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MT. SAN ANTONIO COMMUNITY COLLEGE
DISTRICT and WILLIAM SCROGGINS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
CENTRAL DISTRICT

UNITED WALNUT TAXPAYERS, a
California Nonprofit Fictitious Business Entity,

Plaintiff and Petitioner,

vs.

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.

CASE NO. BC 576587

UNLIMITED JURISDICTION

[Assigned to Hon. James C. Chalfant –
Dept. 85, Room 834]

**MT. SAN ANTONIO COMMUNITY
COLLEGE DISTRICT'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS AND
DISSOLVE OR MODIFY THE
PRELIMINARY INJUNCTION**

Date: January 21, 2016
Time: 8:30 a.m.
Dept.: 85
Judge: Hon. James C. Chalfant

TILDEN-COIL CONSTRUCTORS, INC. and
DOES ELEVEN through TWENTY,
Inclusive,

Real Parties in Interest.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The court cannot grant any relief in this action as it does not have subject matter
4 jurisdiction. Plaintiff seeks to challenge three Mt. SAC College facility projects based on
5 allegations the projects are invalid under Mt. SAC Measure RR (a Proposition 39 bond measure),
6 City of Walnut zoning ordinances and the California Environmental Quality Act ("CEQA").
7 Under settled California law, Plaintiff's action is a "reverse" validation action and Plaintiff is
8 required to comply with the mandatory service and publication of summons requirements in
9 Code of Civil Procedure §§ 860 *et seq.*

10 In addition, and independent of the above analysis, Plaintiff's targeted challenge to the
11 validity of the Parking Structure Project fails as it is untimely. This project was passively
12 validated at the earliest when Measure RR was passed in November 2008, or December 11, 2013
13 when Mt. SAC approved the final CEQA supplemental EIR for the Parking Structure Project,
14 among other projects. In between these two time frames, on February 23, 2013, the Mt. SAC
15 Board ordered the Parking Structure Project to move forward and authorized \$2.77 million in
16 design and professional services contracts for the Parking Structure Project. The Parking
17 Structure Project as identified by the Board of Trustees on February 23, 2013 is identical to the
18 very Parking Structure Project challenged in this action: a 2,300 space parking structure.

19 Finally, the CEQA document that is the subject of Plaintiff's CEQA challenge in this
20 action, 2012 Final Master Plan Supplemental EIR, was approved by the Mt. SAC Board of
21 Trustees on December 11, 2013. The statute of limitations to challenge the CEQA document has
22 long passed.

23 **II. STATEMENT OF FACTS**

24 **A. The Project List As Approved In the November 2008 Measure RR Election**
25 **Approving Authorized the Parking Structure Project**

26 On July 23, 2008, the District's Board of Trustees ("Board") considered and *approved*
27 Resolution No. 08-01 ("Measure RR"), which had ordered a general obligation bond election in

1 November 2008, requesting voters to approve a \$353-million bond to *fund* the 2008 Master Plan.
2 (Request for Judicial Notice (“RJN”) Exh. A [Board Resolution No. 08-01, dated July 23, 2008
3 (“Measure RR Resolution).] The full text of the proposition was attached to the Measure RR
4 Resolution as Exhibit B and specifically listed a parking structure project as an approved project,
5 as follows:

- 6 • “upgrade . . . parking capacity to improve traffic flow and prevent traffic
7 congestion; (*Id.* at p. 8.)
- 8 • “expand parking capacity” as a project. (*Id.* at p. 9.)

9 **B. There was never any timely challenge to the Board’s action to order and**
10 **move forward with the Parking Structure Project as a Measure RR Project**

11 **1. Mt. SAC Facility Master Plan 2012**

12 Mt. SAC has in place a Facility Master Plan 2012 that identifies the Parking Structure
13 Project as a proposed Measure RR project to accommodate anticipated increased student
14 enrollment. (RJN Exh. B, pp. 4, 11, 12, 21.) The Facility Master Plan identifies Lot A as the
15 location of the Parking Structure Project and describes the project as providing 2,300 additional
16 parking spaces for students. (*Id.* at p. 21.)

17 **2. February 27, 2013 Board Action on Parking Facility Project**

18 On February 27, 2013, the Board published notice of its agenda for a regular meeting and
19 specifically identified for Board Action “Professional Design and Consulting Services” (RJN
20 Exh. C, p. 37 “Board Agenda”). The Board Agenda specifically notes: “In order to commence
21 design on construction and renovation projects, it is necessary to retain the services of qualified
22 professionals.” (*Id.*) The Board Agenda goes on to state: “Anticipating the first issuance of
23 Measure RR bonds will take place later this year, project-specific proposals for three major
24 projects were solicited from [] previously approved architectural firms.” (*Id.*) For Item #3, the
25 Board Agenda lists Hill Partnership, Inc. (“Hill Partnership”) as “Consultant” for the “Parking
26 Structure.” (*Id.*) Under Description, the Board Agenda describes the services for “[p]rofessional
27 architectural and engineering services including construction administration and close out for the

1 \$55,000,000.00, 2,200-2,300-space Parking Structure.” (*Id.*) The approved contract amount for
2 such services is \$2,775,306.00. (*Id.*) The Board Agenda lists “Measure RR Bond Anticipation
3 Note” as the funding source for the professional services, wherein it was “recommended that the
4 Board of Trustees approve[] the contracts, as presented.” (*Id.* at p. 41.)

5 The Board of Trustees approved the professional services contract with Hill Partnership
6 for professional design services for the Parking Structure Projects and such action by the Board
7 of Trustees is memorialized in the official Board minutes. (RJN Exh. D p. 2.)

8 **3. Certification of 2012 Subsequent Final Environmental Impact Report**
9 **for Mt. SAC Master Plan Update 2012**

10 Minutes of the Board of Trustees December 11, 2013 regular meeting shows that the
11 Board of Trustees conducted a public hearing regarding certification of the subsequent final
12 environmental impact report (“2012 Final SEIR”) for the Mt. SAC Master Plan update 2012.
13 (RJN Exh. E.) The minutes reflect comments from local residents concerning the Parking
14 Structure Project. (*Id.*) One resident noted that she was “glad the parking structure project is
15 being constructed.” (*Id.*) The Board of Trustees closed the public hearing and moved approval
16 of the 2012 Final SEIR. (*Id.* at pp. 10-11.)

17 **4. Mt. SAC’s Approval of Commencement of Construction of Phase I of**
18 **the Parking Structure Project on February 11, 2015**

19 On February 11, 2015, the Board of Trustee took official action and approved a lease
20 leaseback contract with Tilden-Coil to construction Phase I of the Parking Structure Project.
21 (Verified Complaint for Declaratory Relief and Injunctive Relief; Petition for Writ of Mandate
22 2:5-9 and 5:1-4.)

23 **C. Original Complaint and Allegations**

24 On March 24, 2015, Taxpayers filed its Verified Complaint for Declaratory and
25 Injunctive Relief; Petition for Writ of Mandate (“Complaint”) seeking to overturn and set aside
26 essentially three actions by Mt. SAC, as follows:

- 27 • “The February 11, 2015 final decision of Mt. SAC to proceed with construction of
Phase I of the Parking Structure Project based on alleged failure to comply with

1 City of Walnut local planning and zoning ordinances and CEQA.” (RJN Exh. I
2 Complaint at 2:6-13.);

- 3 • “Mt. SAC’s spending and continuing spending of Measure RR funds on the
4 Project, the Athletic Complex East project (“ACE Project”) and the Retail/Solar
5 Power Plant” (“Solar Project”). (*Id.* at 2:14-16.);
- 6 • “Mt. SAC has adopted and is implementing a pattern and practice of violating
7 CEQA by approving projects without project-specific CEQA review.” (*Id.* at
8 2:18-21.).

9 The Complaint alleges five separate causes of action seeking to invalidate the Parking
10 Structure Project, the ACE Project and the Retail/Solar Project (collectively “Projects”) on
11 grounds the Projects are improper expenditures of Measure RR bond funds, violate the City of
12 Walnut’s zoning ordinances and violate CEQA, as follows:

13 **1. First Cause of Action for Violation of Restricted Government**
14 **Spending; Waste and Misuse of Public Money brought under Cal.**
15 **Code Civ. Proc. §§ 526(a), 1060**

16 In the First Cause of Action, Plaintiff seeks a declaratory judgment and issuance of
17 preliminary injunction to enjoin and prevent the use of Measure RR funds for the Parking
18 Structure Project, the ACE Project and the Solar Project. (Complaint 10:20-24.)

19 **2. Second Cause of Action-Petition for Writ of Mandate for Violation of**
20 **the California Environmental Quality Act brought under Cal. Public**
21 **Resources Code § 21000 et seq.; 14 Cal. Code Regs. § 15000 et seq.**

22 In the Second Cause of Action, Plaintiff alleges the District failed to comply with CEQA
23 in conjunction with approval of the Parking Structure Project. (Complaint 11:9-12.) Plaintiff
24 goes on to allege the 2012 Final SEIR fails to evaluate the Parking Structure Project with the
25 requisite project specificity required under CEQA. (Complaint 11:15-19.)

26 **3. Third Cause of Action – Petition for Writ of Mandate for Violation of**
27 **Local Ordinance, Zoning and/or General Plan Height Restrictions**

In the Third Cause of Action, Plaintiff alleges the Parking Structure Project is subject to
City of Walnut zoning ordinance and a conditional use permit. (Complaint 12:11-17.) Plaintiff

1 seeks a writ of mandate to order the District to rescind approval of the February 11, 2015 lease
2 leaseback contract with Tilden-Coil for the construction of Phase 1 of the Parking Structure
3 Project. (Complaint 12:13-19.)

4 **4. Fourth Cause of Action – Petition for Writ of Mandate For Violations**
5 **of the Exemption Provisions of Cal. Gov. Code § 53094, subd. (b) and**
6 **CEQA**

7 In the Fourth Cause of Action, Plaintiff seeks a writ of mandate to declare the District's
8 adoption of the Section 53094 Zoning Exemption Resolution as null and void based on the
9 failure to comply with CEQA. (Complaint 13:25-14:8.)

10 **5. Fifth Cause of Action – Complaint for Declaratory and Injunctive**
11 **Relief for Pattern and Practice Violations of CEQA**

12 In the Fifth Cause of Action, Plaintiff seeks declaratory judgment that the District
13 engages in a "multiple piecemeal Master Plan Facility programmatic EIR updates without
14 performing required project-specific environmental review." (Complaint 14:23-25.) Plaintiff
15 goes on to allege the Parking Structure Project, the ACE Project and the Solar Project are
16 examples of District's practice of avoiding project-specific environmental review. (Complaint
17 15:1-4.)

18 **D. Mt. SAC Answer And Affirmative Defenses**

19 On May 4, 2015 Mt. SAC filed an answer to the Verified Complaint and asserted various
20 affirmative defenses, including, but not limited to, failure to state a cause of action (First), failure
21 to state a claim (Second), mootness (Fifth), statute of limitations under Public Resources Code
22 §§ 21167, 21080 and Code of Civil Procedure §§ 860, 863 and 1094.6 (Tenth), and standing
(Eleventh). (RJN Exh. J.)

23 **E. Issuance of Preliminary Injunction Enjoining Further Construction Of The**
24 **Parking Structure Project**

25 Plaintiff moved for and obtained a preliminary injunction on May 13, 2015 enjoining
26 further construction of the Parking Structure Project and use of Measure RR bond funds for the
27 project. The court issued a Preliminary Injunction finding the Plaintiff was likely to prevail on
the First Cause of Action alleging that the Parking Structure Project is not a valid Measure RR

1 project as the project was insufficiently identified in Measure RR and on the Third and Fourth
2 Causes of Action alleging the Parking Structure Project violates City of Walnut zoning
3 ordinance.¹

4 **F. Mt. SAC's Abandonment of Parking Structure Project As Measure RR Project**

5 The Board of Trustees at a duly noticed meeting on July 8, 2015 took action to cease the
6 expenditure of Measure RR funds for the Parking Structure Project and remove the project from
7 the Measure RR project list. (RJN Exh. F at p. 2.) Measure RR funds for the Parking Structure
8 Project were diverted to the new Student Center. (*Id* at p. 3.) On July 22, 2015 Mt. SAC
9 terminated the lease leaseback contract with Tilden-Coil for the construction of Phase 1 of the
10 Parking Structure Project by issuing a "Termination for Convenience" letter. (RJN Exh. G.)

11 **III. LEGAL ARGUMENT**

12 **A. Standard Of Review**

13 Under Code of Civil Procedure section 438, subdivision (C)(1)(B), a defendant may
14 move for judgment on the pleadings on the grounds that: (i) the court has no jurisdiction over the
15 subject matter of the cause of action alleged in the complaint; or (ii) the complaint does not state
16 facts sufficient to constitute a cause of action against that defendant. (See Code of Civil
17 Procedure section 438.) The court may consider matters that may be judicially noticed,
18 including court records and a party's admissions or concessions that cannot reasonably be
19 controverted. (*Columbia Casualty Co. v. Northwestern Nat. Ins. Co.* (1991) 231 Cal.App.3d
20 457, 468-69 ("*Columbia Casualty*").) Judgment on the pleadings is proper if it appears from a
21 judicially noticed matter that the action sued on is barred by the statute of limitations and this
22 fact has been pleaded in the answer as an affirmative defense. (See *Wrightson v. Dougherty*
23 (1936) 5 Cal. 2d 257, 262, 264-65; see also *Poseidon Development, Inc. v. Woodland Lane*
24 *Estates, LLC* (2007) 152 Cal.App.4th 1106, at 1117 [finding that a judicially noticed fact may
25 controvert an express allegation of the pleading].) Moreover, a court may take judicial notice of

26 ¹ On April 1, 2015, the Court had entered an order in the related case captioned *City of Walnut v. David Hall et al.*
27 Case No. BS154389 denying the City of Walnut's motion for preliminary injunction, finding the City of Walnut's
own evidence shows that it will not be able to show that the project violates the City's zoning laws. (See RJN Exh.
K at p. 2.)

1 something that cannot reasonably be controverted, even if it negates an express allegation of the
2 pleading. (*Columbia Casualty, supra*, at 468-69.)

3 **B. Plaintiff's Entire Action Should Be Dismissed As It Is An Untimely**
4 **"Reverse" Validation Action Challenging The Validity Of Measure RR**
5 **Projects And Expenditures.**

6 Under the Code of Civil Procedure sections 860 through 870, "a public agency may
7 validate its action by either active or passive means. . . .the agency may do nothing, and if no
8 'interested person' brings suit to determine the validity of the public agency's action within 60
9 days the action is deemed valid." (*Kaatz v. City of Seaside* (2006) 143 Cal.App.4th 13, 19
10 ("Kaatz").) Education Code section 15110 specifically provides for challenging the validity of
11 bonds and ordering of improvements. (See *McLeod v. Vista Unified School District* (2008) 158
12 Cal.App.4th 1156, 1165-66 ("*McLeod*").) Section 15110 provides that:

13 An action to determine the validity of bonds and of the
14 ordering of the improvement or acquisition may be brought
15 pursuant to Chapter 9 (commencing with Section 860) of
16 Title 10 of Part 2 of the Code of Civil Procedure. In such
17 action, all findings, conclusions and determinations of the
18 legislative body which conducted the proceedings shall be
19 conclusive in the absence of actual fraud.

20 (Education Code section 15110.)

21 Where, as is the case here, the public agency does not initiate a validation proceeding,
22 Code of Civil Procedure section 863 allows "any interested person [to] bring an action within the
23 time and in the court specified by Section 860 to determine the validity of such matter." This
24 type of action is referred to as a "reverse validation action." (*California Commerce Casino, Inc.*
25 *v. Schwarzenegger* (2007) 146 Cal.App.4th 1406, 1420, fn. 12 ("*California Commerce Casino*".)
26 Sections 861-864 impose additional notice and service requirements on both validation and
27 reverse validation actions. To accomplish their purpose of providing a public agency with
certainty as to its actions, a validation action or reverse validation action is a proceeding "in rem
whose effect is binding on the agency and on all other persons." (*In re Quantification Settlement*
Cases (2011) 201 Cal.App.4th 758, 833.)

1 Just like the time period for passive validation, the statute of limitations for reverse
2 validation action is short. Sections 860 and 863 make clear that reverse validation actions must
3 be brought within 60 days of the challenged action. “Given the policies underlying the
4 validation statutes, including the need to limit the extent to which delay due to litigation may
5 impair a public agency’s ability to operate financially, the 60-day limitations period for filing a
6 validation action . . . is not unreasonable.” (*California Commerce Casino, supra*, 146
7 Cal.App.4th at 1420.) After this deadline, an agency may proceed knowing that its action is
8 beyond challenge. (*City of Ontario v. Superior Court* (1970) 2 Cal.3d 335, 341-42 (“*City of*
9 *Ontario*”).) “Unless an ‘interested person’ brings an action of his own under section 863 within
10 the 60-day period, the agency’s action will become immune from attack whether it is legally
11 valid or not.” (*City of Ontario, supra*, at 341-42; see *Katz v. Campbell Union School District*,
12 (2006) 144 Cal.App.4th 1024, 1031 [upholding dismissal of reverse validation action against a
13 school district parcel tax where summons was deficient]; *McLeod, supra*, 158 Cal.App.4th at
14 1166 [failure to comply with the reverse validation procedure within 60-day statute of limitations
15 period prevented review of allegations of misuse of bond funds by school district].)

16 In *Protect Agricultural Land v. Stanislaus County Local Agency Formation Commission*
17 (2014) 223 Cal.App.4th 550, 559 (“*Protect Agricultural Land*”), the Court of Appeal found that
18 local agency reorganization was not subject to challenge where plaintiffs failed to comply with
19 the validation procedure notwithstanding plaintiffs’ claim the agency action violated CEQA.
20 “We interpret [Government Code] section 56103 to mean that lawsuits seeking to set aside (i.e.,
21 invalidate) a LAFCO approval of an annexation or a change in a sphere of influence – whether
22 brought under CEQA, the Reorganization Act, or both – are subject to the procedural
23 requirements applicable to reverse validation actions.” (*Id.* at 554; emphasis added.)

24 Most recently, in a November 2015 published opinion, the Court of Appeal in *San*
25 *Diegans for Open Government v. City of San Diego* (2015) 242 Cal.App.4th 416, relied on the
26 *Protect Agricultural Land* decision in finding that a taxpayers group challenge to the validity of a
27 lease leaseback financing arrangement to fund public infrastructure improvements was subject to

1 the reverse validation statute. Absent compliance with the reverse validation procedural
2 requirements, a court has no jurisdiction to hear the challenge. (*Id.* at 427-28.)

3 It is undisputed here that Plaintiff seeks to challenge the validity of the Projects as valid
4 Measure RR Projects. (RJN Exh. I at 2:14-26.) Based on the above legal analysis, Plaintiff was
5 required to comply with the reverse validation statute. It is undisputed that Plaintiff has not
6 complied with the most basic of requirements for a reverse validation action despite the
7 allegations in the Complaint challenging the validity of the action Mt. SAC took to approve
8 expenditure of Measure RR funds on the Projects. (See RJN Exh. I at p. 1 [issuance of non-
9 compliant reverse validation summons].) The court lacks subject matter jurisdiction to hear this
10 action and it should be dismissed and the preliminary injunction issued on May 13, 2015 should
11 be dissolved.

12 **C. Irrespective Of Plaintiff's Failure To Comply With the "reverse validation"**
13 **Procedural Requirements; Plaintiff's Challenge to the Parking Structure**
14 **Project is Untimely Under "Passive" Validation**

15 As discussed above, under Code of Civil Procedure sections 860 through 870, "a public
16 agency may validate its action by either active or passive means. . . .the agency may do nothing,
17 and if no 'interested person' brings suit to determine the validity of the public agency's action
18 within 60 days the action is deemed valid." (Kaatz, *supra*, 143 Cal.App.4th at 19.) Education
19 Code section 15110 specifically provides for challenging the validity of bonds and ordering of
20 improvements. (See *McLeod*, *supra*, 158 Cal.App.4th at 1165-66.)

21 Education Code section 15110 provides that:

22 An action to determine the validity of bonds and of the ordering of
23 the improvement or acquisition may be brought pursuant to
24 Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of
25 the Code of Civil Procedure. In such action, all findings,
26 conclusions and determinations of the legislative body which
27 conducted the proceedings shall be conclusive in the absence of
actual fraud.

(Education Code section 15110.)

Here, the allegations in the Complaint coupled with matters that may be judicially noticed
show that Mt. SAC passively validated the Parking Structure Project as a valid Measure RR

1 project. Plaintiff's Complaint was not filed until March 24, 2015.

2 As discussed above, on July 23, 2008, the Board approved Measure RR, which had
3 ordered a general obligation bond election in November 2008, requesting voters to approve a
4 \$353-million bond to fund the 2008 Master Plan. (RJN Exh. A.) The full text of the proposition
5 was attached to the Measure RR Resolution as Exhibit B and specifically listed a parking
6 structure project as an approved project. There was no timely challenge to Measure RR.

7 Mt. SAC has in place a Facility Master Plan 2012 that identifies the Parking Structure
8 Project as a proposed Measure RR project to accommodate anticipated increased student
9 enrollment. (RJN Exh. B, pp. 4, 11, 12, 21.) The Facility Master Plan identifies Lot A as the
10 location of the Parking Structure Project and describes the project as providing 2,300 additional
11 parking spaces for students. (*Id.* at p. 21.) **On February 27, 2013** the Board took definitive
12 official action on Parking Structure Project. The Board published notice of its agenda for a
13 regular meeting and specifically identified for Board Action "Professional Design and
14 Consulting Services." (RJN Exh. C.) The Board Agenda specifically notes: "In order to
15 commence design on construction and renovation projects, it is necessary to retain the services of
16 qualified professionals." (*Id.*) The Board Agenda goes on to state: "Anticipating the first
17 issuance of Measure RR bonds will take place later this year, project-specific proposals for three
18 major projects were solicited from [] previously approved architectural firms." (*Id.*) For Item
19 #3, the Board Agenda lists Hill Partnership, Inc. ("Hill Partnership") as "Consultant" for the
20 "Parking Structure." (*Id.*) Under Description, the Board Agenda describes the services for
21 "[p]rofessional architectural and engineering services including construction administration and
22 close out for the \$55,000,000.00, 2,200-2,300-space Parking Structure." (*Id.*) The approved
23 contract amount for such services is \$2,775,306.00. (*Id.*) The Board Agenda lists "Measure RR
24 Bond Anticipation Note" as the funding source for the professional services, wherein it was
25 "recommended that the Board of Trustees approve[] the contracts, as presented." (*Id.* at p. 41.)

26 The Board of Trustees approved the professional services contract with Hill Partnership
27 for professional design services for the Parking Structure Projects and such action by the Board

1 of Trustees is memorialized in the official Board minutes. (RJN Exh D p. 2.)

2 Minutes of the Board of Trustees show that at the December 11, 2013 regular meeting the
3 Board of Trustees conducted a public hearing regarding certification of the 2012 Final SEIR, and
4 the minutes of the meeting show the Board of Trustees approved the 2012 Final SEIR after
5 taking comments on the Parking Structure Project. (*Id.* at pp. 10-11.)

6 Plaintiff waited until March 24, 2015 to file the Complaint seeking to challenge the
7 validity of Measure RR bond expenditures on the Parking Structure Project – well beyond the
8 60-day window to do so. (*Kaatz, supra*, 143 Cal.App.4th at 19 [public agency’s action deemed
9 valid if not challenged within 60 days].) Nothing prevented Plaintiff from challenging Measure
10 RR bond expenditures on the Parking Structure Project after the District first authorized such
11 expenditures five years or even over two years ago. Plaintiff may argue that it challenges only
12 the bond expenditures on the construction phase. However, in a phase-by-phase project such as
13 construction of a five-level parking garage, it makes little sense in keeping with the purpose of
14 the validation statutes to allow Plaintiff a second or third “bite at the apple.” To fulfill the
15 express purpose of the validation statutes, any challenge must come at the earliest possible time to
16 ensure that later actions, which rely on the prior validation, are not frustrated when it becomes
17 convenient to litigate or once a public agency has already committed large sums of money to the
18 project. (See *Katz, supra*, 144 Cal.App.4th at 1028 [“[t]he validation procedure is intended to
19 provide a uniform mechanism for prompt resolution of the validity of a public agency’s actions.
20 The procedure ‘assures due process notice to all interested persons’ and settles the validity of a
21 matter ‘once and for all by a single lawsuit.’”].)

22 Plaintiff’s dilatory responses resulted in the validation of expenditures of Measure RR
23 bond funds on the Parking Structure Project, which is now “immune from attack whether it is
24 legally valid or not.” (*McLeod, supra*, 158 Cal.App.4th at 1166 [citations omitted].) Plaintiff’s
25 claims challenging the validity of the Parking Structure Project under all grounds should be
26 dismissed and the preliminary injunction should be dissolved as a result of such dismissal.

1 **D. Plaintiff Lacks Standing To Allege The Third Cause Of Action For Writ Of**
2 **Mandate Alleging Local Zoning Violations And/Or General Plan Height**
3 **Restrictions As To The Parking Structure Project**

4 Plaintiff's Third Cause of Action should also be dismissed as Plaintiff lacks standing to
5 pursue a mandamus action compelling Mt. SAC to enforce the City of Walnut's zoning
6 ordinances.

7 To state a claim for the remedy of mandamus under Code of Civil Procedure section
8 1085, a plaintiff must demonstrate (1) a duty on the part of the respondent, (2) the petitioner's
9 beneficial interest in compelling performance of that duty, and (3) the inadequacy of other legal
10 remedies. (See Code of Civil Procedure section 1086; *Betancourt v. Workmen's Compensation*
11 *Appeals Board* (1971) 16 Cal.App.3d 408 (noting that mandamus will not lie "where an adequate
12 remedy exists at law").)

13 Mt. SAC has no "clear and present ministerial duty" to enforce a local zoning ordinance.
14 The ministerial duty of whether to enforce a local zoning ordinance lies with the City of Walnut
15 and not Mt. SAC, as land use and zoning regulations are derivative of a city's general police
16 power. (See *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 782; see also *Big Creek Lumber*
17 *Co. v. City of Santa Cruz* (2006) 38 Cal.4th 1139, 1159.) Plaintiff can point to no statute or
18 ordinance which imposes an obligation on Mt. SAC to enforce Walnut's ordinances. Nor can
19 Plaintiff point to any permit issued by the City of Walnut to Mt. SAC in connection with the
20 Parking Structure Project that Mt. SAC has violated. Indeed, the Court denied City of Walnut's
21 motion to preliminarily enjoin the Parking Structure Project, finding that no conditional use
22 permit was required for the Parking Structure Project. (See RJN Exh. K at p. 2.)

23 **E. Plaintiff's CEQA Claims in the Second, Third, and Fifth Causes Are**
24 **Untimely Challenges To The 2012 Final SEIR**

25 The problem for Plaintiff here is that the Second, Third and Fifth Causes of Action
26 alleging CEQA violations were filed outside the applicable statutory period under CEQA.

27 The CEQA statutes of limitation are short in time and unforgiving. (See Pub. Resources
Code, section 21167; see also *Committee For Green Foothills v. Santa Clara County Bd. of*
Supervisors (2010) 48 Cal.4th 32, 39 ("*Committee for Green Foothills*") [30 days after filing of

1 NOD]; *Stockton Citizens for Sensible Planning v. City of Stockton* (2010) 48 Cal.4th 481
2 (“*Stockton Citizens for Sensible Planning*”) [35 days after filing of NOE].) “As the CEQA
3 Guidelines explain, ‘[t]he statute of limitations periods are not public review periods or waiting
4 periods for the person whose project has been approved. The project sponsor may proceed to
5 carry out the project as soon as the necessary permits have been granted. The statute of
6 limitations cuts off the right of another person to file a court action challenging approval of the
7 project after the specified time period has expired.’” (*Stockton Citizens for Sensible Planning*,
8 *supra*, 48 Cal.4th 481, 499.)

9 “For purposes of the CEQA statutes of limitation, the question is not the substance of the
10 agency’s decision, but whether the public was notified of that decision.” (*Committee for Green*
11 *Foothills, supra*, 48 Cal.4th at 51.) “To ensure finality and predictability in public land use
12 planning decisions, statutes of limitations governing challenges to such decisions are typically
13 short.” (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 27; see also, e.g., *Travis v. County of*
14 *Santa Cruz* (2004) 33 Cal.4th 757, 774–75.)

15 CEQA’s purpose of ensuring prompt resolution of lawsuits claiming noncompliance with
16 the Act is evidenced throughout the statute’s procedural scheme. For example, such suits have
17 calendar preference; more populous counties must designate one or more judges to develop
18 CEQA expertise to permit prompt disposition of CEQA claims; and expedited briefing and
19 hearing schedules are required. (Pub. Res. Code. Sections 21167.1, 21167.4.)

20 “Courts have often noted the Legislature’s clear determination that ‘the public interest is
21 not served unless CEQA challenges are promptly filed and diligently prosecuted.’” (*Citizens for*
22 *a Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91, 111; see *Nacimiento*
23 *Regional Water Management Advisory Com. v. Monterey County Water Resources Agency*
24 (2004) 122 Cal.App.4th 961, 965; accord, *Board of Supervisors v. Superior Court* (1994) 23
25 Cal.App.4th 830, 836 (“*Board of Supervisors*”); *Oceanside Marina Towers Assn. v. Oceanside*
26 *Community Development Com.* (1986) 187 Cal.App.3d 735, 741.) “‘Patently, there is legislative
27 concern that CEQA challenges, with their obvious potential for financial prejudice and

1 disruption, must not be permitted to drag on to the potential serious injury of the real party in
2 interest.” (*Board of Supervisors, supra*, at 837.) “The Legislature has obviously structured the
3 legal process for a CEQA challenge to be speedy, so as to prevent it from degenerating into a
4 guerilla war of attrition by which project opponents wear out project proponents.” (*County of*
5 *Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 12; italics omitted.)

6 Section 21167 establishes statutes of limitations for all actions and proceedings alleging
7 violations of CEQA. (*Committee for Green Foothills, supra*, 48 Cal.4th at 43.) “CEQA reserves
8 its very shortest limitations periods for cases where the agency has given public notice, in a form
9 required or permitted by the statute, of an agency act or decision that is relevant to CEQA’s
10 statutory scheme. Thus, where the agency approves a project without determining whether it
11 will have a significant effect on the environment (and therefore presumably filing no CEQA
12 notice), the limitations period is 180 days from project approval or, if there was no formal
13 approval, 180 days from the commencement of construction. (Section 21167, subd. (a).) On the
14 other hand, an action asserting that the agency has improperly determined whether a project
15 subject to CEQA will have a significant environmental effect must be commenced within 30
16 days after the agency files the required notice of project approval (which notice must indicate the
17 agency’s determination about the project’s effect on the environment). (Sections 21108, subd.
18 (a), 21152, subd. (a), 21167, subd. (b).) A suit claiming that an EIR prepared for the project, or
19 any other act or omission by the agency, does not comply with CEQA must be filed within 30
20 days after the above described notice of project approval is filed. (Section 21167, subds. (c), (e);
21 *Stockton Citizens, supra*, 48 Cal.4th at 500.)

22 **F. Plaintiff’s Fourth Cause Of Action Is Moot And Should Be Dismissed**
23 **Without Leave To Amend.**

24 Plaintiff raises a CEQA challenge to the February 11, 2015 action taken by Mt. SAC to
25 exempt the Parking Structure Project from City of Walnut zoning ordinances pursuant to
26 Government Code section 53094. Mt. SAC’s action is rendered moot by its abandonment of this
27

1 project. Because no effective relief can be granted Plaintiff, the Court should dismiss this cause
2 of action on mootness grounds.

3 **G. The Court Should Dissolve Or Modify The Preliminary Injunction Enjoining**
4 **Expenditure Of Measure RR Bond Funds On The Parking Structure Project.**

5 Pursuant to Code of Civil Procedure section 533, a court may on notice modify or
6 dissolve an injunction order on a showing that (1) a material change in the facts on which the
7 injunction or temporary restraining order was granted has occurred; (2) the law on which the
8 injunction or temporary restraining order was granted has changed; or (3) the ends of justice
9 would be served by the modification or dissolution. (See Code of Civil Procedure section 533.)

10 Here, the preliminary injunction should be dissolved on two independent grounds.
11 Plaintiff's Complaint is subject to dismissal for failure to comply with the Reverse Validation
12 procedures as set forth above. Independent of this reason, Plaintiff's challenge to the Parking
13 Structure Project is untimely as the project has been passively validated.

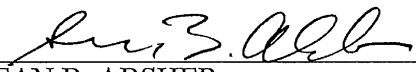
14 **IV. CONCLUSION**

15 For these reasons, the Court should grant this Motion and dismiss Plaintiff's Complaint
16 and dissolve the Preliminary Injunction.

17 DATED: December 23, 2015

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