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Superior Court Of California
County Of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk
By: Marlon Gomez, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

UNITED WALNUT TAXPAYERS, a California Nonprofit Fictitious Business Entity,
Plaintiff and Petitioner,
v.

MT. SAN ANTONIO COMMUNITY COLLEGE DISTRICT; WILLIAM SCROGGINS, in his official capacity as President and CEO of Mt. San Antonio Community College and DOES ONE through TEN, inclusive,

Defendants and Respondents,

AND ALL REAL PARTIES IN INTERESTS and DOES ELEVEN through THIRTY.

Case No.: BC 639908

[action filed: November 7, 2016]

MEMORANDUM OF UNITED WALNUT TAXPAYERS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Motion Reservation ID: 171219275729

Filed concurrently with:
DECLARATION OF CRAIG A. SHERMAN; DECLARATION OF DENNIS G. MAJORS; REQUEST FOR JUDICIAL NOTICE WITH SUPPORTING DECLARATION; and [PROPOSED] ORDER

Hearing Date: April 11, 2018
Time: 8:30 a.m.
Dept.: 42
I/C Judge: Hon. Holly E. Kendig

Plaintiff and petitioner UNITED WALNUT TAXPAYERS ("UWT" or "Plaintiff") files this *Memorandum in Support* of its motion for a preliminary injunction for this Court to order defendants Mt. San Antonio Community College District, and its President and CEO William Scroggins (collectively "Mt. Sac" or "Defendants") cease and suspend Measure RR spending on the new stadium at the Hilmer Lodge stadium site, that was approved on October 12, 2016 as consisting of the *demolition of existing Hilmer Lodge Stadium and construction of a new stadium* (hereafter "Stadium Project"). The Stadium Project was not one of the strict accountability listed projects in the 2008 Measure RR ballot.

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I. INTRODUCTION

Injunctive relief, preliminary and permanent, are expressly provided legal actions and remedies accorded to UWT by the State Legislature and State Constitution to ensure strict compliance with the Constitutional amendment school bond enactment passed via Proposition 39 (Cal. Const. art. XIII A, § 1) and its companion statutory enactment under Education Code §§ 15264-15288.

Voters at the ballot box in 2008, who approved $353 million in new *ad valorem* property taxes, could not have envisioned that they were authorizing **$87 million dollars** for Mt. Sac to construct, or reconstruct, a brand new Hilmer Lodge stadium built to world-class standard so Mt. Sac can host non-scholastic international Olympic caliber events.

The reason voters could not have contemplated funding a new stadium is because the Measure RR ballot measure contains, as required by the State Constitution, a list of projects. The Measure RR bond measure referenced and incorporated the 2008 Master Plan that contained the enumerated and described twelve "Priority Projects" that totaled the $353 million dollars in local Measure RR funding for bond projects that were studied via "facilities evaluations and [that] received public input and review in developing the scope of college facility projects to be funded, as listed in the 2008 Master Plan."

The 2008 Master Plan and the list of described and identified Measure RR projects, Projects "A" through "L" (RFJN, Ex. B) clearly informed and directed the voting public about the $353 million of Measure RR funding for projects. A new or renovated Hilmer Lodge Stadium was not included in the maps, narratives, budgets, or geographical area of the athletics projects identified as "Project D," or any other Measure RR project. (RFJN, Exs. B, F, G and H)

Mt. Sac seeks to unlawfully utilize generic bond language and convince this Court that Measure RR "goals" for vocational training and professions, and new classrooms, represent the disclosed intent for a new $90 million Hilmer Lodge Stadium. This argument defies plain language and the legal requirements set forth in a Proposition 39 bond measure, and the holding in *Taxpayers for Accountable School Bond Spending v. San Diego Unified School District* ("*Taxpayers*"), (2013) 215 Cal.App.4th 1013, because the words stadium lighting, or generic words "physical education" or "classrooms" as Mt. Sac argues here, must be connected with or "tethered to" one of the specific bond listed projects. (*Id.* at 1030-1031) In fact, as clearly stated in Measure RR (RFJN Ex. A at p. 2), the "goals" are met by the projects

specifically listed in the 2008 Master Plan (the twelve "Priority Projects" that make up the 2008 Project List).

Based on the facts and reasons set forth below, this is a proper case for this Court to enjoin Measure RR spending on a new project never identified in the subject bond measure. UWT is entitled to injunctive relief as a matter of right pursuant to Code of Civil Procedure section 526a and Education Code section 15284. UWT's strong showing of adequate proof – that an $89 million Hilmer Lodge Stadium was not set forth or informed to the voters in Measure RR – such that a balance of harm weighs in favor of UWT. With UWT's lawsuit timely filed and properly brought, there are no affirmative defenses that Mt. Sac can prove to overcome UWT's claim for a rightful injunction of the improper subject bond spending.

II. STATEMENT OF FACTS

A. Constitutional and Legislative Enactments Controlling Measure RR

In 2008, taxpayers within the Mt. Sac Community College District passed a $353 million school bond measure ("Measure RR") pursuant to Proposition 39. Proposition 39 is entitled the "Smaller Classes, Safer Schools, and Financial Accountability Act." (Prop. 39, § 4, as approved by voters, Gen. Elec. (Nov. 8, 2000).)

To enforce Proposition 39, the State Legislature enacted Education Code §§ 15264-15288, entitled the "Strict Accountability in Local School Construction Bond Act of 2000" (hereafter defined as "Strict Accountability Act").

Proposition 39 allows the voters within a school or community college district to approve measures permitting the taxation of real property within the district in order to issue bond funds for the purpose of school capital improvements. Measures adopted pursuant to Proposition 39 require only a 55% approval rate and are an exception to the constitutional mandate that all taxes imposed by local government requires a two-thirds (66.6%) approval. (*See* California Constitution, Article XIII C, Section 2; *cf.* California Constitution, Article XIII A, Section 1.)

Proposition 39 requires that school districts like Mt. Sac that propose bond measures taking advantage of a lower 55% approval threshold adhere to specific requirements, including under California Constitution, Article XIII A, Section 1, subdivision (b)(3)(B) which requires: "**A list of the specific school facilities projects to be funded and certification that the school district board, community college board, or county office of education has evaluated safety, class size reduction, and information technology needs in developing that list.**"

B. Mt. Sac's Study and Presentation of the Projects List to the Voters via Measure RR

In accordance with the Constitutional and statutory strict compliance and project list requirements, the Measure RR ballot measure referenced and incorporated the 2008 Master Plan containing the "2008 Project List" that totaled the $353 million dollars in bond projects that were studied via "facilities evaluations and [that] received public input and review in developing the scope of college facility projects to be funded, as listed in the 2008 Master Plan." (RFJN, Ex. B, pp. 9-10)

The Mt. San Antonio College 2008 Master Plan ("2008 Master Plan") includes 12 discrete projects, denominated as Projects "A" through "L," that make up the "new bond projects" for the 2008 Project List, which are referenced in Measure RR as "Priority Projects". (RFJN, Ex. B at p. 9-10; RFJN, Ex. A, p. 3, *see also* RFJN, Ex. F, pp. 1-3.)

Neither the text of Measure RR nor any part of the 2008 Master Plan includes the construction of an athletic stadium at the Hilmer Lodge Site, nor any mention of "**stadium**" at all. (RFJN, Ex. A and Ex. B, respectively.)

The only physical education building and athletics projects in the 2008 Project List are the "**Athletics Complex Phase 2**" **project designated as "Project D"** (RFJN, Ex. B at pp. 9-10, 21, 23), the "Classroom Building Renovation" project (designated as "Project F") to comply with the Field Act for a new Physical Education Center with faculty offices, the weight rooms, classrooms, team rooms, and locker/shower rooms (RFJN, Ex. B at pp. 9-10, 26-27), and the infrastructure/grading project called "Campus Site Improvements (South of Temple Avenue)" designated as "Project L1-C" for major grading west of the stadium to prepare the site for the gym, tennis courts, and parking. (RFJN, Ex. B at pp. 9-10, 40)

The Project D **Athletics Complex Phase 2** site for the gym building and **fields and courts to the south** are expressly delineated and shown by a blue hashed-line on the 2008 Master Plan. (RFJN, Ex. B at pp. 1, 21.)

Prior to the voters going to the polls in November 2008, Mt. Sac also prepared complete narrative descriptions for the projects comprising the 2008 Project List which it continues to post on its website as the 2008 Master Plan (under its heading "Legacy Master Plans," – RFJN, Ex. E), with the descriptions for each of the projects verifying – by both maps and descriptions – that no Hilmer Lodge Stadium construction (or renovation) was contemplated or included as part of the 2008 Measure RR bond program. (RFJN, Ex. F)

Consistent with the aforementioned currently hosted map and narrative July 23, 2008 version of the 2008 Master Plan (*id.*), the 2010 updated narratives of the 2008 Project List

projects also do not contain any reference or project for Hilmer Lodge Stadium renovation or construction. (Exh G., pp. 1, 5, 7, 20-21)

C. Mt. Sac Adds "Renovations" to Hilmer Lodge Stadium to a Master Plan Update in 2013

It was not until 2013 that Mt. Sac *added* anything related to the Hilmer Lodge Stadium (renovations) which, even then, were not the current Stadium Project. This is proven in the environmental impact report (EIR) for the 2012 facilities plan update that shows, in both a table and a map, that no stadium renovation project was previously included or reviewed prior to 2012. (RFJN, Ex. J, pp. 9-10.) Further, neither the Final EIR nor the 2012 facilities plan update (approved in December 2013) identify or include any mention of "Athletics Complex East."

From 2013 through 2015, Mt Sac engaged an architect firm and construction consultant to commence design and planning for the stadium renovations under an undefined named and moniker of the "Athletics Complex East" project.

D. Prior Litigation Between the Parties Proved that Mt. Sac is Violates Measure RR Spending and Project Review and Approval

On March 24, 2015 UWT filed a lawsuit alleging that Mt. Sac is proceeding with development projects not identified in Measure RR and its 2008 Project List, and that Mt. Sac is proceeding with project approval and development without proper CEQA review. (RFJN, Ex. O, ¶¶ 1.b, 2, 20, 30-32, 58-59) UWT included reference and claims regarding the "ACE" or "Athletics Complex East" project because (1) it was a project that could not be identified in the Measure RR project list for use of Measure RR bond proceeds, and (2) so that Mt. Sac could claim it had reviewed or approved the ACE project – because it had never been defined, review, and approved for development.

On May 14, 2015, the Honorable Luis Lavin granted UWT a preliminary injunction to enjoin Mt. Sac from spending the Measure RR funds for a parking structure project because the project was not identified on the bond measure's Project List. (RFJN, Ex. P, p. 7) Mt. Sac presented and averred the concurrently filed RFJN, Ex. B document as the 2008 Master Plan for the Judge Lavin's consideration and review to decide the merits of said motion.

On January 21, 2016, the Honorable James Chalfant denied Mt. Sac's motion to dismiss UWT's Measure RR bond spending claim, rejecting Mt. Sac's argument that a 60-day validation lawsuit limitations period applied to UWT's Proposition 39 bond spending challenge. (RFJN, Ex. Q, pp. 1-3, 6-7 [court order].)

After a March 14, 2017 trial, the Honorable James Chalfant ordered and ruled in favor of UWT and entered judgment on May 4, 2017 against Mt. Sac, because it was pervasively

attempting to proceed with master plan projects (2002 through 2012 EIRs) in a legally defective manner, and whereby Mt. Sac was ordered to prepare and circulate initial studies for identified master plan projects before commencement or approvals of projects. (RFJN, Ex. R, p. 3, ¶ 2.e)

The May 4, 2017 judgment indicates that UWT dismissed (without prejudice) its First Cause of Action Measure RR spending cause of action against Mt. Sac, including the undefined and unapproved (and admittedly abandoned) ACE project. (RFJN, Ex. R, p. 2, ¶ 2.a)[1] UWT agreed to do this because it had already filed this instant November 7, 2016 lawsuit directly challenging the Stadium Project which expressly arose as a result of Mt. Sac's October 12, 2016 approvals of the separate, and now on-point, athletics PEP project – which for the first time included a defined, and herein challenged, Stadium Project. Mt. Sac had its expert Sid Lindmark aver at the March 7, 2017 trial that "the new project was titled 'Physical Education Projects' ("PEP") to distinguish **the abandoned Athletic Complex East Project**." (RFJN, Ex. I, ¶ 26, p 12 [Lindmark Decl.])

E. UWT Timely Filed a Lawsuit Challenging the October 12, 2016 PEP Approvals Containing a New Hilmer Lodge Stadium

On October 12, 2016, at a meeting of the Board of Trustees, Mt. Sac approved Measure RR expenditures on the Stadium Project, in conjunction with approval of Resolution No. 16-02, amending the Facilities Master Plan (a 2015 Update), certification of the Physical Education Projects (PEP) and Master Plan Program EIR, adopting a Statement of Overriding Considerations, and authorizing the expenditure of Measure RR funds for PEP, as well as approvals of contracts for ACE designated to be funded by Measure RR bond funds. (RFJN, Ex. M)

In response to Mt. Sac's October 12, 2016 first and formal decision and approvals to illegally authorize Measure RR bond funds for the construction and development of the new Stadium Project at the Hilmer Lodge site, UWT filed this instant lawsuit on November 7, 2016. (Nellessen Depo. at p. 222; Ex. A to Sherman Decl.)

This was filing was timely to suspend Measure RR spending on new Stadium Project construction because Mt. Sac could not have commenced or contracted for developing and constructing the new Stadium Project until after this date. In fact, it was not until July 12, 2017

[1] *See also* RFJN, Exh. S, the May 2, 2017 partial dismissal of claims, namely the First Cause of Action against Mt. Sac without prejudice, dismissing real party Tilden-Coil with prejudice (as to the First and Sixth Cause of Action regarding its role as a lease-leaseback contractor.)

that Mt. Sac first considered approving bids for the construction of the Stadium Project. RFJN, Ex. N, pp. 3-5)

Mt. Sac currently proposes the Stadium Project as part of a newly defined "Physical Education Projects" ("PEP") consisting two phases with Phase 1 is the Stadium Project (continued to be identified by Mt. Sac as "ACE" and "Athletics Complex East"), and Phase 2" is the Physical Education, Kinesiology, and Wellness building (117,898 gsf), (2) Rooftop bleachers (2,800 seats) and, (3) a 50-meter pool and diving pool. (RFJN, Ex. N, p. 2)[2]

In the October 12, 2016 approvals, the scantly mentioned and aborted 2013 master plan intent to *renovate* Hilmer Lodge Stadium is now identified as constructing the *entirely new* Stadium Project . (RFJN, Ex. M.) The new Stadium Project is intended as a 10,912 seat stadium with a 9-lane Class 1 Olympic rated track intending to host the 2020 U.S. Olympic trials. (*See also* RFJN, Ex. K, pp 1-2 [schematics and project descriptions].)

With all other claims dismissed without prejudice, UWT's remaining *Third* and *Fourth Causes of Action* seeks to enjoin Mt. Sac from spending Measure RR funds on the implementation and development of the PEP and ACE projects – because the Stadium Project is not contained on the Project List in Measure RR.[3]

II. ARGUMENT

A. The Legal Standard for Interim Injunctive Relief

1. The Standards for a Preliminary Injunction

Generally, whether a preliminary injunction should issue is based on the evaluation of two interrelated factors: (1) the likelihood that the plaintiff will succeed on the merits of its claims at trial; and (2) the harm that plaintiff is likely to suffer if the preliminary injunction does not issue, balanced against the harm that the defendant is likely to suffer if it does issue. (*Cohen v. Board of Supervisors*, (1985) 40 Cal.3d 277, 286; *IT Corp. v. County of Imperial*, (1983) 35 Cal.3d 63, 69-70.) When addressing these factors, the plaintiff must prove the likelihood that it

[2] However, because Mt. Sac has decided to spend approximately 25% of the entire $353 million Measure RR bond measure on the challenged/improper Stadium Project, Mt. Sac has depleted remaining Measure RR funds to construct the Gym and education classroom building complex identified as Project D in Measure RR. (RFJN, Ex. T, p. 2)

[3] UWT does not object to Measure RR spending on the outside football and track fields, tennis court, or gym/education building because those projects were identified in the Measure RR project list as set forth and described in the Athletics Complex Phase 2 project.

will suffer immediate and irreparable harm due to the inadequacy of other legal remedies. (*Triple A Machine Shop, Inc. v. State of California,* (1989) 213 Cal.App.3d 131, 138.)

However, as is the case here, where injunctive relief is authorized by statute and the statutory conditions for its issuance have been satisfied, irreparable injury need not be shown to obtain injunctive relief. (*See IT Corp. v. County of Imperial,* (1983) 35 Cal. 3d 63, 70-72); *Paul v. Wadler*, (1962) 209 Cal.App.2d. 615, 625 ["[W]here an injunction is authorized by statute, a violation is good and sufficient cause for its issuance."].)

2. The Status Quo Here is the Uncontested Status Prior to the October 12, 2016 Authorization of Measure RR Funds for the Stadium Project

The status quo in this case is not measured by ongoing or current tally of Mt, Sac's expenditures of Measure RR funds. The primary purpose of a preliminary injunction is to preserve the *status quo* until a court can make a final determination on the merits of the action. (*Continental Baking Co. v. Katz*, (1968) 68 Cal.2d 512, 528.) It is well settled that the *status quo* is "the last actual peaceable, uncontested status which preceded the pending controversy." (*14859 Moorpark Homeowner's Assn. v. VRT Corp.*, ("*Moorpark*"), (1998) 63 Cal.App.4th 1396, 1408 *citing Voorhies v. Greene*, (1983) 139 Cal.App.3d 989, 995 *quoting United Railroads v. Superior Court*, (1916) 172 Cal. 80, 87.)

The last peaceable and uncontested status for this case was not later than the time that Mt. Sac authorized the expenditure of Measure RR funds as part of the October 12, 2016[4] decision of the Board to approve and proceed with development of the new Hilmer Lodge Stadium (as contained in Phase 1 of the PEP approvals). The respondent in *Moorpark*, like Mt. SAC here, attempted to alter the *status quo* and then self-servingly claim that their activity *was* the *status quo*. (*Cf., Id.* at pp. 1407-1408.) Such erroneous argument and action did persuade the Court of Appeal in *Moorpark*, nor should this Court avail Mt. SAC here.

However, even if this Court still found that ongoing spending was the status quo, UWT is entitled to a mandatory injunction to *alter* the status quo and prevent illegal expenditure of taxpayer funds. (*Integrated Dynamic Solutions, Inc. v. VitaVet Labs, Inc.*, (2016) 6 Cal.App.5th 1178, 1183-1184 [mandatory injunctions available to alter the status quo].)

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[4] In actuality, the last peaceable moment was on March 24, 2015 when UWT alerted and objected to Measure RR spending on ACE when it filed a lawsuit objecting to Mt. Sac's improper review, noticing, and approval of projects, including ACE. (RFJN, Exhs. O-R)

B. Law and Facts Support that a Preliminary Injunction Order Should Issue

1. United Walnut is Likely to Prevail in This Action on the Grounds that Mt. Sac is Unlawfully Spending Measure RR Funds on a New Hilmer Lodge Stadium

As set forth above in the Statement of Facts (Section I.B, *ante*), there is no mention or semblance *whatsoever* of a Stadium rebuild or renovation project set forth in the required Projects List for Measure RR. (RFJN, Exhs. A, B, F, G & H) The statutory and constitutionally required 2008 Project List does not contemplate *new construction* of a Stadium Project ranging from $60 million to $88 million, representing nearly 25% of the entire $353 million bond measure. (*See* RFJN, Ex. C, p. 5; Ex. A, p. 1; Ex. B, p. 9; Ex. N, pp. 3-4)

Mt. Sac will argue that it permissible buried and authorized a new state-of-the-art Stadium as an authorized physical education "classroom" project. But, that is not what was prominently advised and displayed to the public when it voted to approve Measure RR. What the voters saw and understood is paramount. (*Legislature v. Eu*, (1991) 54 Cal.3d 492, 505; *Lesher Communications, Inc. v. City of Walnut Creek*, (1990) 52 Cal.3d 531, 541-542.) Just as Judge Lavin was limited to the maps and 2008 Project List identifiers and money charts for judicial review (*e.g.*, Ex. B and Ex. P), ordinary voters were presented and decided based on the same designated and labeled 2008 Project List (Projects A -L).

Mt. Sac will likely argue that the mapped and defined "Athletics Complex Phase 2" (with its approx. $26.9 million budget) is an ever-changing project that is entitled to be converted, or considered geographically, as a "*new*" versus "*renovation*" project. Alternatively, Mt. Sac will argue that Hilmer Lodge Stadium is a "classroom," with classrooms amounting to the "types" or "goals" of projects authorized by the bond measure. (*See Foothill-De Anza Community College Dist. v. Emerich,* (2007) 158 Cal.App.4th 11, 23-24.)

While the *leaky roofs* might be an acceptable "type" of project that need not be specifically located for school reconstruction in a Proposition 39 bond measure, major public works projects such as new stadia, theatres, parking garages, and student convention areas need to be studied and disclosed so voters can decide whether (and how) their tax dollars might be spent. In fact, this is what Mt. Sac did here. (RFJN, Exhs. A, B, F, G & H)

Otherwise, the taxpaying public can be duped by being shown a succinct project list with plans and maps, only to have other major public works projects built with the special tax funds. This contravenes the relaxed intent and efficacy of Proposition 39 bond measures and violates the legislated and constitutional mandates of Proposition 39.

As instructed in *Taxpayers for Accountable School Bond Spending v. San Diego Unified School District* ("*Taxpayers*"), (2013) 215 Cal.App.4th 1013, Proposition 39 bond

projects must adhere to the **project list approved by the voters**. *Taxpayers* held that school district bond revenues could not be spent based on a "un-tied" and catch-all reference to stadium lighting where the bond proposition did not specifically list a project for the implementation of such stadium redevelopment as part of the Proposition 39 mandate for identified, contemplated, and listed projects (*Id.* at pp. 1030-1031 [field lighting not specifically listed as part of the bond projects].)

Based on being a strict accountability bond measure, with a mandatory project list, this Court should similarly read and construe Mt. Sac's project list under Measure RR in accordance with the holding in *Taxpayers*. Here, when reviewing the 12 specific identified 2008 Project List "A" through "L" projects, **none of the projects include or mention a new or renovated stadium project at the Hilmer Lodge site, nor do they include development at any part the stadium site**. (RFJN, Exhs. A, B, F, G & H) It simply isn't there. Mt. Sac's approval and expenditure of Measure RR funds for the new Hilmer Lodge Stadium Project is simply and plainly illegal under the Constitution and Strict Accountability Act.

2. United Walnut is Entitled to a Preliminary Injunction Pursuant to Code of Civil Procedure 526a and Education Code § 15264

California Code of Civil Procedure § 526a provides for injunctive relief for "restraining and preventing" wasteful and unlawful expenditures. Injunctive relief (and preliminary relief) is an appropriate remedy for a cause of action pursuant to Section 526a. (*Blair v. Pitchess* (1971) 5 Cal.3d 258, 267-269) Code of Civil Procedure § 526 defines and describes this Court's power to issue injunctions and Code of Civil Procedure § 527 describes this Court's power to issue preliminary injunctions.

Code of Civil Procedure § 526a is a special type of "CCP § 526 injunction" related to school bond expenditures. Harmonizing the various provisions of California Code of Civil Procedure and the California Education Code, this Court has jurisdiction and legislated directives to issue a preliminary injunction in this case. (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*, (2012) 55 Cal.4th 783, 805 ["A court must, where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all of their provisions."].)

In fact, this Court has a duty to do so swiftly and vigorously to enjoin and prevent wasteful and illegal expenditures of school bond funds. (*See* Code of Civil Procedure § 526a; *cf.* Education Code § 15264.) This is especially true because money damages are not the type of relief that is (or can) be granted in equitable actions, such as for the declaratory and injunctive relief sought here.

Mt. Sac will likely argue that "it's only money," with case law directing that legal money *damages* are not usually irreparable harm, and preliminary injunctions are to be granted only where there is an *inadequacy* of damages. (*Department of Fish & Game v. Anderson-Cottonwood Irrigation District*, (1992) 8 Cal.App.4th 1554, 1564-1565.) However, that line of cases and legal doctrine is inapplicable here. United Walnut does not seek money damages at all. (Ex. D, *Complaint* at pp. 28-30.) Instead, United Walnut seeks declaratory and injunctive relief under Code of Civil Procedure § 526a and Education Code § 15264, subds. (a) & (d) whereby those provisions expressly mandate immediate (or "swift") suspension, cessation, and then restitution for illegally spend proceeds.

As contemplated by the constitutional and statutory paradigm, because United Walnut is very likely to prevail in this lawsuit, every wasted dollar spent on construction, and every additional dollar Mt. Sac spends on Stadium construction, is a tax liability and *waste of funds*, thereby harming the voters who approved Measure RR and whose tax dollars will need to be recaptured to cure the improper spending and waste. The statutory suspension of Measure RR expenditures not only promotes the mandatory strict accountability purposes of a Proposition 39 bond measure, but it also protects the voters and district taxpayers for whom the enactments were approved.

3. UWT is Entitled to a Presumption of Harm Because It is Likely to Prevail on its Waste Claims and the Statutes and Constitutional Provisions Expressly Immediate Cessation to Protect Public Interest and Harm

United Walnut brought its waste action based on Mt. Sac's violation of Proposition 39, Cal. Education Code §§ 15264-15288, Cal. Constitution, Sec. 1 of Art. XIII A, subd. (b)(3), and Art. XVI subd. (b), and Cal. Code Civil Procedure §§ 526(a), 1060. (RFJN, Exh. D, pp. 17-21)

An action to enjoin waste under said codes is "a taxpayer suit [that] seeks **preventative relief** to restrain an illegal expenditure." (*Taxpayers*, *supra*, 215 Cal.App.4th at p. 1032, bold added.) The California Supreme Court ruled in *IT Corp. v. County of Imperial*, (1983) 35 Cal. 3d 63, that a statute presuming a particular kind of harm, establishing that a plaintiff will probably succeed at trial, **there is a presumption that public harm will result if an injunction does not issue.** (*Id.* at 72.)

The actual rule and reasoning of the Supreme Court in *IT Corp.* is stated as follows:

> Where a legislative body has enacted a statutory provision proscribing a certain activity, it has already determined that such activity is contrary to the public interest. Further, where the legislative body has specifically authorized injunctive relief against the violation of such a law, it has already determined

> (1) that significant public harm will result from the proscribed activity, and (2) that injunctive relief may be the most appropriate way to protect against that harm.

(*Id.* at p. 70.)

As a private attorney general action under California Constitution article XIII A, § 1 and Education Code §§ 15264 and 15284, this case is the type of public protection and prevention action to restrain public harm such that the law and reasoning in *IT Corp.* applies.

4. Even if This Court Were to Engage in a Balance of Harms Analysis, Irreparable Harm Will Occur if a Preliminary Injunction Does Not Immediately Issue

United Walnut specifically pleaded restitution of Measure RR funds spent on the Stadium Project as part of the *Complaint*. (RFJN, Ex. D, *¶ 73* and *Prayer* at *¶ 10*].) As construction is about to ramp up and tens of millions of expenditures will be expended in contravention of law (Majors Decl., ¶¶ 7, 12, 13, 15-19), now is an appropriate and reasonably significant point in time that Measure RR expenditures should be halted.

The balance of harms analysis weighs heavily in favor of UWT because the statute and directs it to prevent the waste of public funds and Mt. Sac, as public institution, is not likely to suffer harm for a taxpayer spending challenge and financial matter where it argues alternative funds are available or can be arranged. (*E.g.*, Gregoryk Depo. at pp. 68-89; Ex. B to Sherman Decl.) In contrast, the harm of a preliminary injunction not issuing is great with Mt. Sac gearing up to commence with primary construction with an accelerated time schedule. (Majors Decl. at ¶¶ 7, 12, 13, 19.) Accelerated construction comes at a higher cost to both UWT and the public for whom this action has been brought.

A preliminary injunction, even with actual restitution of applicable Measure RR, will reflect significant harm to voters and UWT because the *actually approved* Project D gym and classroom project will not built with Measure RR funds and the rights of voters will be thwarted. (Nellessen Depo. at pp. 179-182; Ex. C to Sherman Decl.; *see also* RFJN, Ex. T)

5. Mt. Sac Cannot Prove Any Affirmative Defense That Would Bar United Walnut from Prevailing on the Merits in This Case

Mt. Sac has the burden to prove that causes of action pursuant to Code of Civil Procedure section 526a and Education Code section 15264 et seq. are subject to a 60-day validation statute of limitations and that United Walnut did not file within sixty days of the approval of the PEP Stadium Project. (*See Ladd v. Warner Bros. Ent., Inc.*, (2010) 184 Cal.App.4th 1298, 1310)

This Court need not consider the arguments as to whether a 60-day statute of limitations applies because the PEP Stadium Project was approved on October 12, 2016, and United Walnut

filed suit *less than 60-days later*.[5] To the extent this Court might order an earlier filing date, such a ruling contradicts an earlier court order and analysis on the same subject. (RFJN, Ex. Q)

Mt. Sac will principally rely on two appellate court cases, *McLeod v. Vista Unified School District*, (2008) 158 Cal.App.4th 1156 and *Plunkett v. City of Lakewood*, (1975) 44 Cal. App. 3d 344 to argue UWT did not timely file its lawsuits. Neither case holds that UWT cannot sue to prevent and enjoin illegal expenditures because some design contracts and different project site grading had commenced.

In any event, the California Supreme Court addressed and rejected the 60-day statute of limitations in *Ontario v. Superior Court of San Bernardino City*, (1970) 2 Cal.3d 335 by finding that Code of Civil Procedure section 860 is not applicable to taxpayer waste actions. (*See* accord, RFJN, Ex. Q, p. 7) This Court is bound and required to follow the precedence of the California Supreme Court. (*Auto Equity Sales, Inc. v. Superior Court*, (1962) 57 Cal.2d 450, 455)

The California Supreme Court in *Ontario* made it clear that: (1) taxpayer actions to enjoin expenditures predate the enactment of the validation statute that Mt. Sac relies on, and (2) the Legislature *obviously* did not intend for the sixty-day statute of limitation under California Code of Civil Procedure section 860 or Government Code section 53511 to apply to taxpayer actions pursuant to California Code of Civil Procedure section 526a. (*Id.* at pp. 342-345 ["The Legislature obviously does not believe that chapter 9 somehow repealed section 526a by implication, for it recently took action on that very section. The courts have continued, of course, to entertain taxpayers' suits."].)

An action to restrain the illegal expenditure of Measure RR funds and restitution of funds illegally spent is precisely the relief requested here and the *gravamen* of the *Complaint*. In *Taxpayers*, petitioner similarly was not required to bring a reverse validation action to enjoin illegal Proposition 39 bond funds. (*Taxpayers supra*, 215 Cal.App.4th at p. 1033 ["Taxpayers could properly bring, and had standing to bring, a taxpayer action under Code of Civil Procedure section 526a to challenge District's use of Proposition S bond funds."].)

In the *McCleod* appellate decision, the Court of Appeal was very clear that petitioner's action, "directly challenged the validity of a planned bond issuance, and the lack of a prompt validating procedure would impair the District's ability to operate." (*McLeod*, *supra* 158 Cal.App.4th at p. 1169.) The petitioner's "theory at trial was that the District should be prohibited from issuing between $25 and $28 million in remaining bonds authorized by

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[5] United Walnut filed suit on the 27th day after the date that PEP and ACE were first approved. (Nellesen Depo. at p. 222; Ex. A to Sherman Decl.)

Proposition O [a Proposition 39 bond measure].” (*Id.* at p. 1171.)

In *Plunkett*, the petitioner was challenging and trying to void a redevelopment plan. (*Plunkett*, *supra* 44 Cal.App.3d 344 at p. 345.) The appellate court in *Plunkett* found that the incorporation of the 60-day validation statute of limitations applied to challenges to ordinances enacting **redevelopment plans** pursuant to Health and Safety Code section 33500 which specifically incorporates a 60-day validation limitation. (*Id.*) This lawsuit is not an attempt to void a redevelopment plan and neither Code of Civil Procedure § 526a, nor Education Code § 15284 mandate or authorize a 60-day limitation period. Mt. Sac’s interpretation would render null the above quoted provision of Code of Civil Procedure section 860, which it cannot do.

6. United Walnut’s Lawsuit Specifically Challenges the October 12, 2016 Decision of the Board to Approve New Expenditures of Measure RR Funds on the Stadium Project

In its prior pleadings submitted to this Court, Mt. Sac argues that if funds are spent or earmarked at the conceptual *designing* and *planning* phase for a project, UWT should be barred from challenging the subsequent agency action when (and if) elected agency officials review and decide to approve the project. (E.g., Mt. Sac TRO Oppos. at p. 11.) This is an absurd argument intending to nullify the rights of taxpayers under Code of Civil Procedure § 526a that has been in place since 1909. Moreover, the Supreme Court in *Ontario* addressed this very issue stating: “In most large-scale public projects that a taxpayer may wish to challenge in the courts, some money will already have been spent and the authorities will be threatening future action more or less related to the project.” (*Ontario*, *supra*, 2 Cal.3d at p. 345) In any event, UWT filed within 60 days of the official Mt. Sac agency action to proceed with the Stadium Project. (RFJN, Ex. M; Nellessen Depo. at p. 222, Ex. A to Sherman Decl.)

Mt. Sac additionally cites to *Graydon v. Pasadena Redevelopment Agency*, (1980) 104 Cal.App.3d 631, in support of its claims that once any funds are spent, even on conceptual design and planning, a petitioner may not challenge a new and distinct approval of restricted bond funds when a project is *actually* approved. (Mt. Sac TRO Oppos. at p. 11.) Mt. Sac goes further, suggesting that before any funds are spent, but only *earmarked*, that no challenge to the *actual* approval of funds may be made. (*Id.*, Mt. Sac arguing that “Mt. SAC has spent **(or earmarked)** millions of dollars on the Stadium Project.” Emphasis added.)

The facts in *Graydon* are significantly different from Mt. Sac’s conflated arguments. In *Graydon*, the petitioner was attempting to void a contract for the construction of a parking garage that was part of the **redevelopment** of a blighted area in Pasadena’s business district. (*Graydon*, *supra*, 104 Cal.App.3d at p. 634.) The petitioner’s challenge in *Graydon* was based on

challenging the *validity* of the contract because of the allegation it required competitive bidding. (*Id.* at pp. 634-635.) The Court in *Graydon* found that a challenge to the validity of a contract, based upon the now rescinded Health and Safety Code section 33422 for competitive bidding, is the type of contract under **redevelopment law** that is subject to a 60-day validation statute of limitations pursuant to Government Code section 53511. (*Id.* at p. 639.) As found by the court in (*Kaatz v. City of Seaside*, (2006) 143 Cal.App.4th 13, 32-33), not all government contracts are subject to the validation statutes. In any event, there is no conflict between *Graydon* and *Ontario* – especially where the Supreme Court has distinguished Code of Civil Procedure § 526a cases. (*Ontario*, *supra*, 2 Cal.3d at p. 344.)

7. Only a Nominal Bond Should be Imposed Bond

Because UWT is an organized 501(c)(3) nonprofit that is carrying out the duty and function of the State Attorney General, only a nominal bond should be required here.

California courts have yet to determine in published decisions whether only nominal bonds should be imposed in environmental litigation. However, Ninth Circuit decisions have so held even where a defendant may suffer substantial economic loss as the result of the injunction. (*See, e.g., People ex rel. Van De Kamp v. Tahoe Regional Plan*, (9th Cir. 1985) 766 F.2d 1319), the danger of the Court not issuing a nominal bond in this case is that the door will be closed to prevent harms from occurring and judicial review of this public interest litigation.

III. CONCLUSION

For the reasons set forth above, and as set forth in the concurrently lodged *[Proposed] Order for Preliminary Injunction*, UWT respectfully requests that this Court grants the requested preliminary injunction ordering Mt. Sac to suspend the use of Measure RR funds for the Stadium Project.

Dated: March 19, 2018

CRAIG A. SHERMAN,
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Craig A. Sherman, Esq.
Attorney for Plaintiff and Petitioner
UNITED WALNUT TAXPAYERS

Proof of Service

United Walnut Taxpayers v. Mt. San Antonio Community College District, et al.
Los Angeles Superior Court Case No.: BC 639908

I, the undersigned, 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):

MEMORANDUM OF UNITED WALNUT TAXPAYERS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

on March 19, 2018 on the following person(s) in a sealed envelope or package, addressed as follows:

Sean B. Absher, Esq.
STRADLING YOCCA CARLSON & RAUTH
44 Montgomery Street, Suite 4200
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O: 415-283-2240
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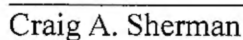
Counsel for Mt. San Antonio Community College District

in the following manner:

1) ☒ By personally serving each person named above.

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 19, 2018 at San Diego, California.



Craig A. Sherman