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UNITED WALNUT TAXPAYERS

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]

REPLY BRIEF OF UNITED WALNUT TAXPAYERS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

RESERVATION ID NO.: 171219275729

Filed concurrently with:
SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE; SUPPLEMENTAL DECLS. OF CRAIG A. SHERMAN and DENNIS MAJORS; DECLS. OF LAYLA ABOU-TALEB and HASSAN SASSI; EVIDENTIARY OBJECTIONS

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 *Reply Brief* as responsive and rebuttal argument to *Opposition to Motion for Preliminary Injunction* filed by Mt. Sac ("Opp.Brf."). UWT concurrently files supplemental and rebuttal declarations, and a supplemental request for judicial notice, as well as evidentiary objections, in response to Mt. Sac's Opposition Brief.

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I. INTRODUCTION AND SUMMARY OF REBUTTAL ARGUMENTS

Mt. Sac's own director of Facilities Planning and Management, Gary Nellesen, could not identify language authorizing the Stadium Project as one of the listed projects. (Supplemental Declaration of Craig A. Sherman ("Sherman Supp. Decl.") Ex. D, pp. 36:10-19 & 37:5-6.) This true despite Mr. Nellesen being instrumental in developing and drafting Measure RR and the 2008 Master Plan along with its succinct projects included in the project list. (*Id.* at p 4.) Yet, Mr. Nellesen can't identify the Stadium Project in Measure RR because it isn't there. (*Id.* at pp. 36:10-19 & 37:5-6.) Instead, Mr. Nellesen supplements that his knowledge of whether the Stadium Project is included in Measure RR is "based on a legal opinion received from Dave Casnocha [bond counsel]" (*Id.* at p. 35:9-11.)[1]

Mt. Sac also *now* claims the Measure RR project list was *not* drafted by Mt. Sac officials based on facility needs. (*Cf.* Supp. Sherman Decl., Ex. D, p.4.) Instead, Mt Sac avers that David G. Casnocha, attorney for the defense firm of Stradling Yocca Carlson & Rauth, told Mr. Nellesen that the construction of the new Stadium Project was in Measure RR and that Mr. Casnocha's belief, influenced by being bond counsel, is dispositive of the issue. (*Cf. Id.* at p. 35:9-11; Declaration of David G. Casnocha, ¶ 6.) This is incorrect. The legal standard for reading and understanding the list of projects is what the voters understood the "project list" to be, along with the incumbent maps and projects descriptions. (*Hill v. National Collegiate Athletic Assn.* ("*Hill*"), (1994) 7 Cal.4th 1, 16 ["Initiative is to be interpreted and applied in a manner consistent with the probable intent of the body enacting it: the voters of the State of California."]; *Committee for Responsible School Expansion v. Hermosa Beach City School Dist.* ("*Hermosa*"), (2006) 142 Cal.App.4th 1178, 1191 [project list incorporated by reference in ballot measure documents].)

As predicted by UWT in its moving papers (Memo. at 7-8), Mt. Sac seeks to argue that generic and nonspecific terms in the bond measure, speaking to goals and missions of the college to promote *jobs*, provide *physical education*, and even support *school accreditation* are the "projects" that make up the Constitutionally required project list. Cognizant of the case of *Taxpayers for Accountable School Bond Spending v. San Diego Unified School District*

[1] Under objection Mr. Nellesen refused to identify the Stadium Project anywhere in Measure RR or the 2008 Master Plan claiming his inability to do so as a witness. (Sherman Suppl. Decl. Ex. D, p. 34-35.) Now, Mt. Sac seeks to have Mr. Casnocha testify about the projects included in Measure RR. It is remarkable that Mt. Sac's key administrator who oversaw the creation of Measure RR cannot identify where the Stadium Project is identified, while at the same time arguing the voters were informed.

("*Taxpayers*"), (2013) 215 Cal.App.4th 1013, Mt. Sac must craft an excuse to dodge the holding of that case, because no semblance of the Stadium Project is contained in the text of Measure RR or its 2008 Master Plan. Instead, Mt. Sac cites to *Foothill-De Anza Community College Dist. v. Emerich* ("*Foothill*"), (2007) 158 Cal.App.4th 11 (Opp.Brf. at 2-14) to suggest the voters knew a new stadium might be built because it will contain classrooms and be used for teaching and promoting school purposes. Mt. Sac essentially interprets the Constitutional *projects list* requirement as only needing to say: *we will build facilities to teach and promote the educational purposes of our students* to be sufficient for it to build essentially anything, anywhere. Not only is this wrong, but it is not how Mt. Sac actually created and specifically set forth its Measure RR project list (Projects A through L), and it not how Mt. Sac has budgeted and implemented the bond measure to date.

II. ARGUMENT

A. Mt. Sac Prepared and Promoted to the Voters a List of $353 Million of Facilities Projects, has Substantially Followed those Buildings Plans and Projects to Date; Now it Wants to Add a New $87 Million Dollar Athletic Stadium

The public's intent and approval of a ballot initiative is not measured by what the agency might do later; rather, it is measured by the information given, along with the common understanding of the voters at the time they vote. (*Lesher Communications, Inc. v. City of Walnut Creek*, (1990) 52 Cal.3d 531, 541-542 *Hill*, *supra*, 7 Cal.4th at p. 16.) The voters' reading of the ballot measure is determined not by "the words of the civil service commission, or the city council, or the mayor, or the city attorney, but as the words of the voters who adopted the amendment." (*Diamond Int'l Corp. v. Boas*, (1979) 92 Cal.App.3d 1015, 1033-1034; *accord Howard Jarvis Taxpayers Assn. v. County of Orange*, (2003) 110 Cal.App.4th 1375, 1381.)

Rather that acknowledge the well settled rule, Mt. Sac argues that the litigation position of its bond counsel is determinative. This proposition should be rejected. (*Culligan Wat. Cond., Inc. v. State Bd. of Equal.*, (1976) 17 Cal.3d 86, 93; *cf.* Casnocha Decl. ¶¶ 4-7)

The California Constitution and statutes enacted to facilitate Proposition 39 bond measures mandate that Mt. Sac was both required to complete a *pre-bond* facilities needs analysis and a *pre-bond* project list. (*See* Memo. at 8:15-16:25, citing Cal. Const., Art. XIII A, Sec. 1, subds. (b)(3)(B)&(C); Cal. Ed. Code §§ 15264-15288) **Indicative of its weak defense, Mt. Sac avoids any discussion of these codes or legal requirements.**

In its memorandum in support, UWT briefed this Court on the dispositive case of *Taxpayers*, *supra*, 215 Cal.App.4th at pp. 1030-1031. (Memo. at 14-15.) In *Taxpayers*, the court made a legal finding that Proposition 39 bond fund expenditures must be tied to a specific

listed project. Here, Mt Sac argues the project list authority for a major new $87 million Stadium Project is tied to classroom or ADA uses - which it was not. (Opp.Brf. at 15:13-23.) In fact, Mt. Sac admits that "*Taxpayers* . . .**involved an unauthorized project that was not 'expressly or implicitly' included in the bond measure.** (*Id., Taxpayers* at pp. 1028-1029.)

Mt. Sac claims that *Foothill* is "controlling on the issue of the Proposition 39 project list requirement" (Opp.Brf. at 12:14-15), and argues that the "*Foothill* case is the only published California appellate decision setting forth the standard for bond project list specificity . . ." (Casnocha Decl. ¶ 5.) This assertion is intentionally false and misleading. The decision in *Hermosa*, (2006) 142 Cal.App.4th 1178 is proof of this.

In *Hermosa*, the court analyzed the constitutional mandates for a Proposition 39 bond measure, including (1) "a list of the specific school facilities to be funded and (2) the school district's certification that it has evaluated certain factors in developing that list. . ." (*Hermosa* at p. 1187.) A central dispute in *Hermosa* was whether the "project list" was required to be presented in the ballot – with the court finding it was sufficient to have "a list of the specific school facilities projects to be funded by the sale of the bonds" (*id*. at p. 1190), but that list need not be on ballot, instead it could be contained as an exhibit to the bond resolution. (*Id*. at p. 1191.) In this case, the *required* list of specific school facilities – especially for the major public works projects "A" through "L," were specifically referenced and incorporated into in the Measure RR ballot as being "2008 Master Plan." (RFJN, Ex. A at p. 2.) The question of minor projects such as *leaky roofs*, *painting*, or *rewiring* are not types of project needing to be identified with specific location specificity. (*Foothill* at p. 20.)

UWT does not challenge the Constitutional sufficiency of the project list as the challenger did in *Foothill*. (*Id*., 158 Cal.App.4th at p. 18 ["Our task is to determine whether the bond proposal met the requirements of Proposition 39."].) However, Mt. Sac spends three pages of its Opposition Brief (pp. 12-14) litigating an issue not before this Court, in the hope that a further shell game will confuse or cloak the merits of UWT's case. As mentioned above, on page 24 of its decision, the *Foothill* court rejected the appellant's arguments that the project list was not specific enough for Measure C using the example of the category "Repair leaky roofs" and finding that appellants sought undue specificity:

> For example, it is clear that among the projects to be funded are repair or replacement of leaky roofs, wiring classrooms for computers and other technology, and installation of fire safety doors and sprinklers. This is sufficiently specific for meaningful approval and oversight. Defendants urge a level of specificity that is impractical and unnecessary. Surely it is unnecessary to inform the voter which

buildings will receive new fire safety doors or which roofs will be replaced and which will be repaired. That is minutiae that the voter has no expertise or need to consider.

Mt. Sac urges this Court to find that an $87 million brand new Stadium Project (approximately 25% of the entire bond) is "minutae" like a leaky roof or fire door. (*Cf.*, *Id.* at p. 20.) This attempted analogy is ludicrous and belied by the express list of major facilities projects (Projects A through L), totaling the exact $353 million of the bond amount requested from the voters. *Foothill* does not stand for authorization for Mt. Sac to add new major public works projects *after* the bond passes. (*Cf. Id.* at p. 24 [remedy under Ed. Code 15284 where school district exceeds bond authority].) Such an interpretation (and implementation) suggests an allowable bait-and-switch approach whereby voters would not be uninformed of major projects and could be duped into approving controversial major projects that they otherwise would not have voted their tax dollars to fund. Here, Mt. Sac is limited to those major works projects that it advertised and listed to the voters to obtain their assent.

Mt. Sac attempts to escape its specified $353 million projects list by arguing "the *San Diego Taxpayers* case does not support UWT's argument that the only permitted Measure RR projects are those listed in the 2008 Facility Master Plan." (Opp.Brf. at 16:8-9.) This statement is at odds with the ordinary plain English presented to the voters in Measure RR that "The Board conducted facilities evaluations and 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. A at p. 1.) Measure RR goes on to further elucidate that the 2008 Master Plan "includes the following types of projects," followed by headings indicating the *types* of projects that are in the 2008 Master Plan. (*See* RFJN, Ex. A at pp. 2.)[2]

Thus, what Mt. Sac describes as categories are simply descriptions of the kinds of projects *specifically listed* in the 2008 Master Plan – which Mr. Nellesen admitted. (*See* Supp. Sherman Decl., Ex. A, pp. 8:25 through 9:1-2 ["Many of the things that are on the resolution exist in numerous projects on **this** [2008 Master Plan project] list."], bold added.) For example, Project H – the Fire Academy, is a specified project in the career preparation and job training category. As UWT thoroughly briefed in its Memorandum, there are two distinct projects in Measure RR related to athletics and physical education (Project D & Project F). (*See* Memo. at 9:12-21.)

[2] The types of 2008 Master Plan projects being Essential Repair and Upgrade Projects, Health and Safety Projects, Student Enrollment Projects, Career Preparation and Job Training Projects. (*See* RFJN, Ex. A at pp. 2-3.)

B. Mt. Sac's Scholastic Educational Goal or Physical Education Requirements are Not "Projects" Under Measure RR Allowing *Any Project Anywhere*

In its effort to circumvent the fact that Mt. Sac did not plan or disclose a new athletic stadium project to the voters, Mt. Sac defends this omission by arguing *ad nauseum* variations that the educational mission relating to "district athletics, intercollegiate sports, and extra-curricular activities serve a core public education mission…[whereby the PEP and ACE] … will provide critical physical education and health facility and also allow Mt. Sac to meet accessibility, seismic, and other life and health requirements." (Opp.Brf. at 5:13-21) Mt. Sac argues that any project can be constructed under Measure RR as long as it relates to, and supports, the *educational purpose/mission* and is a part of its *educational facilities* – an argument contradicted by admissions of Mr. Nellesen. (Nellesen Depo., Suppl. Sherman Decl., Ex. D, p. 8:25 -through 9:1-2 [admitting that general language of Measure RR was the description of what projects in the 2008 Master Plan list would accomplish].)

Mt Sac seeks to turn the Proposition 39 pre-bond sneeds analysis and specific project list requirements into a discretionary spending fund whereby it can spend on anything related to its *educational mission* or *educational facilities*. (Opp.Brf. at 5:13-23, 6:24-7:19, 8:8-23)

Major public works and controversial projects attempted to be added and shoehorned into Prop 39 bond measure project listS on the basis of ADA, seismic, and Title IX issues have been, and should continue to be, rejected. In fact, the *Taxpayers* court expressly rejected such an attempt to shoehorn a stadium field light project on a generic and *post hoc* basis that it was a listed ADA project. (*Taxpayers, supra*, 215 Cal.App.4th at p. 1029.) Mt. Sac's discussion of *Taxpayers* on this point is misplaced and incomplete.

If this Court were to accept Mt. Sac's argument, then the project list requirement of Proposition 39 would become unnecessary and nugatory – whereby any school district could spend on a project so long as it relates to, or supports, its *educational purpose/mission*, and is a part of its *educational facilities*. The only limitation would be administrative or teacher salaries. This interpretation is absurd as it wipes out a majority of the project list and accountability requirements. (*Lungren v. Deukmejian,* (1988) 45 Cal.3d 727, 735.) The accountability requirements were put in place and intended to **protect taxpayers**, not to create a school slush-fund. (Cal. Const., art. XIII A, § 1, subd. (b).)

C. UWT is Entitled to a Presumption of Harm Under a Balance of Harms Standard

Mt. Sac argues that *only a government entity* plaintiff is entitled to a presumption of harm after demonstrating a likelihood of prevailing on a relevant injunctive statute. (Opp.Brf. at 11:9-

12) Mt. Sac misreads *IT Corp. v. County of Imperial*. The Supreme Court referred to "government entity" because the cross-complaining party that had sought the injunction under review was a *governmental entity*. *(IT Corp. v. County of Imperial*, (1983) 35 Cal.3d 63, 68.) It did not limit the application of the presumption to *only* cases where the party seeking a preliminary injunction is a government entity. *(Id.)* That is not what the statute says and the legal principle in *IT Corp*. is valid here. (*See Cole v. Rush*, (1955) 45 Cal.2d 345, 364-365 ["Every requested application of the principles of the common law to a new set of circumstances is originally without precedent, and some court must be the first one to make the proper application."], overruled on other grounds in *Vesely v. Sager* (1971) 5 Cal.3d 153, 160.)

The issue of balancing harms between the respective parties that is central to UWT's request for a preliminary injunction requires consideration of recent related developments in the other Stadium Project lawsuit (Case No. BS166152) between the City of Walnut ("City") and Mt. Sac. In that case, The Honorable John A. Torribio has entered a preliminary injunction against Mt. Sac to cease all site grading activities. (Case No. BS166152, March 14, 2018 Minute Order ("March 14 Minute Order"), Supp. RFJN, Ex. V thereto.) Judge Torribio found it likely that the City of Walnut would prevail on its claims that Mt. Sac was required to apply for grading permits before beginning a large public works that would impact city resident's and their safety. (*Id.* at p. 4.) City presented evidence that Mt. Sac has violated multiple stop work orders, with City staff averring that agents of Mt. Sac ripped down stop work orders at the site of the Stadium Project. (Supp. RFJN, Ex. U, [*Supplemental Declaration* of Chris Vasquez at pp. 2-3 & Exhibit A thereto].) The significance and relevance here is that Mt. Sac has proven itself to be a bad actor, with a demonstrated willingness to violate CEQA, misuse bond funds, and ignore a court order to cease grading. (RFJN Exs. P, Q, R and Decl. of Hassan Sassi, Exs. 1-3 thereto.) Thus, Mt. Sac should be entitled little weight as to the balance of harms and this preliminary injunction should issue to immediately enjoin further bad acts.

Most significantly, Judge Torribio found that Mt. Sac would not suffer any harm because its delays were solely economic. (Suppl. RFJN Ex. V at p. 4) The same reasoning applies here. Additionally, with the preliminary injunction of Case No. BS166152 now in place preventing further grading, Mt. Sac has no argument that it suffers any harm related to its construction schedule or obligations. All other continuing expenditures of Measure RR funds (for which Mt. Sac can calculate a precise dollar value) represent purely economic issues, and therefore Mt. Sac does not suffer any great or irreparable harm. (*Cf. Huong Que, Inc. v.*

Luu, (2007) 150 Cal.App.4th 400, 418 [ability to calculate a precise quantifiable level of harm generally not the type of harm analyzed when considering a preliminary injunction].)

In contrast, the harm to UWT and the taxpayer bases that UWT represents, is extremely difficult to quantify and therefore the type of harm that supports this Court issuing a preliminary injunction. (*Id.*, [inability to quantify harm is a ground for providing interim injunctive relief].) UWT also bears a risk of substantial irreparable injury because there is no absolute right that this court will order full equitable restitution of unlawful expenditures made during the applicable claw-back and statute of limitations time period. (Suppl. Sherman Decl. ¶ 4; *see also* Section C.3 *post*.)

If a preliminary injunction issues, Mt. Sac may continue to expend funds, enter into agreements and contracts, and generally carry out preparations for the Stadium Project that do not violate the preliminary injunction granted by Judge Torribio in the March 14 Minute Order – so long as the source of those funds is not Measure RR. Mt. Sac has made public statements that it has sufficient non-Measure RR funds to build the Stadium Project, and has affirmed those statements through its vice-president and chief financial officer Michael Gregork. (Sherman Decl. Ex. B, pp. 12-13 thereto [Gregoryk Deposition testimony re availability of funds].) Thus, on a scale of harms, the weight of harm to Mt. Sac nears zero.

1. UWT Need Not Show Irreparable Harm Where There is a Strong Likelihood of Prevailing

The California Supreme Court has settled the rule of a balance of harms determination where the moving party is likely to prevail on the merits. For example, in *Butt v. State of California*, (1992) 4 Cal.4th 668, the Court held that where the plaintiff parents had demonstrated a likelihood of prevailing, "irreparable harm" did not need to be proven as long as the "balance" of harms favored the plaintiffs. (*Id.* at p. 694 ["the court was not obliged to deny a preliminary injunction simply because plaintiffs failed to demonstrate that "irreparable" harm to students was unavoidable by other means"], citing *Common Cause v. Board of Supervisors*, (1989) 49 Cal.3d 432, 441 and *King v. Meese*, (1987) 43 Cal.3d 1217, 1227.) Similarly, as held by the local Second Appellate District, "the more likely it is that plaintiffs will ultimately prevail, the less severe must be the harm that they allege will occur if the injunction does not issue." (*Right Site Coalition v. Los Angeles Unified School Dist.*, (2008) 160 Cal.App.4th 336, 342, quoting *King v. Meese*, *supra*, 43 Cal.3d at p. 1227 citing accordance of *Butt v. State of California*, *supra*, 4 Cal.4th at p. 678.)

2. Harm Includes All District Taxpayers Represented by UWT as a Private Attorney General

Mt. Sac argues that "a taxpayer's general interest in avoiding public waste is not the

type of irreparable injury that supports issuance of a preliminary injunction. (Opp.Brf. at 11:13-15, citing *White v. Davis* (2003) 30 Cal.4th 528, 561.) But the California Supreme Court in *White* did not make the legal finding Mt. Sac claims. Instead, it provided analysis, as dicta, that "In this case, however, we need not decide whether interim harm to a taxpayer's interest is *ever* in itself sufficient to justify a preliminary injunction barring the expenditure of public funds. . ." (*White* at p. 557.) In fact, the same pincite Mt. Sac cites to in *White*, the Court stated that "in some instances a trial court may grant a preliminary injunction upon a sufficiently strong showing of likelihood of success even when the party seeking the injunction cannot show that the balance of harms 'tips' in its favor . . ." (*White* at p. 561, citing *Common Cause v. Board of Supervisors*, (1989) 49 Cal.3d 432, 447.) There is no merit to Mt. Sac's argument.

Here, UWT brought suit as a "private attorney general" and therefore stands in the place to vindicate the rights of numerous groups that include district residents, students, and the general public. (*Serrano v. Priest*, (1977) 20 Cal.3d 25, 48 ["[the] basic rationale underlying the 'private attorney general' theory which we here adopt seeks to encourage the presentation of meritorious constitutional claims **affecting large numbers of people**. . ."].) In fact, California courts have recognized that broad constitutional rights may be implicated, and are balanced, in a preliminary injunction harms analysis. (See *Bank of Stockton v. Church of Soldiers*, (1996) 44 Cal.App.4th 1623, 1631, *overruled on other grounds as stated in Albertson's, Inc. v. Young*, (2003) 107 Cal.App.4th 106, 124, 125.) Therefore, the individual and collective harms to both the representative taxpayer group UWT and all of the taxpayers of the school district are relevant.

3. There is no Guarantee that UWT Will Be Granted Restitution, Even as a Prevailing Party

Restitution is an equitable remedy and a trial court has discretion whether to exercise its equitable powers such as awarding restitution. (1 Cal. Civil Appellate Practice (Cont.Ed.Bar 3d ed. 2015) § 2A.49, p. 2A-20 ["Remedies that require the trial judge to weigh equities are commonly discretionary."]; 2 Cal. Civil Appellate Practice, *supra*, § 17.69, p. 17-31 ["Granting or denying a motion for restitution rests in the trial court's sound discretion [citation], controlled by equitable principles [citation]."].) A court of appeal will review a trial court's decision whether to exercise its equitable powers only for abuse of discretion. (*Gunderson v. Wall*, (2011) 196 Cal.App.4th 1060, 1065.) Thus, this Court may rule in favor of UWT in a final trial on the merits and *still* not grant restitution of bond funds spent between now and final judgment based on a calculation that the complex world of school financing does not support the equitable restitution of illegally spent funds. (Supp. Sherman Decl. ¶ 4.)

This lawsuit is different from one claiming money damages – whereby "a certain measure of damages is permissible given the legal right the defendant has breached, is a matter of law, subject to de novo review." (*New West Charter Middle School v. Los Angeles Unified School Dist.*, (2010) 187 Cal.App.4th 831, 843, bold added.) Here, this Court will decide restitution as an equitable matter (that are not legal money damages) and thus there is no available **legal remedy** for UWT to invoke should the preliminary injunction not issue – which is precisely why one is needed.

D. Mt. Sac Cannot Meet its Burden of an Affirmative Defense Based on Alleged Delay

Mt. Sac goes to great lengths to claim UWT improperly delayed in bringing suit and this preliminary injunction. However, nowhere in its Opposition Brief does Mt. Sac identify its argument for what it is – **a laches affirmative defense**. Mt. Sac purposely does not do so because laches is not a defense in public interest cases such as this. In public interest lawsuits laches is generally not a defense and "will rarely be invoked to defeat a policy adopted for the public protection." (*People ex rel. Department of Public Works v. Bosio*, ("*Bosio*"), (1975) 47 Cal.App.3d 495, 527.) In *Bosio*, the Second Appellate District applied this legal principle to a writ of mandate challenging a project's CEQA exemption, stating: "Though economy in government is an important consideration, the Legislature has clearly subordinated it to environmental considerations by adopting CEQA." (*Id.* at p. 529; *see also Santiago City Water District v. County of Orange*, (1981) 118 Cal.App.3d 818, 834 [seeking to require public officials to obey statutes that are supreme to the general interest in economical government].)

This case is similar to *Bosio* because UWT has brought suit in the public interest based on a strong public policy and public interest manifested through constitutionally enacted voter initiative. (Cal. Ed. Code §§ 15264-15288 [entitled the "Strict Accountability in Local School Construction Bonds Act of 2000"], as embodied in the Constitutional amendment of Proposition 39 (Cal. Const. art. XIII A, § 1).) The Legislature's intent for strict accountability here is just as strong a public policy as CEQA. (*Cf. Bosio*, *supra*, 47 Cal.App.3d at p. 525.)

In any event, Mt. Sac cannot blame UWT for unreasonable delay, and it certainly cannot claim prejudice, because the law requires that a project is not committed or approved until the October 12, 2016 approval date and UWT filed suit **within 30 days of said decision**. (*See*, Memo. § II.E, pp. 11-12; *see also* Suppl. Decl. of Dennis Majors, ¶¶ 3-4.)

E. UWT's Non-Profit Public Interest and Private Attorney General Status Should be Considered to Issue a Reduced or Nominal Bond

The bond for a preliminary injunction is intended to be a surety against damages that the

enjoined party would face *if it prevailed at trial*. Mt. Sac demands that a UWT injunction bond must cover amounts it claims will be lost because of estimated $175,000 in legal fees for counsel Sean Absher and the purported $900,000 cost of alternative financing. (Opp.Brf. at 19:13-16.) These numbers are suspect. First, and most important, because of the preliminary injunction in Case No. BS166152, Mt. Sac will never complete the Stadium Project in time for the 2020 Olympic Trials, Mt. Sac has no reason to raise alternative funds while the stop work order is in place, and therefore none of the $900,000 is valid. Second, the Declaration of Sean Absher claims legal fees for all work, including post-trial motions unrelated to the preliminary injunction. In sum, Mt. Sac has presents a speculative amount of interim damages in the approximate amount of $150,000.

UWT was formed as a California nonprofit corporation for the purpose of reviewing and upholding improper Measure RR bond spending and timing for the review and approvals of its master plan projects. (Decl. of Abou-Taleb, ¶¶ 4-6) Further, UWT has been found by this Superior Court to have public interest and private attorney general standing to bring lawsuits such as this. (*See* Supp. RFJN Ex. W [Minute Order], Case No. BC 576587.)

As detailed in the concurrently filed declaration of UWT's president Layla Abou-Taleb, Mt. Sac lacks major funding sources, incomes, and does not have the ability to pay a premium or cash deposit in excess of $25,000 for a bond or undertaking. (Decl. of Abou-Taleb, ¶¶ 9-11)

Because this Court is required to order a bond based on damages proved to be caused by UWT's motion, and because (1) Mt. Sac cannot prove its proximate losses are the cause of UWT, and (2) UWT is a non-profit engaged in a public interest lawsuit, UWT requests that this Court order a bond in the amount of not more than twenty-five thousand dollars ($25,000).

III. CONCLUSION

As set forth above and in the concurrently filed declarations, UWT requests this Court to issue and grant the requested preliminary injunction against Mt. Sac and that UWT is ordered to post a reduced and/or nominal bond in the amount not exceeding twenty-five thousand dollars ($25,000).

Dated: April 4, 2018

CRAIG A. SHERMAN, A PROFESS. LAW CORP.

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):

REPLY BRIEF OF UNITED WALNUT TAXPAYERS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

on April 4, 2018 on the following person(s) in a sealed envelope or package, addressed as follows:

Sean B. Absher, Esq.
Shana Inspektor, Esq.
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Counsel for Mt. San Antonio Community College District

in the following manner:

1) ☒ By placing a copy in a separate envelope, with postage fully pre-paid, for each person and address named above and depositing each with the Overnight Carrier Golden State Overnight at San Diego, CA.

2) ☒ By sending to each person named above via electronic service at the above electronic notification addresses.

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 April 4, 2018 at San Diego, California.

Paul Best