported a ROPS III distribution of \$14,665,768." (Exh. 26.) Thus, the Successor Agency should have had \$11.4 million "available" to it during the ROPS III period, plus the \$3.1 million in RPTTF it received.

On December 27, 2013, Petitioners filed the instant action challenging the Auditor-Controllers' decision (and DOF's approval thereof) to reduce the RPTTF for the ROPS 13-14B distribution. Petitioner sought a temporary restraining order (TRO) to enjoin Respondents from withholding and failing to distribute the \$11.1 million or alternatively not distribute these monies to the taxing entities.

This Court granted the TRO pending a preliminary injunction hearing. (Exh. 37.) In January 2014, the Court (Hon. Eugene Balonon) denied Petitioners' request for a preliminary injunction, finding that Petitioners had not shown evidence of irreparable harm. (Exh. 35.) Specifically, the Court found that (1) Petitioners had money available to make the May 2014 bond payment, (2) the bond indenture did not require that the funds be deposited into the debt service funds account because Petitioners had not yet "received" the funds and thus, could not deposit them, and (3) the \$11.1 million amount was insufficient to cover the November payment, and Petitioner could still request and receive monies for the November payment in the next ROPS cycle. Because the Court found that Petitioners had failed to demonstrate irreparable harm, the Court did not address the merits of the parties' arguments. (Exh. 37, p. 5:23-26.)

## ii. ROPS 14-15A Withholding

The Successor Agency then submitted ROPS 14-15A for the period of July 1, 2014-December 31, 2014, which listed approximately \$22 million in enforceable obligations. (Muir Decl., ¶33; Exh. 26.) This amount included bond debt service payments due November 1, 2014, totaling \$15,584.51. (*Ibid.*)

On May 16, 2014, DOF, without the Auditor-Controller's recommendation,<sup>4</sup> adjusted Petitioners' distribution of RPTTF for the ROPS 14-15A period by \$11,127,859. (Exh. 30.) The sole basis for DOF's adjustment was its belief that these funds were "available" to the Successor Agency. DOF adjusted the RPTTF by the above amount, because it found that the Successor Agency should first use funds available to it.

Petitioners filed a Supplemental Petition challenging DOF's ROPS 14-15A withholding. In June 2014, the Court issued a preliminary injunction enjoining the Auditor-Controller from distributing the \$11,127,859 to the taxing entities, and granting leave to Petitioners to file their proposed Supplemental Petition.

<sup>4</sup> The Auditor-Controller made no such recommendation because it did not make a Prior Period Adjustment for the ROPS 14-15A distribution.

## II. DISCUSSION

### a. Motion to Strike

DOF moves to strike all portions of Petitioner's Opening Brief and Muir Declaration that refer to the Supplemental Petition or ROPS 13-14A withholding. This motion is **DENIED**.

First, a motion to strike is available to strike any pleading, which means a demurrer, answer, complaint or cross-complaint. (Code Civ. Proc., § 435, subd. (a)(2).) This statute provides no authority to strike part of an opening brief or declaration. DOF argues that the Court has inherent authority to strike other papers. The Court declines to exercise this discretion here.

The basis for DOF's motion to strike is that Petitioners did not timely file the Supplemental Petition after the Court ordered that it be filed, and that DOF has been deprived of the opportunity to respond. DOF has shown no prejudice. DOF has been well-aware of Petitioner's challenges to the ROPS 14-15A withholding throughout the litigation. Additionally, the Supplemental Petition, filed September 16, 2014, is exactly the same as the proposed Supplemental Petition attached to Petitioners' exhibits in the proceedings for injunctive relief. Moreover, the Opening Brief is in support of both the Petition and Supplemental Petition, and DOF and the Auditor-Controller have responded to all of the arguments.

DOF also moves to strike the Opening Brief's use of the word "illegal" to describe the ROPS III adjustment. This motion is **DENIED**.

### b. The Petition and Supplemental Petition

#### i. Standard of Review

The applicable standard of review is abuse of discretion. The Court reviews the challenged administrative decision to determine if it was arbitrary, capricious, or entirely lacking in evidentiary support, or whether the agency failed to follow the procedure and give the notices the law requires. (*Shelden v. Marin County Employees' Ret. Ass'n* (2010) 189 Cal.App.4<sup>th</sup> 458, 463; *see also, Ridgecrest Charter School v. Sierra Sands Unified Sch. Dist.* (2005) 130 Cal.App.4<sup>th</sup> 986, 1003.)

Here, the material facts are generally undisputed, and the legality of the subsequent ROPS withholdings is a question of law. When an agency's action depends solely upon the correct interpretation of a statute, it is a question of law, upon which the Court exercises independent judgment. (*California Correctional Peace Officers' Assn. v. State* (2010) 181 Cal.App.4<sup>th</sup> 1454, 1460.)

In construing a statute, the court's fundamental task is to ascertain the intent of the Legislature. (*Guillemin v. Stein* (2002) 104 Cal.App.4<sup>th</sup> 156, 164.) To determine intent,

courts must first examine the statute's words, "because they are generally the most reliable indicator of intent." (*Wirth v. California* (2006) 142 Cal.App.4th 131, 139.) If the statute's language is clear and unambiguous, no construction is necessary and the court need not resort to other indicia of intent. (*Ibid.*)

### ii. Requests for Judicial Notice; Evidentiary Objections.

The Court grants the unopposed Requests for Judicial Notice (RJN) filed by (1) the Auditor-Controller and (2) DOF in support of the Opposition to the Petition and Supplemental Petition.

The Court grants Petitioners' RJN in support of the Opening Brief to the Petition and Supplemental Petition as to Exhibits 1-7 and 9-16. The Court takes judicial notice of Exhibit 16, the Declaration of Jeff Muir, excepting the portions thereof to which the Court in *Culver City I* sustained evidentiary objections.

The Court rules on DOF's objections to Petitioners' Declaration of Jeff Muir as follows: The Court **SUSTAINS** objection Nos. 1, 7, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 38, 41. The Court **OVERRULES** objection Nos. 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 32, 33, 34, 35, 36, 37, 39, 40, 42.

The Court rules on the Auditor-Controllers' objections to Petitioners' Declaration of Jeff Muir as follows: The Court **SUSTAINS** objection Nos. 1, 3, 7, 8, 9, 10, 11, 12, 13, 16, 18. The Court **OVERRULES** objection Nos. 2, 4, 5, 6, 14, 15, 17, 19.

The Court rules on Petitioners' objections to the Auditor-Controller's declaration of Kristina Burns as follows: The Court **SUSTAINS** objection No. 3. The Court **OVERRULES** objection Nos. 1, 2, 4, 5, 6, 7, 8.<sup>5</sup>

### iii. ROPS 13-14B Withholding

Because Respondents justify the subsequent ROPS withholdings on different grounds, the Court addresses the legality of each ROPS withholding separately.

DOF argues that the ROPS 13-14B withholding is proper "under the principles affirmed in *Culver City I*."<sup>6</sup> (DOF Opposition, p. 18.) However, the Court in *Culver City I* never

<sup>5</sup> The objections following No. 4 are not correctly numbered. Accordingly, the Court has numbered those objections 5-8.

<sup>6</sup> Petitioners assert in their reply brief for the first time in this litigation (and previous litigation) that the RDA's 2011 repayment to the City was lawful because the RDA opted to follow AB 27, the companion bill to AB 26. Petitioners also aver that they furnished the DOF with documents to show that the loaned money was used to repay bonds. The Court will not address these arguments as they were raised for the first time in Petitioner's reply brief. Moreover, the Court notes that in *Culver City I* never addressed Petitioners' arguments, because Petitioners did not raise them and/or support them in that litigation. Rather, *Culver City I* found that "[i]t is undisputed that after AB XI 26 passed, the City Loan and RDA's payment thereof was unauthorized." (*Culver City I*, 1:16-17.)



ruled on or considered the propriety of the "remedy" employed by Respondents by future RPTTF withholdings. The Court finds that the Dissolution Law does not permit the RPTTF withholding for the ROPS 13-14B period.

The Auditor Controller contends that it made the ROPS 13-14B adjustment pursuant to Section 34186, subdivision (a), the "Prior Period Adjustment Statute." That subdivision does not support the Auditor-Controller's adjustment. It provides:

- (a) Differences between actual payments and past estimated obligations on recognized obligation payment schedules shall be reported in subsequent recognized obligation payment schedules<sup>7</sup> and shall adjust the amount to be transferred to the Redevelopment Obligation Retirement Fund pursuant to this part. These estimates and accounts shall be subject to audit by county auditor-controllers and the Controller.

The Auditor-Controller avers that it is proper to adjust the ROPS 13-14B distribution to account for the differences between the actual ROPS III payments and past estimated obligations on the ROPS III schedule. This is not what the Auditor-Controller did here.

Rather, the Auditor-Controller reported to DOF that (1) it made a ROPS III distribution of \$14,665,768—or \$3,106,429 plus the \$11,559,339 Prior Period Adjustment (2) and that the Successor Agency did not use \$11,559,339 of these monies. (Exh. 25.)<sup>8</sup> Respondents aver that Petitioner only spent the \$3.1 million amount for estimated enforceable obligations in the ROPS III cycle. (Exh. 25.)

However, the Auditor-Controller did *not* make an "actual payment" of \$14,665,768 during the ROPS III period. It distributed approximately \$3 million of RPTTF, and assumed that \$11,559,339 was "available" to the Successor Agency. This \$14,665,768 amount does not represent an "actual" payment by the County Auditor Controller to the Successor Agency for the ROPS III period. Accordingly, if the Successor Agency only received \$3.1 million and spent \$3.1 million for the ROPS III period, there is nothing for the Auditor Controller to adjust in future ROPS distributions under Section 34186, subdivision (a).

The language of Section 34186 only permits a difference between "actual" payments and estimated obligations. It also does not invest the Auditor-Controller with the discretion to determine that an "actual" payment during a ROPS period reflects an earlier RPTTF payment or credit that "rolled over" and should still be available to the Successor Agency.

---

<sup>7</sup> Because the statute contemplates adjustments on payment "schedules," this language provides authority for the Auditor-Controller to make adjustments on numerous ROPS cycles. It does not limit the Auditor-Controller to a one-time adjustment.

<sup>8</sup> The Auditor-Controller determined that the \$11,559,339 Prior Period Adjustment "transferred over" to the next ROPS cycles, because it represented available RPTTF. (See Declaration of Kristina Burns, ¶¶8-9.)

Indeed, this argument contrasts the Auditor-Controller's earlier position that its application of Section 34186 is a purely ministerial adjustment based on payments and estimated obligations for a particular ROPS period. The Auditor-Controller's (and DOF's) changing position<sup>9</sup> suggests that Respondents are inventing this self-help remedy in the face of the Successor Agency's failure to recoup the monies from the City.

Further, the Auditor-Controller's decision to withhold RPTTF for the ROPS 13-14B period appears to be an attempt to "delay payments under this part to successor agencies...based on pending transactions, disputes, or for any other reason...." (Health & Saf. Code, § 34168, subd. (b).) The Auditor-Controller "shall not delay payments" for these reasons without a court order. (*Ibid.*)

Although the Court recognizes Respondents' burden of administering the Dissolution Law, the Court accords no deference to Respondents' interpretation of the Dissolution Law statutes in this case.<sup>10</sup> (*Yamaha Corp. of Am. v. State Bd. of Equal.* (1998) 19 Cal.4<sup>th</sup> 1, 12-14 ["The deference due an agency interpretation...turns on a legally informed commonsense assessment of [its] contextual merit," including the agency's consistency with earlier and later pronouncements].)

The Court finds that the plain language of Section 34186 does not support the Auditor-Controller's "adjustment" of RPTTF for the ROPS 13-14B period.

Respondents also contend that the ROPS 13-14B withholding was proper because the \$11,559,339 mistakenly paid to the Successor Agency in the ROPS I cycle is still "available" to it—e.g., the Successor Agency could recoup those monies from the City.

Respondents cite Section 34177, subdivision (D)(1)(E) in support of this argument. Subdivision (D) requires the Successor Agency to prepare a ROPS schedule for the upcoming ROPS period, and identify a "source of payment" for each listed enforceable obligation. "Sources of payment" may include the Low and Moderate Income Housing Fund, bond proceeds, the Successor Agency's reserve balances or administrative cost allowance, and RPTTF "but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation or by the provisions of this part." (Health & Saf. Code, § 34177, subd. (D)(1).)

<sup>9</sup> DOF has also changed its position. In *Culver City I*, it disclaimed any responsibility or authority to approve the Auditor-Controller's Prior Period Adjustments. However, in this case, DOF approved the Auditor-Controller's adjustment in the underlying administrative proceedings, supports its adjustment in this litigation, and also made a subsequent adjustment in the ROPS 14-15A distribution.

<sup>10</sup> Petitioners filed a October 14, 2014 "Sur-Reply and Sur-Opposition" arguing that the Court should accord DOF no deference because DOF treated the City of Galt differently under similar facts. DOF responded that it rescinded that determination as to the City of Galt. The Court already determined that it will accord no deference to DOF's interpretation of the Dissolution Law in this matter, and as explained in this ruling, it concludes that the Dissolution Law does not allow Respondents to employ the "self-help" remedy in this case. Accordingly, it need not consider these arguments when ruling on this case.

According to Respondents, the Successor Agency is entitled to RPTTF only "to the extent no other funding source is available." This interpretation of the Section 34177 is incorrect. Subdivision (D)(1)(E) also allows RPTTF when payment "is required by an enforceable obligation." The parties do not dispute that the RPTTF is needed to make the bond payment, and that such payment is an enforceable obligation. Thus, the Successor Agency is entitled to RPTTF for its enforceable obligations for each ROPS cycle.

Further, Respondents ask this Court to find under Section 34177 that the \$11,559,339 is "available" to the Successor Agency under the Dissolution Law, because the Successor Agency could get this money back from the City. The Court declines to make this finding.

First, the City and the Successor Agency are two legally distinct entities under the Dissolution Law. (Health & Saf. Code, § 34173, subd. (g); *see also Pacific States Enter., Inc. v. City of Coachella* (1993) 13 Cal.App.4<sup>th</sup> 1414, 1426 [RDA is separate and distinct from creating city].) Moreover, the Dissolution Law does not define the term "available." Respondents' broad reading of "available" would allow Respondents to deem money "available" to an RDA or successor agency any time (1) these entities improperly transferred monies to another entity, and (2) Respondents concluded that the successor agency should be able to get the money back. The Dissolution Law does not permit Respondents to make these assumptions. In the absence of any express statements within the Dissolution Law defining "available" in this context, or permitting the self-help remedy of continual ROPS deductions, the Court does not find that the moneys are "available" to the Successor Agency, and that its RPTTF allotments may be deducted *ad infinitum*.

Respondents argue that principles of fairness require the Court to find this self-help remedy in the Dissolution Law. This is because in each ROPS cycle, the Successor Agency will receive \$11.5 million that should go to taxing entities, because it has failed to recoup the \$11.5 million from the City. The Court rejects this argument.

The Dissolution law authorizes other means to recoup improperly transferred funds that may be distributed to the taxing entities, such as the Due Diligence Review (DDR) process, and the State Controller's Review. By enacting the DDR and State Controller Review processes, the Legislature was aware that the remitted monies would not immediately be returned to the taxing entities. In fact, Section 34167.5 governing the State Controller's Review, does not set a deadline by which these reviews must be completed.

Accordingly, the Court declines to infer that an additional self-help remedy of deducting future ROPS distributions exists on the basis that money is "available" because particular taxing entities may not immediately receive some amount of money during each ROPS cycle.

#### iv. ROPS 14-15A Withholding

Respondents first argue that the ROPS 14-15A withholding, the subject of the Supplemental Petition, cannot be heard, because Petitioners did not timely file and serve the Supplemental Petition. The Court rejects Respondents' arguments, as discussed in Section II (a), above, and will consider the merits of the ROPS 14-15A withholding.

Respondents contend that DOF has authority to "reclassify a payment source" under Section 34177, subdivision (m), because the Successor Agency failed to recoup the monies from the City. The Court is not persuaded.

That subdivision provides that DOF "shall make its determination of the enforceable obligations and the amounts and funding sources of the enforceable obligations" within 45 days after the Successor Agency submits its ROPS schedule. (Health & Saf. Code, § 34177, subd. (m).) However, this subdivision outlines DOF's procedural duties and authority in reviewing ROPS submissions. It says nothing about authorizing DOF to determine whether money held by another entity is, "available" to the Successor Agency, so that it can modify an RPTTF allocation.

Respondents also cite to Section 34179, subdivision (h), which gives DOF power to "eliminate or modify" a ROPS item on the schedule prior to DOF's approval. Here, DOF did not eliminate or modify a ROPS item. It reduced the Successor Agency's RPTTF distribution based on DOF's determination that the Successor Agency could recoup that amount from the City.

The Court has reviewed the Dissolution Law statutes cited by Respondents in support of their arguments that the ROPS 14-15A withholding was proper. The Dissolution Law does not permit or contemplate that DOF may use the "self-help" remedy it employed here.

Accordingly, the Court finds that Respondents made or authorized the ROPS 13-14B and 14-15A withholdings without legal basis, and that Petitioners are entitled to a writ of mandate setting aside these decisions.

#### v. Equitable Arguments

The parties discuss at length the "fairness" of the ROPS withholdings. Petitioners claim that the withholdings are unfair because the City was not unjustly enriched: it advanced the RDA \$12.5 million and the RDA quickly repaid it. Petitioners also claim that the taxing entities will be unjustly enriched because they, not the Successor Agency, will receive the RPTTF that the Successor Agency needs in each ROPS distribution cycle. Respondents counter that it is unfair that RPTTF must be paid to the Successor Agency in each ROPS cycle (and not the taxing entities) because the Successor Agency has not recouped the money. Because the Court resolves the Petition and Supplemental Petition on the basis of Respondents' legal authority to take actions under the Dissolution law, it does not reach the merits of these arguments.

## vi. Declaratory Relief

Petitioners also assert causes of action for declaratory and injunctive relief in the Petition and Supplemental Petition. Petitioners seek (1) a judicial declaration that the ROPS 13-14B and 14-15A withholdings are “unlawful” and (2) an injunction to prevent Respondents from withholding \$11,127,859 from the ROPS 13-14B and 14-15A distributions. (Petition, p. 15:22-28; Supplemental Petition, p. 8:10-17.)

DOF argues that the Court should dismiss these causes of action, because the Court’s ruling denying the mandate claims would necessarily resolve Petitioners’ demands for declaratory and injunctive relief.<sup>11</sup> (*Griset v. Fair Political Practices Comm’n* (2001) 25 Cal.4<sup>th</sup> 688, 699-700.) Because the Court grants the claim for writ relief in the Petition and Supplemental Petition, this argument is unavailing. However, Petitioners’ prayers for declaratory relief essentially ask the Court to review Respondents’ administrative decisions and declare them unlawful. Petitioners *do not* ask the Court to declare the rights of the parties as to future ROPS determinations. Declaratory relief is not available to review an administrative decision. (*State of California v. Superior Court* (1974) 12 Cal.3d 237, 249.) Additionally, the Court has already reviewed the challenged administrative decisions in granting the writ claims in the Petition and Supplemental Petition, and Petitioners’ declaratory relief claims are duplicative.

Accordingly, the Court **DENIES** as moot Petitioner’s causes of action for declaratory and injunctive relief in the Petition and Supplemental Petition.

## c. DOF’s Cross-Petition

DOF has filed the Cross-Petition seeking a writ of mandate against the City and Successor Agency. The Cross-Petition seeks an order “reversing” the RDA’s repayment to the City, and directing the City to pay the Successor Agency interest on the transferred monies. DOF also seeks a writ of mandate ordering the Successor Agency to take action to recover the funds from the City and a declaration that the Successor Agency either use those monies before using RPTTF on enforceable obligations or remit the monies to the taxing entities.

### i. Standard of Review

A writ of mandate may issue to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station. (Code. Civ.

<sup>11</sup> DOF also cites *City of Pasadena v. Cohen* (2014) 228 Cal.App.4<sup>th</sup> 1461, to argue that a claim for declaratory relief cannot be joined with a writ of mandate claim reviewing an administrative decision. However, DOF undermines this argument by joining declaratory causes of action to its claims for writ of mandate in the Cross-Petition. Further, *Pasadena* is not final or precedential, in that a petition for review of that case is before the California Supreme Court. Because the Court denies Petitioners’ declaratory relief claims on the grounds that they seek review of an administrative decision, it does not address when declaratory relief claims may be appropriately joined with mandate claims.

Proc., § 1085; *City of Dinuba v. County of Tulare* (2007) 41 Cal.4<sup>th</sup> 859, 868.) To obtain writ relief, a party must establish a clear, present and usually ministerial duty on the part of respondent and a clear, present, and beneficial right of the petitioner to the performance of that duty. (*City of Dinuba, supra*, 41 Cal.4<sup>th</sup> at p. 868.) To obtain writ relief, the petitioner must not have any other plain speedy, or adequate remedy at law. (Code Civ. Proc., § 1086.)

**ii. Evidentiary Objections; Request for Judicial Notice**

DOF's request for judicial notice is granted.

DOF objects on the basis that Cross-Respondents refer to unspecified documents in their Opposition Brief to the Cross Petition. These documents include the "Muir Decl.," "RJN" and "Supp. RJN," and are cited as authority for background facts underlying this dispute. Petitioners have filed no separate declarations or requests for judicial notice to the Cross-Petition. Nor do Petitioners not identify the "Muir Decl." by the full title and date of execution, in violation of California Rules of Court, Rule 3.1110(d). The caption of the previously filed Declarations of Jeff Muir, do not also refer to this particular proceeding, in violation of Rule 3.1115.

The Court notes DOF's objections and admonishes Cross-Respondents for not complying with the applicable Rules of Court.

**d. Petition for Writ Relief Against the City**

Cross-Petitioners argue that mandate lies against the City because the Court in *Culver City I* already determined that the RDA's repayment of \$12.5 million to the City was unlawful. Cross-Petitioners further argue that if the City does not return the funds, *Culver City I's* ruling (which did not address this contention) will be of no force and effect. However, Cross-Petitioners have failed to allege that a clear and present duty exists compelling the City to return the monies. At the hearing, DOF argued that because the Court in *Culver City I* observed that the 2001 transfer was unlawful, a writ of mandate lies to reverse the transfer, regardless of whether DOF alleges a duty. Although DOF notes that mandate lies to compel an *agency* to rescind its void act, the cases cited by DOF do not discuss this fact pattern here: where a petitioner seeks mandate relief against the *recipient* of monies, and alleges no duty on the part of the recipient.

Additionally, as discussed below, Cross-Petitioners have failed to demonstrate that they are without a plain, speedy or adequate remedy at law. They are not entitled to mandate relief as to the City.

**e. Petition for Writ Relief Against Successor Agency**

Cross-Petitioners also seek a writ of mandate directing the Successor Agency to take efforts to recover these monies from the City. They argue that the Successor Agency has a duty to nullify and rescind the RDA's void acts, including the 2011 repayment to the

City, and a duty to “[e]nforce all former redevelopment agency rights for the benefit of the taxing entities.” (Health & Saf. Code, §§ 34173, subd. (b), 34177, subd. (f).) However, the Court does not reach the question of whether these statutes impose a ministerial duty upon the Successor Agency to recover the funds. This is because Cross-Petitioners’ claim for writ relief is premature.

To obtain writ relief, Cross-Petitioners must show that no other plain speedy or adequate remedy at law is available. (Code Civ. Proc., § 1086.) Section 34167.5 authorizes the State Controller to review transfers between the RDAs and sponsoring entities<sup>12</sup> or any other public agency made after January 1, 2011. If a transfer occurred during that period and the government agency that received the assets is not contractually committed to a third party to expend or encumber those funds, to the extent not prohibited by law, the State Controller shall order the available assets returned to the successor agency. (Health & Saf. Code, § 34167.5.)

The State Controller will review the RDA’s 2011 repayment to the City. No parties dispute that the State Controller has not completed his review of the RDA’s transactions.<sup>13</sup> If the State Controller orders that the repayment be remitted, Cross-Petitioners will not need to seek writ relief for a separate order directing the City to return funds or the Successor Agency to recover them.

DOF responds that the State Controller’s review is a “separate process” and that DOF has independent authority “to obtain injunctive or other appropriate relief”—e.g. an “order directing the City to return funds.” (Citing Health & Saf. Code, §§ 34167, 34177, subd. (a)(2).) This argument is unavailing.

The Dissolution Law does not further define “injunctive and other appropriate relief.” Here, DOF seeks an “order” compelling the City to return the funds or the Successor Agency to return funds. This is the subject of a writ of mandate, and a plain, speedy and adequate remedy exists—the State Controller’s review. While the Court acknowledges that the DOF and the State Controller are separate entities and the processes are separate, this is a distinction without a difference—the relief sought is identical: that is, reversal or return by the City of the funds to the Successor Agency.

At oral argument, DOF argued that it is immaterial that the State Controller has not completed his review. This is because DOF, as the *Petitioner*, does not have a remedy other than writ relief, that it can “pursue” at this moment. DOF cited *Flores v. Department of Corrections and Rehabilitation* (2014) 224 Cal.App.4<sup>th</sup> 199 for this proposition. *Flores* is inapposite, and the Court has not located other authority providing that the remedy of waiting, without actively pursuing, for another agency to make an

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<sup>12</sup> The City is the RDA’s sponsoring entity.

<sup>13</sup> The State Controller has not undertaken review of the RDA’s transfers of funds to other entities. The State Controller notified Petitioners that it will begin its review in September 2014. (Declaration of Jeff Muir, ¶43; Exh. 34.)





### III. DISPOSITION

The claims for writ of mandate in the Petition and Supplemental Petition are **GRANTED**. The claims for declaratory relief in the Petition and Supplemental Petition are **DENIED**. The Cross-Petition and all claims therein are **DENIED**.

At the hearing, DOF requested a stay of the Court's decision, in the event that the Court decided to affirm the tentative ruling. DOF's request for a stay is **DENIED**, in light of the Court's ruling that the Dissolution Law does not authorize Respondents' RPTTF withholdings, and Petitioners' representation of the harm that would befall the Successor Agency if it defaulted on its bond obligations.

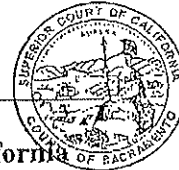
As to the Petition and Supplemental Petition, Counsel for Petitioner is directed to prepare formal order incorporating this ruling as an exhibit thereto, a judgment, and a separate writ of mandate; submit them to opposing counsel for approval as to form, and thereafter submit them to the Court for approval in accordance with the California Rules of Court, rule 3.1312. The writ of mandate shall be prepared for the signature of the Clerk of the Court.

As to the Cross-Petition, Counsel for Petitioners is directed to prepare a formal order incorporating this ruling as an exhibit, and judgment; submit them to opposing counsel for approval as to form, and thereafter submit them to the Court for approval in accordance with the California Rules of Court, rule 3.1312.

Date: October 27, 2014



Shelleyanne W.L. Chang  
Judge of the Superior Court of California  
County of Sacramento



**EXHIBIT 4**  
**Notice of Appeal**



**EXHIBIT 5**

**Minute Order**



# Superior Court of California, County of Sacramento

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## FACSIMILE TRANSMITTAL SHEET

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Date:

**November 3, 2014**

Send FAX to:

Company:

**Edward Kang/Guillermo Frias  
Peter Lee  
Sylvia Cates/Marc LeForestier**

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SUBJECT:

**2013-80001719  
City of Culver City vs. Cohen**

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Court Contact: E. HIGGINBOTHAM

Department/Unit: 24

Telephone: 916-874-6687

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO  
GORDON D SCHABER COURTHOUSE**

**MINUTE ORDER**

DATE: 11/03/2014

TIME: 01:11:00 PM

DEPT: 24

JUDICIAL OFFICER PRESIDING: Shelleyanne W L Chang

CLERK: E. Higginbotham

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **34-2013-80001719-CU-WM-GDSCASE** INIT.DATE: 12/26/2013CASE TITLE: **City of Culver City vs. Michael Cohen in his official capacity as Director of the State of California Department of Finance**

CASE CATEGORY: Civil - Unlimited

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**APPEARANCES**

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**Nature of Proceedings: Minute Order Re: Ex Parte Application**

Having reviewed and considered Petitioners' Ex Parte Application and Respondent Department of Finance's Opposition, the Court denies the ex parte application. The hearing scheduled for November 7, 2014 at 10:00 a.m. in Department 24 is dropped from calendar.

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|--|---|
| <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO</b><br>Gordon D Schaber Courthouse<br>720 Ninth STREET<br>Sacramento, CA 95814-1311          |   |
| <b>SHORT TITLE:</b> City of Culver City vs. Michael Cohen in his official capacity as Director of the State of California<br>Department of Finance |   |
| <b>CLERK'S CERTIFICATE OF SERVICE BY MAIL (Minute Order)</b>   | <b>CASE NUMBER:</b><br>34-2013-80001719-CU-WM-GDS |

I certify that I am not a party to this cause. I certify that a true copy of the Minute Order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Sacramento, California, on 11/04/2014.

Clerk of the Court, by: */s/ E. Higginbotham* , Deputy

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**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **City of Culver City v. Michael Cohen**  
Case No.: **34-2013-80001719**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On October 31, 2014, I served the **Notice of Appeal** by placing attached document in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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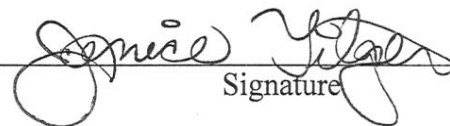
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 31, 2014, at Sacramento, California.

Janice Titgen  
Declarant

  
Signature