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14 City of San José

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF SANTA CLARA

17 CITY OF SAN JOSÉ, a California municipality,  
18 Plaintiff,

19 v.

20 ALL PERSONS INTERESTED IN THE MATTER  
21 of the validity of the proceedings, including the  
landowner election, forming Convention Center  
22 Facilities District No. 2008-1, City of San José,  
County of Santa Clara, California; the validity of the  
23 special tax authorized by the Convention Center  
Facilities District; the validity of the bonds to be  
24 secured and repaid by the special tax; the  
establishment of the appropriations limit for the  
25 Convention Center Facilities District; the validity of  
all contracts and agreements related thereto; and the  
26 validity of the Ordinance levying the special tax,

27 Defendants.  
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CASE NO. \_\_\_\_\_

**COMPLAINT FOR VALIDATION OF  
CONVENTION CENTER FACILITIES  
DISTRICT SPECIAL TAX AND BONDS**

**EXEMPT from filing fees per Govt. Code  
§ 6103.**

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2 Plaintiff, City of San José, for its complaint to validate certain proceedings against  
3 all interested persons pursuant to California Code of Civil Procedure Sections 860, *et seq.* and  
4 Government Code Sections 53510, *et seq.*, alleges as follows:

5 **PRELIMINARY ALLEGATIONS**

6 1. Plaintiff, City of San José (the “City”) is and, at all times relevant herein,  
7 was, a municipal corporation and charter city duly organized and existing under a charter pursuant  
8 to which the City has the right and power to make and enforce all laws and regulations in respect  
9 to municipal affairs and certain other matters in accordance with and as more particularly provided  
10 in Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and the Charter of  
11 the City. Plaintiff is a “public agency” authorized to bring this action pursuant to California Code  
12 of Civil Procedure Section 860 and Government Code Sections 53359 and 53511.

13 2. The defendants named herein (the “Defendants”) are all persons interested  
14 in the matter of the validity of certain proceedings leading up to and including the landowner-voter  
15 approval and authorization of a special tax, sufficient to pay for specified facilities and incidental  
16 expenses related to the San José Convention Center, to be levied upon hotel property (as defined in  
17 the San José Municipal Code) within Convention Center Facilities District No. 2008-1, City of San  
18 José, County of Santa Clara, State of California (the “Convention Center Facilities District”); and  
19 the issuance of bonds to be repaid by the special tax; and the creation and voter approval of the  
20 appropriations limit (Art. 13B, Calif. Const.) for the Convention Center Facilities District.  
21 Defendants, and each of them, are named in this Complaint as directed in Sections 861, 861.1 and  
22 862 of the California Code of Civil Procedure.

23 3. Venue is proper in the County of Santa Clara pursuant to Section 860 of the  
24 California Code of Civil Procedure, as the principal office of the Plaintiff is located within the  
25 County of Santa Clara.

26 **FORMATION OF THE CONVENTION CENTER FACILITIES DISTRICT**

27 4. Chapter 14.32 (the “Chapter”) of the San José Municipal Code provides that  
28 the City is authorized to form a convention center facilities district to finance the acquisition,  
construction, reconstruction, replacement, rehabilitation and upgrade of the San José Convention

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Center under the provisions of the Mello-Roos Community Facilities Act of 1982 (Sections 53311 and following of the California Government Code) as they existed at the time of the adoption of the Chapter (the “Act”) and as modified by the Chapter.

5. The formation of the Convention Center Facilities District, the levy and collection of the special tax authorized thereby, the issuance and repayment of bonds authorized by the Convention Center Facilities District, and the expansion and improvement of the San José Convention Center are all municipal affairs of the City, and within its charter powers to regulate by means of the Chapter.

6. In the exercise of the City’s municipal affairs, the City Council of the City (the “City Council”) formed the Convention Center Facilities District pursuant to the Chapter.

7. On September 30, 2008, by its Resolution 74604, the City Council, among other things, approved the Boundary Map of the Convention Center Facilities District, and the Boundary Map was recorded on November 4, 2008 in the Book of Maps of Assessment and Community Facilities Districts maintained by the County Recorder of the County of Santa Clara in Book 44 at Pages 32-46, as Instrument Number 20037072.

8. On January 13, 2009, the City Council, by its Resolution No. 74758, repealed Resolution 74604 for reasons unrelated to the Boundary Map, but re-approved the Boundary Map, ratified its approval in Resolution 74604, and ratified the recordation of the Boundary Map.

9. As required by the Chapter, the City Council adopted preliminary resolutions containing the proposed powers to be conferred upon the City Council by the Convention Center Facilities District, and setting a public hearing at least 30 but not more than 60 days distant on all of the proposed powers. The City Council adopted the preliminary resolutions on February 3, 2009, and the public hearing was scheduled for March 10, 2009. The preliminary resolutions were: Resolution No. 74783, Resolution of Intention to Form the Convention Center Facilities District; and Resolution No. 74784, Resolution to Incur Bonded Indebtedness.

10. Proper notice of the hearing by publication, as required by the Act, was provided by the City, in that the Notice of Public Hearing was published in the *SAN JOSE MERCURY*

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*NEWS* on February 18, 2009. In addition, although it is optional under the Act, the City mailed notice of the hearing to the owners of property within the Convention Center Facilities District – except in cases where the land was owned by a public agency in which case the mailing was to the lessee of the public agency (defined as a landowner for purposes of the proceedings in Section 14.32.230 of the Chapter).

11. On March 10, 2009, the public hearing was held as noticed. There were no written protests submitted by any of the registered voters residing within the Convention Center Facilities District. Written protests were submitted by the owners of less than a majority of the hotel rooms within the Convention Center Facilities District. Under the provisions of the Chapter, therefore, the City Council was not precluded from proceeding further with the formation of the Convention Center Facilities District.

12. The City Council then, also on March 10, 2009, adopted its Resolution No. 74826, the Resolution of Formation of the Convention Center Facilities District (the “Resolution of Formation”), in which the City Council specified the types of public facilities and incidental expenses proposed to be authorized to be financed; set forth the Rate and Method of Apportionment of the special tax to be used to pay for all such facilities and incidental expenses, including the repayment of bonds or other debt obligations issued to finance the authorized public facilities, to be levied upon all taxable parcels within the Convention Center Facilities District; and specified the Convention Center Facilities District’s proposed appropriations limit.

13. At the same meeting the City Council also adopted its Resolution No. 74827, Resolution Deeming it Necessary to Incur Bonded Indebtedness (the “Resolution Deeming it Necessary”), in which the City Council proposed that the Convention Center Facilities District authorize the issuance of up to \$750 million in bonds to be repaid, both as to principal and interest, by the special tax revenues.

14. In the Resolution of Formation, the City Council proposed that the annual appropriations limit of the Convention Center Facilities District, pursuant to Article 13B of the California Constitution, be fifty-million dollars for the 2008-2009 fiscal year.

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2 **THE CONVENTION CENTER FACILITIES DISTRICT ELECTION**

3 15. The City Council then determined to submit the authorizations contained in  
4 the Resolution of Formation and the Resolution Deeming it Necessary to a vote of the qualified  
5 electors within the Convention Center Facilities District, and did so, still in its meeting on March  
6 10, 2009, by adopting its Resolution No. 74828, Resolution Calling Special Mailed-Ballot Election  
7 (“Resolution Calling Election”).

8 16. As authorized by Section 53353.5 of the Act, the three questions – (1) the  
9 authorization to levy the special tax for specified facilities, (2) the authorization of the bonds, and  
10 (3) the establishment of the appropriations limit – were combined into a single ballot proposition  
11 for submittal to the qualified electors of the Convention Center Facilities District.

12 17. Section 53326(c) of the Act authorizes an election by landowners, rather  
13 than registered voters, irrespective of the number of registered voters residing within a community  
14 facilities district, in cases where the special tax will, by its own terms, not be apportioned in any  
15 tax year on any portion of property in residential use in that tax year. Hotel property, and  
16 transitory occupancy of hotel rooms, by definitions in the San José Municipal Code, are not  
17 residential properties or residential uses. The Resolution of Formation provides that the special tax  
18 will be levied only on hotel rooms. Thus the special tax will never be levied on property in  
19 residential use. Thus a landowner, rather than registered-voter, election is authorized by the Act.

20 18. The Chapter modifies the Act for purposes of convention center facilities  
21 districts in respect of landowner elections. Where the Act provides that each landowner may cast  
22 one vote for each acre or portion of an acre that the landowners owns, the Chapter provides that  
23 each landowner may cast one vote for each hotel room on its property. The Chapter further  
24 provides that when the property on which a hotel sits is owned by a public agency, then the  
25 “landowner” for purposes of voting is the lessee of the property.

26 19. These modifications of the Act by the Chapter are within the municipal  
27 affairs of the City, and are legal, valid and binding provisions of the Chapter which the City  
28 lawfully and properly utilized in forming the Convention Center Facilities District under the  
Chapter.

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20. In the proceedings, the City Council accepted a Certificate Re Landowners and Hotel Rooms executed on March 9, 2009 by Habib Isaac of Willdan Financial Services, consultant to the City, and filed in the proceedings. That Certificate set forth the names of the landowners within the Convention Center Facilities District, including the lessees of hotel properties where the underlying land was owned by a public agency, and the number of hotel rooms existing on each hotel property within the Convention Center Facilities District. This provided the City with the names of the qualified electors for the special election, and the number of votes each qualified elector was entitled to cast in the election.

21. Section 53326(a) of the Act provides that the City Council may submit the ballot measure to the qualified electors “in a special election to be held, notwithstanding any other requirement, including any requirement that elections be held on specified dates, contained in the elections Code, at least 90 days, but not more than 180 days, following the adoption of the resolution of formation.” The Resolution Calling Election set the election date as June 9, 2009, which is at least 90 days, but not more than 180 days, following the close of the protest hearing on March 10, 2009. Section 53326(a) goes on to provide that if “the election is to be held less than 125 days following the adoption of the resolution of formation, the concurrence of the election official conducting the election shall be required.” The Resolution Calling Election named the City Clerk as the official to conduct the election, and the City Clerk indicated her [consent] [concurrence?] by conducting the election in accordance with Resolution 74828.

22. The City Clerk published notice of the election and deadline for submitting ballot arguments in the *SAN JOSE MERCURY NEWS* on March 16, 2009.

23. The election was conducted by the City Clerk in accordance with the Resolution Calling Election and, in all respects, in accordance with the requirements of California law.

24. As appears from a Certificate of Mailing Special Election Ballots, executed on May 11, 2009, Jennie Carter of Willdan Financial Services, on behalf of the City Clerk, mailed the ballots and ballot pamphlets to the qualified electors within the statutorily prescribed time limits.

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25. After the mailing, certain errors were discovered in the ballot pamphlets mailed with the ballots, and corrected ballot pamphlets were mailed to the voters on behalf of the City Clerk on May 20, 2009, as evidenced by a Certificate of Mailing Corrected Ballot Pamphlets executed by Jennie Carter of Willdan Financial Services on May 27, 2009, which was filed with the City Council.

26. The City Clerk received such of the ballots as were returned to her by the deadline of 8:00 p.m. on June 9, 2009. On June 10, 2009, the City Clerk tallied the votes cast on the returned ballots and then reported the results of her canvass to the City Council at its meeting on June 16, 2009. That report showed that of the 8,941 ballots eligible to be cast, 7,663 were cast. Of the votes cast, 5,955 were cast “YES,” and 1,708 were cast “NO.” Thus, the percentage of votes cast that were cast “YES,” was 77.7%, which is in excess of the two-thirds vote required by the Act.

27. The City Council then declared, by its Resolution No. 75000, Resolution Declaring Election Results, adopted June 16, 2009, that the ballot proposition had been approved. Under the Chapter, and under Article 13A of the California Constitution, the passage of the ballot proposition conferred upon the City Council authority to levy the special tax to finance the authorized facilities and authority to issue the bonds. Passage also established the appropriations limit of the Convention Center Facilities District.

28. The recording of the Notice of Special Tax Lien in the official records of the Santa Clara County Recorder, required by California Streets and Highways Code Section 3114.5, was accomplished on June 30, 2009, as Document # 20320458.

29. Section 53321 of the Act provides that the special tax shall be “annually” levied. Section 53340(e) provides that the “special tax shall be collected in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure, sale, and lien priority in case of delinquency as is provided for ad valorem taxes, unless another procedure has been authorized in the resolution of formation establishing the district and adopted by the legislative body.”

30. The Chapter provides, in Section 14.32.500, that the special taxes imposed

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pursuant to the Chapter “shall be due and remitted with the Hotel’s payment of the Transient Occupancy Tax.” The Resolution of Formation provided for levy of the special tax on a monthly basis, and for its calculation (based on a percentage of rent charged for the hotel rooms) and collection in accordance with the Chapter. These changes to the normal requirement of the Act, that the special taxes be levied annually and collected in the same manner as ordinary ad valorem property taxes are collected, are lawful because they comprise “another procedure” authorized under the provisions of Section 53340(e) of the Act and under the Resolution of Formation.

31. Also on June 16, 2009, the City Council introduced its Ordinance Levying Special Tax in Convention Center Facilities District No. 2008-1 (Ordinance No. 28605, the “Ordinance”) pursuant to Section 53340 of the Act. On June 19, 2009, pursuant to its terms, the City Clerk published the Ordinance in the *SAN JOSE MERCURY NEWS*. On June 23, 2009, the City Council adopted the Ordinance. The Ordinance went into effect immediately as a tax measure and, by its terms, levied the special tax beginning July 1, 2009. The Ordinance was lawfully adopted and is valid and operative to effect the levy of the special tax of the Convention Center Facilities District according to its terms.

32. In the Resolution of Formation, in accordance with Section 53325.1 of the Act, the City Council found and determined “that all proceedings conducted and approved by the City Council with respect to the establishment of the Convention Center Facilities District, up to and including the adoption of this Resolution and the other Resolutions adopted this date in connection with the Convention Center Facilities District, are valid and in conformity with the requirements of the Chapter, and this determination is final and conclusive for all purposes and is binding upon all persons.”

33. The election was in all respects valid and binding and in accordance with law. The special tax is in all respects legal, valid and binding. The bonds of the Convention Center Facilities District have been properly and legally authorized and, when issued, will be legal, valid and binding special obligations of the City payable solely from the special taxes collected pursuant to the Convention Center Facilities District.



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mailing a copy of the Summons to all landowners within the Convention Center Facilities District, (b) by posting a copy of the Summons in two public places within the City and (c) by mailing copies of the Summons and Complaint to those persons, if any, or their attorneys of record, who, not later than ten (10) days after publication of Summons is complete, or such other time as the Court may order, either have expressly notified in writing Plaintiff's attorneys of record of their interest in this matter or have filed and served actions against Plaintiff challenging *inter alia* the validity of the proceedings of the City Council in respect of the Convention Center Facilities District.

**FIRST CAUSE OF ACTION**

(Judgment of Validity)

40. Based upon the foregoing, the City is entitled to a judgment declaring that:

- (a) this action is properly brought under Sections 860, *et seq.* of the California Code of Civil Procedure;
- (b) all proceedings by and for the City in connection with the adoption of the Chapter, the formation of the Convention Center Facilities District pursuant to the Chapter, and the authorization of the special tax to finance the specified facilities, the authorization of the issuance of bonds, and the establishment of the appropriations limit, were and are valid, legal and binding and were and are in conformity with the applicable provisions of all laws and enactments at any time in force or controlling upon such proceedings, whether imposed by law, constitution, statute, charter or ordinance, and whether federal, state or municipal;
- (c) the legal proceedings for formation of the Convention Center Facilities District and conduct of the special election demonstrate conformity with all requirements of law, and there was no violation of any due process or equal protection clause of either the State or Federal Constitution;
- (d) the voter approval requirement of Article 13A, Section 4 of the California Constitution has been satisfied in the proceedings;
- (e) the levy, collection and expenditure of the special tax does not and will not violate any limitation contained in Article 13B of the California Constitution;

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(f) the timing of the election was valid;

(g) the findings in the Resolution of Formation are valid and correct and binding upon all persons;

(h) all conditions, things and acts required by law to exist, happen or be performed precedent to the levy of the special tax, the issuance of bonds, the establishment of the appropriations limit for the Convention Center Facilities District, and the terms and conditions thereof, and any other related contracts or agreements authorized or contemplated by the City, have existed, happened and been performed in the time, form and manner required by law; and

(i) the City Council has the authority under California law to levy the special tax, to issue the bonds, and to execute and deliver all contracts and agreements related thereto.

41. California Code of Civil Procedure Section 870(a) requires that the judgment rendered in an *in rem* validation action brought under California Code of Civil Procedure Sections 860 and following shall permanently enjoin the institution by any person of any action or proceeding raising any issue as to which the judgment is binding and conclusive. The provision also states that the judgment shall be forever binding and conclusive as to all matters adjudicated or which at the time could have been adjudicated against the City and against all other persons.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for entry of judgment as follows:

1. That the Court order that the jurisdiction of all interested persons has been lawfully obtained (a) by publication of the Summons pursuant to Section 861 of the California Code of Civil Procedure and Section 6063 of the Government Code and the Order of the Court in the *SAN JOSE MERCURY NEWS*, (b) by mailing a copy of the Summons to all landowners within the Convention Center Facilities District, (c) by posting a copy of the Summons in two public places within the City and (d) by mailing copies of the Summons and Complaint to those persons, if any, or their attorneys of record, who, not later than ten (10) days after publication of Summons is complete, or such other time as the Court may order, either have expressly notified in writing Plaintiff's attorneys of record of their interests in this matter or have filed and served actions

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against Plaintiff challenging *inter alia* the validity of any matter alleged herein.

2. That the Court find that this action is properly brought under California Code of Civil Procedure Sections 860, *et seq.* in the Superior Court for the County of Santa Clara.

3. That judgment be entered determining and declaring that:

(a) this action is properly brought under Sections 860, *et seq.* of the California Code of Civil Procedure;

(b) all proceedings by and for the City in connection with the adoption of the Chapter and the Act, the formation of the Convention Center Facilities District pursuant to the Chapter, and the authorization of the special tax to finance the specified facilities, the authorization of the issuance of bonds, and the establishment of the appropriations limit, were and are valid, legal and binding and were and are in conformity with the applicable provisions of all laws and enactments at any time in force or controlling upon such proceedings, whether imposed by law, constitution, statute, charter or ordinance, and whether federal, state or municipal;

(c) the legal proceedings for formation of the Convention Center Facilities District and conduct of the special election demonstrate conformity with all requirements of law, and there was no violation of any due process or equal protection clause of either the State or Federal Constitution;

(d) the voter approval requirement of Article 13A, Section 4 of the California Constitution has been satisfied in the proceedings;

(e) the levy, collection and expenditure of the special tax does not and will not violate any limitation contained in Article 13B of the California Constitution;

(f) the timing of the election was valid;

(g) the findings in the Resolution of Formation are valid and correct and binding upon all persons;

(h) all conditions, things and acts required by law to exist, happen or be performed precedent to the levy of the special tax, the issuance of bonds, the establishment of the appropriations limit for the Convention Center Facilities District, and the terms and

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2 conditions thereof, and any other related contracts or agreements authorized or  
3 contemplated by the City, have existed, happened and been performed in the time, form  
4 and manner required by law; and

5 (i) the City Council has the authority under California law to levy the  
6 special tax, to issue the bonds, and to execute and deliver all contracts and agreements  
7 related thereto.

8 4. That judgment be entered ordering that all persons are thereby permanently  
9 enjoined and restrained from the institution of any action or proceeding challenging, *inter alia*, the  
10 validity of the proceedings of the City Council for the formation of the CFD, for the adoption of  
11 the Resolution of Formation, the Resolution Deeming it Necessary, and the Ordinance levying the  
12 special tax, for the satisfaction of the voter approval requirement for the levy of the special tax to  
13 finance specified facilities, for the issuance of the bonds and the levying of the special tax, for the  
14 establishment of the appropriations limit of the Convention Center Facilities District, and for the  
15 authorization, execution and delivery of any contracts or agreements related to the matters set forth  
16 herein, or any other matters herein adjudicated or which at this time could have been adjudicated  
17 against the City, the Convention Center Facilities District, or any other persons.

18 5. For costs incurred herein.

19 6. For such other and further relief as the Court may deem just and proper.

20 Dated: July \_\_, 2009

21 DANIEL C. BORT  
22 MICHAEL C. WEED  
23 ORRICK, HERRINGTON & SUTCLIFFE LLP

24 \_\_\_\_\_  
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