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TAXPAYERS FOR ACCOUNTABLE
6 SCHOOL BOND SPENDING

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO – CENTRAL DISTRICT**

10 TAXPAYERS FOR ACCOUNTABLE)
SCHOOL BOND SPENDING, a California)
11 nonprofit fictitious business entity,)

12)
13 Plaintiff and Petitioner,)

14 v.)

15)
16 SAN DIEGO UNIFIED SCHOOL)
DISTRICT; and DOES ONE through)
17 TWENTY, inclusive,)

18)
19 Defendants and Respondents,)

Case No.: 37-2011-00085714-CU-WM-CTL

[action filed: February 10, 2011]

REPLY TO DEFENDANT'S
OPPOSITION TO MOTION FOR
FURTHER POST-JUDGMENT RELIEF
ORDERING RESTITUTION AND
REPAYMENT OF ILLEGALLY
EXPENDED TAXPAYER FUNDS

Date: March 21, 2014

Time: 1:30 p.m.

Dept. C-72

I/C Judge: Hon. Timothy B. Taylor

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21 **A. Restitution is a Proper Remedy Under Declaratory Relief**

22 In its opposition, the District makes no argument that Declaratory Relief is improper or
23 should not have been ordered. Instead, the District makes the argument that Declaratory Relief
24 be limited. (Opposition at pp. 3-4.) The District incorrectly argues: "It is not the purpose or
25 function of Declaratory Relief to undo a completed wrong." (Opp. at 4:21-22.) To the contrary,
26 the California law supports that "An action for declaratory relief is equitable, and a court of
27 equity will administer complete relief when it assumes jurisdiction of a controversy."

28 (Westerholm v. 20th Century Ins. Co., (1976) 58 Cal.App.3d 628, 632, citing Laurance v.

1 Security-First Nat. Bank, (1963) 220 Cal.App.2d 622, 626.) The court in Westerholm concluded
2 that Declaratory Relief included reimbursement, and that it was proper for a court to “grant any
3 relief consistent with the evidence and the issues embraced by the pleadings.” (Id., 58
4 Cal.App.3d at p. 632.)

5 Taxpayers has established that the further relief now sought is consistent with the
6 pleadings of the Complaint and relief requested. (Motion at 4-5.) The District admits that
7 Taxpayers properly pleaded and requested this Court order the District to suspend *proceeding*
8 *with the project or spending Proposition S money for construction*. (Opp. at 6:11-19.) However,
9 it requests this Court to ignore plaintiff’s pleaded and requested claim to suspend spending after
10 the February 10, 2011 complaint filing date on the bases that (1) its continued illegal spending
11 was “in good faith” and was exercised with “due care” advice of counsel, and (2) Taxpayers
12 alleged a right to interim injunctive relief but never pursued it. (Opp. at 12:20-13:6.)

13 Except perhaps for statutory government torts claims, a government agency’s “good
14 faith” mistake and misapplication of law is not an excuse to deny judgment or relief. Second, a
15 preliminary injunction to suspend expenditures would not only have proved futile in light of the
16 initial judgment issued by this Court, but the mere *expenditure of money* is not a proper subject
17 for issuance of a preliminary injunction because a moving party cannot satisfy the required
18 “irreparable harm” element to obtain such preliminary relief because *money* can almost always
19 be repaid or ordered as part of a judgment. In this case, repayment to an account for use of
20 proper Proposition S projects is an appropriate remedy.¹

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¹ The District makes multiple nonspecific and unsupported arguments that the requested repayment is “very complex,” “not feasible” and cannot go into an existing Proposition S account, because it would interfere with a “myriad” of Treasury Regulations and sacrifice bondholders’ tax exempt status. (Opp. at 10:27-11:14, citing the Salkeld Declaration.) This red herring argument to allow the illegal expenditures to remain should be rejected. It is much more logical and plausible that federal regulators would be more concerned with misuse and illegal expenditures of bonds funds *remaining* out there. As an alternative, this Court might order the repaid funds be placed in a separate District or Superior Court account for later use by the District for future authorized Prop S projects.

1 The February 10, 2011 complaint filing date is additionally significant because not only
2 did Taxpayers make a claim and demand for the District to suspend its alleged illegal
3 expenditures (¶¶ 12, 27, 29), but it is demonstrated and admitted that most of the offensive
4 Proposition S construction and expenditures had not been commenced or completed as of the
5 lawsuit filing date. (*See* confirmation in the Declaration of Gary Stanford, ¶¶ 3-7.) Therefore, it
6 appears conceded that more than half of the monetary value of the installations (\$1.7M) had not
7 been commenced (Hoover, University and Clairemont), and in any event the state of limitations
8 and claw-back for remedying and disgorgement of illegal taxes covers at least one year prior to
9 the lawsuit filing date. (*Ontario v. Superior Court of San Bernardino County*, (1970) 2Cal.3d
10 335, 345 [“the statute of limitations in an ordinary taxpayers’ suit is one year.”] *citing* Code Civ.
11 Proc., § 526a.)

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13 **B. Plaintiff Properly Pleaded Declaratory and Injunctive Relief for the**
14 **Proven Violation of CCP § 526a**

15 The District inaccurately states “Plaintiff acknowledges it did not plead a cause of
16 action supporting a restitutionary remedy.” (Opp. at 7:21-22.) Taxpayers made no such
17 acknowledgement. There is good reason why Taxpayers did not plead a separate or specific
18 cause of action for restitution or unjust enrichment because such specific equitable requests and
19 remedies are not acceptably pleaded claims, but are rather encompassed as possible relief
20 associated with other substantive properly pleaded claims. (Section C, *post.*) Taxpayers’
21 requested remedy is encompassed with its First Cause of Action and this motion now seeks to
22 ensure that the proof at trial conforms to the CCP § 526a remedy of restitution.

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1 **C. Unjust Enrichment and Restitution are not Acceptably Pleaded Causes of Action**

2 "[T]here is no cause of action in California for unjust enrichment." (Melchior v. New
3 Line Productions, Inc., (2003) 106 Cal.App.4th 779, 793.)² This same principle applied to
4 restitution is recognized in Munoz v. MacMillan, (2011) 195 Cal.App.4th 648, 661 ["There is no
5 freestanding cause of action for 'restitution' in California."]. Thus, the District's multiple
6 arguments that "Plaintiff alleged no existing unjust enrichment or claim for restitution" are
7 legally infirm. (E.g. Opp. at 2:22-23, 7:18-19.)

8
9 **D. Rationale and Support for Restitution as a Reasonably Necessary and**
10 **Appropriate Remedy**

11 In association with its meritless arguments that restitution and unjust enrichment were
12 not pleaded causes of action, the District also seeks to demonstrate that the District was not
13 unjustly enriched. (Opp. at 9-10.) The District analogizes that illegally expended funds in one
14 hand is undifferentiated with the money that would be used to pay it back. (Opp. 10:1-2.) This
15 wholly ignores and does not address Taxpayers' argument that the District is asking taxpayers
16 to continue to pay many years of property taxes for illegally expended funds when, it was the
17 District which acted to misapply the law for one or more of its unauthorized projects. (Motion
18 at 6:7-17.)

19 Furthermore, there is unjust harm to taxpayers. The District spent \$2,616,173 on field
20 lighting for five different schools in the district. It used Proposition S money that properly
21 belonged to a fund that had a specific list of projects for **repair and safety**. Money taken from

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24 ² The court further explained that the "phrase 'Unjust Enrichment' does not describe
25 a theory of recovery, but an effect: the result of a failure to make restitution under
26 circumstances where it is equitable to do so." (Lauriedale Associates, Ltd. v.
27 Wilson, (1992) 7 Cal.App.4th 1439, 1448.) Unjust enrichment is " 'a general
28 principle, underlying various legal doctrines and remedies,' " rather than a remedy
itself. (Dinosaur Development, Inc. v. White, (1989) 216 Cal.App.3d 1310, 1315.)
It is synonymous with restitution. (*Id.* at p. 1314.)"
(Melchior, supra, 106 Cal.App.4th at p. 793, citations in original.)

1 the repair and safety fund for an unlawful purpose deprives other approved and listed projects
2 from funding. Additionally, it forces taxpayers voting to approve the Proposition to pay for
3 illegal expenditure and construction for years to come. The entire purpose of the vote was to
4 authorize certain expenditures and where the District diverts those funds, equity and good
5 conscience demand that the diverted funds are paid back.

6
7 **E. The Dates of the Court of Appeal Decision and Ultimate Judgment Do Not**
8 **Control or Limit the Remedies of a Properly and Timely Filed Complaint**

9 As part of its “good faith” argument, the District argues that, as of the date of the Court
10 of Appeal decision (approx. two years after Taxpayers’ commenced the lawsuit), it had
11 completed the construction and therefore should be relieved from its adverse actions, conduct
12 or any judgment or remedy . (Opp. at 13:15-24.) The District requests such accommodation
13 based on the original supportive (but now reversed) determination and judgment issued by the
14 trial court. This argument and rationale is without merit. It is the original filing date and
15 ultimate judgment that controls, not what happens in the interim. The District is essentially
16 arguing that – if it completes all of its illegal spending during the pendency of the action
17 (whether in reliance of “good faith” or the mere passage of time) then Taxpayers should
18 reasonably, legally, and/or equitably be left without a full and fair effective remedy. Taken to
19 its extreme, if the District’s argument and rationale were adopted, an agency that completes an
20 illegal action is excused from and has escaped the requirement to redress any noncompliance.
21 This argument not only contravenes multiple legal doctrines, but there is also substantial
22 authority that agencies proceed at their own risk and peril in the face of litigation with full
23 knowledge and advice that they may be required to correct and undo the wrongdoing. (Kriebel
24 v. City of San Diego, (1980) 112 Cal.App.3d 693, 704.) The District’s request for relief
25 because it completed the wrongful acts prior to a final judgment is meritless as both a matter of
26 law and fact.

1 **F. Conclusion**

2 Taxpayers requests the court grant this motion for further post-judgment relief to provide
3 for the repayment of illegally expended Proposition S funds in the amount of \$2,616,173 and for
4 attorney's fees.

5 In the event this Court declines to grant this Motion based on a missing clause or word in
6 the Complaint, Taxpayers requests the denial of the motion be made without prejudice and time
7 be given to allow Taxpayers to bring a post-judgment motion to amend the complaint to conform
8 to proof as allowed by law. (See, e.g. La Forge v. Groendyke, (1952) 108 Cal.App.2d 522, 525.)
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10 Respectfully submitted,

11 Dated: March 14, 2014

12 LAW OFFICE OF CRAIG A. SHERMAN



13
14 Craig A. Sherman
15 Attorneys for Plaintiff
16 TAXPAYERS FOR ACCOUNTABLE
17 SCHOOL BOND SPENDING
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Proof of Service

Taxpayers for Accountable School Bond Spending v. San Diego Unified School District
Case No.: 37-2011-00085714-CU-WM-CTL
San Diego Superior Court, Central District

I, the under.signed, declare under the penalty of perjury that I am over the age of eighteen years, my place of business is in the County of San Diego, located at 1901 First Avenue, San Diego, CA; and I served the below-named person(s) the following document(s):

REPLY TO DEFENDANT'S OPPOSITION TO MOTION FOR FURTHER POST-JUDGMENT RELIEF ORDERING RESTITUTION AND REPAYMENT OF ILLEGALLY EXPENDED TAXPAYER FUNDS

on March 14, 2014 on the following person(s) in a sealed envelope or package, addressed as follows:

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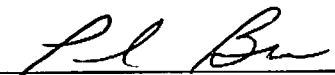
Counsel for Defendants and Respondents
SAN DIEGO UNIFIED SCHOOL DISTRICT

in the following manner:

- 1) By placing a copy in a separate envelope, with postage fully arranged for payment, for delivery to the persons and addresses named above and depositing each with the overnight carrier Norco Delivery Services at San Diego, California.
- 2) By personally delivering copies to the person(s) served.
- 3) By faxing copies to the above person and printing confirmation of the success of said transmission and retaining a copy of said successful transmission
- 4) By sending to each person named above via electronic service at the above electronic notification address(es).

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

Executed on March 14, 2014 at San Diego, California.



Paul Best