SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

ISAAC GONZALEZ, JAMES CATHCART, and JULIAN CAMACHO, Petitioners and Plaintiffs, vs. KEVIN JOHNSON, JOHN SHIREY, JOHN DANGBERG, CITY OF SACRAMENTO, SACRAMENTO CITY COUNCIL, and ALL PERSONS INTERESTED IN THE MATTER OF THE VALIDITY OF THE CITY OF SACRAMENTO'S MAY 20, 2014, BOND RESOLUTION TO ISSUE BONDS PURSUANT TO THE MARKS-ROOS LOCAL BOND POOLING ACT OF 1985, Respondents and Defendants.	Case Number: 34-2013-80001489 **PROPOSED STATEMENT OF DECISION** Hon. Timothy M. Frawley

This matter came on regularly for court trial commencing June 22, 2015, at 9:00 a.m., in Department 29 of the above-entitled court, before the Honorable Timothy M. Frawley. Plaintiffs Isaac Gonzalez, James Cathcart, and Julian Camacho appeared and were represented by their attorneys of record, Cohen Durrett, LLP, and Soluri Meserve, a law corporation. Defendants Kevin Johnson, John Shirey, John Dangberg, City of Sacramento, and Sacramento City Council appeared and were represented by their attorneys of record, the Sacramento City Attorney and Meyers, Nave, Riback, Silver &

Wilson.

Oral and documentary evidence was introduced on behalf of the respective parties, as noted in the court's minutes, and the case was argued and submitted for decision. The court, having considered the evidence and heard the arguments of counsel, and being fully advised, now issues this proposed Statement of Decision. Under California Rule of Court 3.1590, subdivision (g), parties shall have fifteen days to serve and file objections to the proposed Statement of Decision. The court then will consider any timely objections and issue a final Statement of Decision.

I.

Introduction

This action arises out of a public-private partnership agreement between the City of Sacramento and the owners of the Sacramento Kings professional basketball team for the construction, operation, and use of a new multi-purpose entertainment and sports center ("Arena") that will serve as the home of the Kings and host other entertainment events.

Plaintiffs' Third Amended Verified Petition and Complaint seeks to overturn the City's approval of the Arena project based on claims of fraud, concealment, waste, and illegal expenditure of public funds. Plaintiffs bring these claims on behalf of taxpayers, alleging that City officials colluded with the investors to provide an additional subsidy – separate from the Arena – to offset the purchase price of the Kings, and then concealed that additional subsidy from the public. Plaintiffs also seek, through a reverse validation action, to invalidate the City's Resolution approving the issuance and sale of up to $325 million in lease revenue bonds in connection with the project.

After more than ten days of trial, with eighteen different witnesses and over 150 exhibits, the court concludes that Plaintiffs have failed to meet their burden of proof.

Plaintiffs' taxpayer representative claims depend on three basic contentions: (1) Defendants misrepresented that the City's "total contribution" to the Arena project was

limited to $258 million ; (2) Defendants agreed to convey a second, "secret subsidy" to the Kings investors to compensate them for their perceived "overpayment" for the Kings team; and (3) the Defendants hid the secret subsidy within the financial arrangements for the Arena by misrepresenting and concealing the value of certain components of the City's contribution to the Arena project: namely, a Digital Billboard Lease and an Arena Parking Management Agreement for the Downtown Plaza parking garages. The evidence introduced at trial does not support Plaintiffs' contentions.

There is no merit in Plaintiffs' argument that Defendants misrepresented that the City's "total contribution" to the Arena project was limited to its $255 million cash contribution toward development of the Arena. While Defendants stated in the Term Sheet and elsewhere that the City's capital contribution to the construction cost of the Arena is $258 million (later reduced to $255 million), Defendants did not misrepresent that this was the City's "only" contribution to the project. Both the "Term Sheet" and the "Definitive Agreements" for the deal clearly disclosed that the City's agreement extended beyond its capital contribution.

Because the City agreed to contribute "assets" beyond its capital contribution, Plaintiffs infer a nefarious, backroom deal to subsidize the investor group's purchase of the team, separate from the Arena deal. However, the evidence shows that the additional assets conveyed to the Kings are essential components of a single, integrated Arena deal. They cannot be parsed out and treated as a separate, isolated transaction.

The City agreed to convey the assets as part of its total consideration for the Arena deal, and in exchange the City received value back from the Kings, including at least $391 million in annual lease payments, payment by the Kings of all predevelopment and capital repair expenses, and the Kings' agreement to take full responsibility for any cost overruns (which currently are tens of millions of dollars). These were important terms that the City received, at least in part, in consideration for its agreement to convey the additional assets.

Plaintiffs focus on the value of the assets conveyed to the Kings and argue that the City concealed the true nature of these "giveaways." However, the City was under no obligation to disclose the potential revenue that the Kings might generate from the assets conveyed. The relevant question for taxpayers is what the City gave up, not what the Kings might do with them.

The evidence shows that the City's goal in structuring the deal was to use items that currently have little or no value to the City, and use them as leverage to negotiate a better deal for the City. Some City officials referred to this strategy as "making diamonds out of coal."

The Downtown Plaza parking garage spaces serve a rundown, half-vacant mall, produce relatively little revenue (due, in part, to a parking validation program), are expensive to operate and maintain, and have extensive capital improvement needs. Some within City ranks viewed the garages as more of a "liability" than an asset.

The Digital Billboard Lease relates to six small parcels of City land. The parcels are undeveloped and, in the absence of the Arena deal, likely would otherwise remain vacant. There are currently no billboards on the sites and the City has not agreed to construct any. All of the risk in constructing, operating, and maintaining the billboards will lie with the Kings.

These assets may have significant value in the hands of the Kings – time will tell – but the evidence shows they did not have significant value to the City. Plaintiffs' arguments to the contrary amount to nothing more than speculation, based largely on taking statements out of context and assuming facts not in evidence.

Plaintiffs have failed to establish that Defendants knowingly misrepresented or concealed the value of these "assets" to the City. The evidence shows that the assets were a relatively small component of the City's total contribution to the deal. Thus, the City was not required to assign a definitive dollar value to them.

Nevertheless, the City identified the value of the Downtown Plaza parking garages based on the evaluation of an independent, third-party parking consultant, Walker

Parking. Because the garages serve a struggling mall, are subject to an onerous management agreement, and have significant capital improvement needs, the consultant estimated the value of the garages at $6 million before debt service, or a negative value after debt service. (The consultant subsequently determined that the capital improvement needs are significantly higher than reported in the staff report, meaning that the value of the garages is even lower.)

Plaintiffs take issue with the consultant's estimate, and contend, based primarily on the testimony of their expert, Dr. Haveman, that the Downtown Plaza parking garages are worth tens of millions of dollars. The court is not persuaded by Dr. Haveman's testimony. The difference between the City's valuation and Plaintiffs' valuation amounts to nothing more than a disagreement as to the valuation methodology.

Further, even if the Plaintiffs could show the City's analysis is flawed, Plaintiffs have failed to show that Defendants *knew* it was flawed, as Plaintiffs must do to show fraud and concealment. Plaintiffs have failed to prove that City officials persuaded its independent consultant to prepare an intentionally fraudulent report.

In regard to the Digital Billboard Lease, the City recognized that the leases have an opportunity cost in that the City theoretically could lease the sites to someone else (even though the City had no intention of doing so). The City did not assign a specific dollar value to this "opportunity cost," but the City publicly disclosed that it currently receives $180,000 per billboard per year for four digital billboards leased to Clear Channel. This likely overstated the opportunity cost to the City, but the City nevertheless disclosed this information as the best information available to it. The City did not fraudulently conceal the value of the Digital Billboard Lease.

Plaintiffs' reverse validation claim challenges the City's finding that there is a "significant public benefit" from issuing bonds under the Marks-Roos Local Bond Pooling Act of 1985. Plaintiffs contend no significant public benefit exists.

The court's review of this issue is limited to determining whether the finding is arbitrary, capricious, or entirely lacking in evidentiary support. Since there is evidence in

the administrative record to support the City's finding that issuing the bonds will result in "significant public benefits," Plaintiffs have failed to meet their burden on the reverse validation action.

The court shall issue a judgment denying the relief requested in Plaintiffs' Third Amended Verified Petition and Complaint.

II.

Background Facts and Procedure

In 1985, the Kansas City Kings NBA franchise relocated to Sacramento and became the Sacramento Kings. From 1985 to 1988, the Kings played in a temporary arena. In 1988, the Kings moved to a permanent arena, now known as Sleep Train Arena. The Kings have played in this arena for the last twenty seven years. Over the years, there have been repeated attempts to replace Sleep Train Arena with a new arena. Two such proposals are relevant here.

Beginning in February 2011, the Maloofs, owners of the controlling interest in the Sacramento Kings at the time, announced plans to pursue relocation of the team to another city, citing the outdated design and condition of Sleep Train Arena. The NBA had a deadline in March for the City and Kings to reach an agreement on terms for the financing, development, and operation of a new facility, to be opened no later than the start of the 2015 basketball season.

In February 2012, the Maloofs reached a tentative agreement with the City for the construction of a $390 million arena to be located at the downtown railyard (the "Railyard Arena Proposal"). Under the terms of the (non-binding) term sheet, approved by the City in March 2012, the City agreed to contribute approximately $258 million toward construction of the new arena. The City planned to finance its capital contribution by "monetizing" the City's parking assets and selling certain City-owned land.[1]

[1] Monetization contemplates transferring the City's parking assets or the right to operate such assets to another entity in exchange for a lump sum payment. Monetization can be public or private. Private

In addition to its capital contribution, the City was responsible for acquiring the land for the arena (estimated at $7.8 million) and for constructing a new 1,000 space private parking structure (estimated at $14.5 million). In addition, the City was responsible for 50% of predevelopment costs (estimated at $13 million) and for a portion of development cost overruns. Under the term sheet, the Kings would get parking revenue from city-owned lots on the nights of Kings games. The arena operators would get all arena naming rights proceeds and ad signage revenue. The Railyard Arena Proposal did not contemplate ancillary development by the Kings in the area surrounding the arena.

In April 2012, shortly after the term sheet was announced, the Maloofs backed out of the Railyard Arena Proposal.

In January 2013, it was publicly revealed that the Maloofs had agreed to sell their controlling interest in the Kings franchise to a Seattle-based investor group. The Seattle group had agreed to purchase a 65% controlling interest in the Kings at a "franchise value" of $525 million. The Seattle group publicly indicated its intent to relocate the Kings to Seattle. The NBA indicated it intended to consider the proposed acquisition and relocation in March or April.

Determined to avoid relocation of the Kings, Mayor Johnson began seeking potential investors to submit a competing offer to purchase the Kings and keep the team in Sacramento. The investor group assembled by Mayor Johnson included Mark Mastrov, Vivek Ranadive, and (for a time) Ron Burkle as the principal investors, as well as a number of other (generally local) investors. Mayor Johnson also set about gathering evidence to show the NBA that Sacramento is a viable NBA market and to engage the public on the arena issue (i.e., garner public support for an arena deal).

Mayor Johnson was assisted in his efforts by representatives of Think Big

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monetization typically involves private investors paying a lump sum payment in exchange for the right to receive future revenues generated by assets. Public monetization typically involves transferring assets to a non-profit corporation that then issues bonds to be repaid from the expected future revenues generated by the assets.

Sacramento, a private initiative that the Mayor formed in 2010 to help facilitate the construction of a new arena in Sacramento. Employees of Think Big were used as resources by the Mayor and other City officials, answering questions and providing input on issues related to the effort to assemble an ownership group and, in some cases, negotiations of deal points. Employees did not, however, negotiate terms on behalf of the City.

The NBA agreed to entertain a competing offer to keep the Kings in Sacramento, but told the City that any effort to keep the Kings would require both a competitive (essentially, matching) offer to purchase the team and a plan to replace the existing arena. Thus, as the Sacramento investor group was assembled, City officials, led by City Manager (Mr. Shirey) and Assistant City Manager (Mr. Dangberg), with consultant Dan Barrett of Barrett Sports Group, sought to negotiate the framework of a deal for financing and constructing a new arena in Sacramento. Separately, the City entered into agreements with Walker Parking Consultants to assist with the plan to monetize the City's parking assets. The City was working under a very tight timeline because of the NBA's March/April deadline to consider the Seattle group acquisition and relocation request.

Before commencing negotiations with the Sacramento investor group, the City adopted a set of principles to guide negotiations of the preliminary terms of an agreement. The core tenets included protecting taxpayers and the City's General Fund, maximizing jobs and economic development in the downtown area, forming a true public-private partnership in which both the City and Kings share in the risks/rewards, securing a long-term commitment to keep the Kings in Sacramento, and reusing the existing Natomas arena site.

The City also formed an Ad Hoc Committee to provide feedback regarding negotiations. Several of the City Councilmembers (but less than a majority) were members of the Ad Hoc Committee. Ad Hoc Committee meetings were not open to the public, but members of the public, including representatives of Think Big were, from time to time, invited to attend Ad Hoc Committee meetings to speak on (or address questions

about) particular issues.

Early in the course of negotiations for the Arena deal, the Sacramento investor group conveyed a "wish list" of deal points to the City. Around the same time, the Sacramento investor group communicated to the City that, to match the Seattle group's offer, the investor group was going to have to "overpay" for the Kings by $150-200 million. Mr. Ranadive summarized the problem in an email as follows:

> The problem is that while 525m might be a justifiable price for the Seattle market it is not for Sac. The Kings market is more like Memphis or New Orleans – so leaving aside our ask on the arena we have to find ways to make the Kings price tag more in the 325m to 350m range. So we need almost 200m in value separate from the arena. (Plaintiffs' Exhibit 223.)

Based on the gap between the purchase price of the Kings and the perceived market value of the Kings, the Sacramento investor group asked for $150 to 200 million in additional value from the City. (See Plaintiffs' Exhibits 165, 223, 452.)

The investor group's wish list was not specifically tied to the "ask" for additional value/assets. The investor group requested cash, not "assets." Nevertheless, Mr. Ranadive's email included a list of assets that could provide additional "value" to the Kings, and this list specifically referenced digital signage and the parking spaces at the Downtown Plaza parking garages. (See Plaintiffs' Exhibits 165, 223, 355, 452.)

The City likewise had its own "wish list" of deal points, which included items such as lessening the City's exposure to cost overruns, more favorable profit-sharing (i.e. the "waterfall"), and making the Kings responsible for predevelopment expenses, operating expenses, operating risk, and capital repairs.

On February 13, 2013, City officials met with the Sacramento investor group to discuss the framework and timeline for a possible Arena deal. The parties discussed their respective wish lists. "Key issues" included, among other things, the Downtown Plaza parking garage spaces and digital signage. Notes from the meeting indicate that digital signage was listed as an item that the City possibly could provide, but the parking garages were identified as an issue requiring "follow up."

Within weeks after the February 13 meeting, evidence shows that both the digital signage and the parking garages were "on the table," and that City officials were considering (at least internally) the potential value of those assets (in terms of revenues) to the Kings. (Plaintiffs' Exhibits 166, 355.)

In March 2013, the Sacramento City Council approved a non-binding Preliminary Term Sheet with the Sacramento investor group for the financing, development, and operation of a new Arena. The Term Sheet outlined a basic agreement and set the framework for the parties to negotiate final, definitive legal documents (the so-called "Definitive Agreements").

Under the provisions of the Term Sheet, the investor group agreed to be responsible for the planning, environmental review, design, land acquisition, development, and construction of a new $447 million Arena to be located at the site of the existing Downtown Plaza shopping mall. The Arena will be owned by the City and leased to the Kings under a long-term lease with a non-relocation agreement. The City agreed to contribute $258 million toward the cost of constructing the new Arena, with the investor group responsible for the remaining $189 million. In addition, the investor group agreed to be responsible for all predevelopment expenses, all cost overruns, all operating expenses and maintenance and repairs, all capital repairs and improvements, and all operating risk.

The Term Sheet provides that a share of Arena operating profits shall be allocated to the City on an annual basis according to a "waterfall" formula, with a minimum annual payment to the City of $1,000,000.

In the Term Sheet, the City agreed to transfer operational control of the remaining spaces in the Downtown Plaza parking garages (approximately 3,700 spaces, less 1,000 spaces that will be demolished) pursuant to a long-term parking management agreement. Unlike the Railyard Arena Proposal, the City was not required to build a stand-alone parking structure. The Term Sheet allowed the City to keep parking revenues at City garages (other than the Downtown Plaza garages) during Arena events. The investor

group agreed that Kings shall operate, maintain, and repair the Downtown Plaza parking facilities.

The Term Sheet provides that the parties shall work to develop a digital signage program, pursuant to which the investor group may develop and operate up to six digital signs. The Term Sheet provides that the investor group shall be responsible for the development and any operating and maintenance costs related to such signage. The Term Sheet provides for reuse of the existing Natomas arena site, and the Kings committed to reuse the Natomas arena site. The Term Sheet also provides for up to 1.5 million square feet of additional, ancillary real estate development in the downtown area, including office, retail, housing, and hotel uses. The Term Sheet states that the investor group shall use commercially reasonable efforts to develop the ancillary real estate as promptly as practicable after the Arena opening date.

On May 20, 2014, after more than a year of deliberation and negotiations, the City Council voted to approve the "Definitive Agreements" for the Arena project. The Definitive Agreements include a Comprehensive Project Agreement; Arena Design and Construction Agreement; Arena Management, Operation, and Lease Agreement; Team Non-Relocation Agreement; Arena Finance and Funding Agreement; Property Conveyance Agreement; Agreement for Interim Parking Operations Management; First Amendment to the Property Acquisition Cost, Defense, and Indemnity Agreement; Arena Parking Management Agreement; and Master Lease for Digital Billboards.

The staff report for the May 20 City Council meeting discusses the expected economic benefits of the project. It states that the Arena "will retain up to 800 existing jobs and create between 2,000 and 6,000 new ones." It further states that the total economic output of the Arena (not including the benefits associated with ancillary development) is estimated at between $260 million and $400 million locally and between $470 million and almost $1 billion regionally and statewide. In addition, it states that the Arena is expected to "help spur additional investment along K Street, in Old Sacramento and throughout downtown," and "enhance the entertainment and cultural opportunities in

downtown and the region."

The key differences between the Definitive Agreements and the Term Sheet are as follows:

	Term Sheet	Definitive Agreements
Total Cost of Arena	$447 million	At least $477 million (and currently projected to be $507 million, with Kings covering additional cost)
Ownership	Kings own Arena land	City owns Arena land
City's Capital Contribution – Cash	Funded primarily by monetizing City's parking assets	Funded primarily by sale of lease-revenue bonds and sale of City land
City's Capital Contribution – Land	City to transfer properties with estimated value of $38 million	City to transfer eight properties with appraised value of $32 million in exchange for cash to be applied toward City's cash contribution
City's Capital Contribution – Amount	City to contribute $258 million toward development and construction of Arena	City to contribute $255 million toward development and construction of Arena
Investor Group's Contribution toward Arena construction	$189 million	At least $222 million (and currently projected to be $252 million)
Investor Group's Annual Remittances/Payments to City	5% ticket surcharge (estimated to generate $3.7 million per year, subject to market risk), plus Operating Profit Allocation (Waterfall) with	Annual lease fee payments to City, with minimum annual lease fee of $6.5 million, and total minimum lease fee payments over the term

	minimum annual payment to City of $1,000,000 and uncertain potential for profit sharing (subject to market risk)	of the lease of approximately $391 million (nominal value)

The staff report for the Definitive Agreements directly addressed the value of the Arena Parking Management Agreement for the Downtown Plaza parking garages and the Digital Billboard Lease. With regard to the parking garages, the staff report notes that the garages currently generate only about $1.25 per car in revenue, compared to $6-9 per car in the City's other garages. The staff report explains that the reduced revenue is primarily the result of lackluster demand and onerous restrictions in the governing Parking Operations and Maintenance Agreement ("POMA"), including retail validation obligations for the merchants.

In addition, the staff report notes the garages have suffered from reduced volume due to the ongoing decline of retail at the mall. The staff report also notes that the garages have significant capital improvement needs totaling almost $39 million over the next 40 years, according to an analysis by Walker Parking Consultants. Based on a 40-year analysis of anticipated net operating income and capital expenditures prepared by Walker Parking, the value of the Downtown Plaza garages based on current conditions and a continuation of the status quo ranges from approximately $6 million before debt service to a negative value when existing debt service is included.

With regard to the Digital Billboard Lease, the City disclosed that the Lease is simply a right to use six small parcels of land that have little to no value to the City. The staff report indicates that the City currently derives no revenue from the underutilized sites, and states that there is currently little value and no cost to the City (other than opportunity cost) in providing the sites to the Kings. The staff report acknowledges that the Kings will be creating and benefitting from the value they create through installation of billboards (at their own cost) at the sites. The staff report further states:

> Because of the unique nature of this arrangement where owners of a professional basketball team own and operate digital billboards, it is difficult to come up with an exact estimate of value. Neither staff nor our consultants have been able to find comparable examples. Yet, unlike a typical outdoor advertising company, SBH faces a number of unique constraints that are likely to limit the revenue-generating potential of the billboards. . . . .
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> The City's existing agreement with Clear Channel for four digital billboards is a very different arrangement, by which the City currently receives $180,000 per billboard per year. It is uncertain how much the City would be able to generate if the six signs in question were leased to an entity other than SBH given the proposed locations as well as the increase in the supply of signs in the market (which will negatively impact value). . . . .

In May 2013, Plaintiffs filed a petition and complaint challenging the City's approval of the non-binding Term Sheet. Defendants filed a demurrer to the petition and complaint contending, among other things, that the matter was not ripe for adjudication. The court sustained the demurrer with leave to amend.

Plaintiffs filed a first amended petition and complaint. Defendants filed another demurrer. The court sustained the demurrer with leave to amend.

Plaintiffs filed a second amended petition and complaint. Defendants filed another demurrer and a motion to strike. The court sustained the demurrer in part (with leave to amend certain causes of action), overruled the demurrer in part, and granted the motion to strike.

Plaintiffs filed a third amended petition and complaint. Defendants applied for an order to show cause re contempt, arguing that Plaintiffs continued to include allegations in contravention of the court's prior ruling. At the hearing, Plaintiffs agreed to amend their third amended petition and complaint to remove the challenged provisions and file the document again as a '"revised" third amended verified petition and complaint. The Revised Third Amended Petition and Complaint is the operative complaint in this action (the "Complaint").

The Complaint alleges five causes of action. The First and Second Causes of Action are taxpayer representative claims based on fraud and concealment. Plaintiffs allege that key City officials (including the Mayor and Mr. Dangberg) fraudulently misrepresented and concealed the value of certain assets conveyed to the Kings -- the

right to operate the Downtown Plaza parking garages and construct and operate digital billboards – as part of a "secret" backroom deal to subsidize the investor group for purchasing the "overvalued" Kings franchise. Plaintiffs allege that the City Council, despite being on "inquiry notice" of this backroom agreement, failed to undertake any meaningful investigation or take any actions to prevent this fraud on the public.

The Third and Fourth Causes of Action are taxpayer representative claims based on waste and illegal expenditure of public funds. Plaintiffs allege that the City's approval of the Arena project constitutes waste and an unlawful gift of public funds because it includes a "secret" subsidy to the Sacramento investor group for purchasing the "overvalued" Kings franchise. Plaintiffs further allege that the Arena plan constitutes an illegal expenditure of public funds because the City's financing plan illegally proposes to increase on-street parking meter revenues to pay debt service on the lease-revenue bonds.

(The Complaint also alleges that the Arena project constitutes an illegal expenditure of public funds because (1) the City violated City Code sections 3.68.020 and 3.68.110 by awarding the "Downtown Plaza Garage Lease" to the Kings investors without competitive bidding; and (2) the City violated City Code section 3.88.100 by conveying real properties to a private entity "without cost." The Complaint further alleges that the City's approval of the project is wasteful because the City failed to substantiate its claims that the Arena will be a catalyst for economic development and growth. None of these claims were addressed at trial or in Plaintiffs' opening or closing trial briefs. Thus, the claims are deemed abandoned/forfeited and will not be considered here.)

Plaintiffs' final cause of action – the Fifth Cause of Action – is a reverse validation action seeking to invalidate the City's Resolution authorizing the issuance of bonds under the Marks-Roos Local Bond Pooling Act of 1985. Bonds may be issued under the Act only if there are "significant public benefits" for taking that action. The City made findings that issuing bonds under the Act would have "significant public benefits," but Plaintiffs contend the City's finding is not supported by the evidence.

Trial of this matter commenced at 9:00 a.m., on June 22, 2015, and concluded on July 8, 2015, after ten days of trial, with eighteen witnesses and over 150 exhibits. Plaintiffs called as witnesses Assistant City Manager (and interim Director of Economic Development) John Dangberg; California Assemblymember (and former City Councilmember) Kevin McCarty; Vice President of Strategic Initiative Issues for the Kings (and former Executive Director of Think Big Sacramento) Kunal Merchant; Sacramento Basketball Holdings attorney (and former Think Big attorney) Jeffrey K. Dorso; City Councilmember Allen W. Warren; City Councilmember Steve Hansen; Mayor Johnson's Chief of Staff, Daniel Conway; City Manager John Shirey; City Finance Director Eleyne "Leyne" Milstein; Kings Managing Owner Vivek Ranadive; Mayor Kevin Johnson; City Treasurer Russell T. Fehr; and expert economist Jon D. Haveman, Ph. D.

Defendants called Assistant City Manager John Dangberg; City Entertainment and Sports Center Project Manager Desmond Parrington; outdoor advertising/digital billboard expert George Manyak; Assistant City Manager (and former City Parking Services Manager) Howard Chan; City Parking Services Manager (and former Parking Operations Supervisor) Matthew Eierman; and expert parking consultant Bernard Lee.

III.

Motion for Sanctions

Prior to the start of trial, Plaintiffs filed a motion seeking to impose, as a sanction for the deletion of potentially relevant text messages by Mayor Johnson and Mr. Dangberg, an adverse inference that Mr. Dangberg and Mayor Johnson communicated via text regarding a secret agreement by them to convey City assets to the Kings investors without public disclosure. The court deferred ruling on the motion at that time and received testimony from Mr. Dangberg and Mayor Johnson.

During their testimony, both Mr. Dangberg and Mayor Johnson admitted deleting text messages that potentially related to the Arena project, both before and after the commencement of this action in May 2013, and receipt of Plaintiffs' June 24, 2013,

"litigation hold letter."

Mayor Johnson testified that his actions were, at most, negligence; he did not intentionally destroy evidence. He testified that it is his usual practice, or habit, to delete texts from his phone as soon as he is done with them (i.e., responded to the text or resolved the issue). He was aware of the litigation hold letter but assumed that staff was taking care of it. He testified that he was not a "heavy texter," preferring to send things by email. He did not recall sending or receiving any texts discussing major deal points. He denied sending any texts (or any other communications) discussing or relating to any agreement to give the Kings a secret subsidy for overpaying for the team. He testified that some of the deleted texts possibly could relate to the Arena deal, but he testified that the texts would have been small talk, nothing major.

Like Mayor Johnson, Mr. Dangberg admitted deleting texts, including texts to/from Mr. Dorso of Think Big. Like Mayor Johnson, Mr. Dangberg testified it is his normal practice not to retain texts. Mr. Dangberg testified that he continued to delete text messages even after the litigation hold letter because he believed the messages were backed up when he synched his phone to his computer. However, Mr. Dangberg admitted that he has never tried to retrieve texts that allegedly were "backed up" by his computer. As it turns out, the texts may have been saved by his computer, but they were not preserved, and therefore many of the texts were lost or destroyed. In hindsight, Mr. Dangberg admits that his decision to delete the texts was a "mistake."

Mr. Dangberg testified that, after the fact, he worked with IT consultants to attempt to recover the messages. The City purchased software specifically for the purpose of trying to recover the messages from his hard drive. The City had some success, but was unable to recover all of the deleted messages.

It is undisputed that both Mayor Johnson and Mr. Dangberg deleted text messages that were potentially relevant to the issues in this case. One of the questions before the court is whether they did so with the intent to destroy adverse evidence or as a result of ordinary negligence. The court is persuaded that their actions were caused by

carelessness, not malicious intent.

Nevertheless, they destroyed potentially relevant evidence despite being aware of a letter from Plaintiffs' counsel specifically warning them not to. The court does not take this conduct lightly. Sanctions are warranted. But the court is not prepared to put Plaintiffs in a better position than they would have occupied if they had obtained the discovery. (See *Puritan Ins. Co. v. Superior Court* (1985) 171 Cal.App.3d 877, 884.)

Here, the court does not find it reasonable to infer that the deleted text messages were the proverbial "smoking gun" – evidence of a stand-alone agreement to convey a secret subsidy to the investor group, separate from the Arena deal, and then conceal that subsidy within the financial arrangements for the Arena.

Instead, the court shall adopt an adverse inference, similar to other evidence before the court, that Mayor Johnson and Mr. Dangberg sent/or received messages reflecting the investor group's position that it was overpaying for the team and wanted additional assets/value from the City.

IV.

Discussion

A. The First and Second Causes of Action

Plaintiffs' First and Second Causes of Action are taxpayer representative claims for fraud and concealment. It is settled that a taxpayer may bring a representative suit against the government under either of two theories, one statutory, and the other based upon the common law. (*Los Altos Property Owners Assn. v. Hutcheon* (1977) 69 Cal.App.3d 22, 26; *City of Hermosa Beach v. Superior Court* (1964) 231 Cal.App.2d 295, 300.)

Statutory actions are governed by California Code of Civil Procedure section 526a. The essence of a taxpayer action under section 526a is an illegal or wasteful expenditure of public funds. (*Waste Management of Alameda County, Inc. v. County of*

Alameda (2000) 79 Cal.App.4th 1223, 1240, overruled in part on other grounds, as stated in *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155; see also *Sagaser v. McCarthy* (1986) 176 Cal.App.3d 288, 310.)

In addition to a statutory cause of action under section 526a, a taxpayer is entitled to bring suit under a common law theory alleging fraud, corruption, collusion, ultra vires, or a failure on the part of the government body to perform a duty specifically enjoined.[2] (See *Gogerty v. Coachella Valley Junior College Dist.* (1962) 57 Cal.2d 727, 730.)

The elements of a fraud claim are: (1) a knowingly false representation (or concealment under a duty to disclose), (2) made with intent to deceive and to induce reliance, (3) justifiable reliance, and (4) damages. (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 990; *Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519.) The elements for fraudulent concealment are (1) an intentional concealment of material fact, (2) a duty to disclose the fact, (3) an intent to defraud, (4) the party who suffered the fraud was unaware of the concealed fact and would not have acted if known, and (5) resulting harm. (*Levine v. Blue Shield of California* (2010) 189 Cal.App.4th 1117, 1126.)

In cases such as this, where taxpayers allege fraud on the public, the "reliance" prong is more accurately described as the public's justifiable reliance that governmental officials will perform their official duties in accordance with the law. (See *Gogerty, supra*, 57 Cal.2d at p.730; see also *Lusk v. Compton City School Board of Education* (1967) 252 Cal.App.2d 376, 379.)

In the First and Second Causes of Action, Plaintiffs allege that Defendants engaged in fraud by agreeing to convey a "secret subsidy" to the Sacramento investor

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[2] Courts have held that standing under the common law doctrine is recognized only in mandamus proceedings, and not as an exception to standing under section 526a. (*Reynolds v. City of Calistoga* (2014) 223 Cal.App.4th 865, 873.) Plaintiffs here dismissed their mandamus claim. Nevertheless, Plaintiffs have standing under section 526a to allege an illegal expenditure of public funds. Plaintiffs allege that Defendants are guilty of illegally spending public funds because, among other things, they engaged in fraud and concealment regarding the "secret subsidy." Thus, the court finds that Plaintiffs have standing to raise the claims asserted in the First and Second Causes of Action based on the substantial overlap between the two theories.

group to subsidize their purchase of the team. Plaintiffs allege that Defendants hid the secret subsidy within the financial arrangements for the Arena by misrepresenting and concealing the value of two components of the City's "contribution" to the Arena project: namely, the Digital Billboard Lease and the Parking Management Agreement for the Downtown Plaza parking garages.[3]

Plaintiffs allege that the individual Defendants represented that these assets have no value, when, in fact, they are worth tens of millions of dollars. Plaintiffs allege that the individual Defendants knew the Digital Billboard Lease and parking garages have significant value, and deliberately concealed this information from the public. Plaintiffs allege that Defendants knowingly and intentionally undervalued the assets in order to convey the "secret subsidy" to the Kings investors to offset their "overpayment" for the Kings franchise. Plaintiffs allege the City Council had notice of the secret subsidy hidden within the financial arrangements for the Arena project, but nevertheless approved the deal, perpetrating a fraud upon the public.

It is Plaintiffs' burden to prove that Defendants knowingly misrepresented or concealed material facts concerning the deal between the City and Sacramento investor group, with the intent to deceive, and with resulting harm to the public. Plaintiffs must prove these claims by a preponderance of the evidence. Plaintiffs have failed to meet their burden.

The court finds no merit in Plaintiffs' argument that Defendants misrepresented that the City's "total contribution" to the Arena project was limited to $258 million. While Defendants stated in the Term Sheet and elsewhere that the City's capital contribution to the development cost of the Arena is $258 million (later reduced to $255 million), Defendants did not misrepresent that this was the City's "only" contribution to the project.

Both the Term Sheet and the Definitive Agreements clearly disclosed that the

[3] In their Complaint, Plaintiffs also alleged that the City concealed or suppressed the "dual role" of Goldman Sachs as both financial adviser and bond underwriter. However, Plaintiffs never proved that the "dual role" exists or explained how this "dual role" would constitute fraud on the public. In addition, Plaintiffs failed to raise this issue in their Closing Brief. Accordingly, the court treats the issue as abandoned/forfeited.

City's agreement extended beyond its capital contribution. For example, the staff report for the Definitive Agreements separately lists, under a heading entitled "City Contribution Overview," the City's capital contribution, the Digital Billboard Lease, and the Downtown Plaza Parking Management Agreement. (See Joint Exhibit 15, pp.8-12.) Anyone reading the report, which was posted on the City's website and readily available to the public, could see that the components of the Arena deal extended beyond the City's share of the Arena's construction costs, and included the digital billboards and Downtown Plaza parking garages. The City expressly and publicly disclosed that it would be conveying these items to the Kings as part of the Arena deal, in addition to the City's share of the Arena construction costs.

Plaintiffs also publicly disclosed this information by filing this lawsuit in May of 2013, alleging that the City was conveying a secret subsidy to the Kings and hiding it in the financial arrangements for the deal, including the billboards and the Downtown Plaza parking garage, thereby bringing the City's total subsidy to approximately $338 million. (Initial Petition, ¶ 28.)

While the news media may have focused on the City's capital contribution toward construction of the Arena, and downplayed the City's other contributions, this does not render the City's disclosures fraudulent or misleading.

Plaintiffs also have failed to establish that Defendants knowingly misrepresented or concealed material facts regarding the value of the "assets" conveyed to the Kings. The staff report for the Definitive Agreements, which was publicly available, discussed the value of both the Digital Billboard Lease and the Downtown Plaza parking garages.

The testimony and documents establish that the Digital Billboard Lease is merely a right to use six small parcels of City-owned land. The staff report for the Definitive Agreements indicates that the City currently derives no revenue from the sites, and states that there is currently little value and no cost to the City (other than opportunity cost) in providing the sites to the Kings.

Mr. Dangberg and Mr. Shirey testified that, as a practical matter, there was no

"opportunity cost" to the City in surrendering the billboard sites because, in the absence of the Arena project, the City had no plans to use the sites or lease them to another party. The choice confronting the City was to lease the sites to the Kings investors or continue to hold them in their current (unused) condition.

Nevertheless, relying on the expert advice of Mr. George Manyak, the City addressed the opportunity cost of the Lease, by disclosing the amount it receives under its existing billboard lease agreement with Clear Channel: $180,000 per billboard per year. The City explained that the Clear Channel leases were not entirely comparable, but the City reasonably determined this was the best information it had available regarding the opportunity cost of the Lease. Mr. Manyak, who is an expert in outdoor advertising and digital billboards, opined that this was a reasonable way for the City to disclose the value of the Digital Billboard Lease under the circumstances. The court agrees.

Plaintiffs fault the City for not adequately disclosing the value of the Digital Billboard Lease *to the Kings*. However, the City was under no obligation to disclose the potential revenue that the Kings might generate from the Lease. The relevant question for taxpayers is what the City gave up. The City had no legal obligation to speculate on the potential revenue that the Kings might generate from the billboards in the future.

In any event, the staff report acknowledges that the Kings will be creating and benefitting from any value they create through installation of the billboards (at their cost) at the sites. The only thing the staff report does not do is to give an estimate of that value. But this does not render the City's actions fraudulent.

With regard to the parking garages, the staff report for the Definitive Agreements notes that the Downtown Plaza garages generate significantly less revenue than the City's other garages ($1.25 per car in Downtown Plaza versus $6-9 per car in other garages) due, in large part, to unfavorable retail validation contracts. (Testimony at trial suggested the validation program depressed revenues to the City by approximately $7.5 million a year.) In addition, the staff report notes the garages have suffered from reduced

volume due to the ongoing decline of retail at the mall. (Testimony at trial established that the mall had about a 50% tenant vacancy rate at the time of the deal.)

The staff report also notes that the garages have significant capital improvement needs totaling almost $39 million over the next 40 years, according to an analysis by Walker Parking Consultants. Based on an analysis of net operating income and capital expenditures prepared by Walker Parking, the staff report indicates the value of the Downtown Plaza garages, based on current conditions and a continuation of the status quo, ranges from approximately $6 million before debt service to a negative value when existing debt service is included.

Relying on the testimony of their expert economist, Dr. Haveman, Plaintiffs argue the Walker Parking analysis is flawed. Dr. Haveman testified that, using the City's methodology, but with proper assumptions, the Downtown Parking garages are worth at least $30 to $38.5 million without the Arena, and $44 to $57 million with the Arena, or more.

The principal differences between Dr. Haveman's opinion of value, and that of Walker Parking, is that Dr. Haveman (i) assumed the City's debt service obligations were not relevant to the calculation, (ii) assumed parking rates would increase by 0.5% over time, (iii) used a different discount rate, (iv) assumed construction of the Arena would increase the value of the garages, (v) excluded various "indirect" expenses that were included in the Walker Parking methodology.

The court does not find the Dr. Haveman's criticisms persuasive. Much of Dr. Haveman's opinion is based on his unfounded assumption that the Arena would be constructed whether or not the City conveyed the right to operate the Downtown Plaza garages to the Kings. There is no evidence to support this assumption. All of the evidence is to the contrary, establishing that if the Downtown Plaza parking spaces were not conveyed to the Kings, there would not have been an Arena deal. The City reasonably determined that the value of the garages what they would be worth based on current conditions and a continuation of the status quo, since this is what is what the City

is arguably "giving up" to get the Arena deal.

The evidence before the court shows that, in the absence of the Arena deal, the Downtown Plaza parking garages hardly qualify as an "asset." The garages generate significantly less revenue than other City garages because the garages serve an unpopular, decaying downtown mall. Demand for parking at the mall is low and revenues are constrained by the POMA and the retail validation contracts. This is precisely why the City put the garages "on the table" as part of the Arena deal – the garages have little value without the Arena, but significant potential value to the Kings with the Arena. Dr. Haveman's opinion ignores, or at least glosses over, this important distinction.

Dr. Haveman also relies heavily on his assumption that Walker Parking understated the Downtown Plaza garages' share of certain overhead expenses incurred for the City's parking garages – namely those associated with "administrative employees" and "services and supplies." Dr. Haveman based this assumption on his reading of historical financial results for the City's parking garages prepared and circulated by City staff in connection with the Arena deal. (See Plaintiffs' Exhibits 135, 455, 457, 459.) (For simplicity, the court shall refer to these documents as the "financial spreadsheets".)

Dr. Haveman testified that the financial spreadsheets allocated the overhead expenses on a "per revenue" basis (i.e., based on each garage's proportional share of the total revenues from all garages). From this, Dr. Haveman concluded that this must be the City's historical practice. According to Dr. Haveman, Walker Parking instead allocated the overhead expenses on a "per stall" basis.

Dr. Haveman, who is not a parking expert, admitted that he does not know what is the industry standard; he simply made assumptions based on his reading of the financial spreadsheets. He placed particular emphasis on lines 33, 36, and 37 of page 2 of Plaintiffs' Exhibit 135, which he compared and contrasted against the expense figures produced by Walker Parking for "employee" and "service & supplies" as set forth on page 2 of Plaintiffs' Exhibit 454.

Because the Downtown Plaza garages produce less revenue per stall relative to

the City's other off-street garages, Dr. Haveman testified that this has the effect of decreasing the expenses attributable to the Downtown Plaza garages, relative to Walker Parking's "per stall" approach. Dr. Haveman testified that allocating the overhead expenses on a "per revenue," rather than "per stall" basis, has the effect of increasing the value of the Downtown Plaza parking garages by approximately $16 million. Dr. Haveman surmised that Walker Parking deviated from the City's historical practice of allocating expenses on a "per revenue" basis to make the Downtown Plaza garages appear less valuable.

There are several problems with Dr. Haveman's opinion. First, City staff (Mr. Chan, Mr. Eierman, and Mr. Parrington) and the City's expert parking consultant, Mr. Lee, testified that it is both industry standard and the City's historical practice to allocate overhead expenses on a "per stall" basis. They denied that the City has ever budgeted overhead expenses on a "per stall" basis.

Second, they denied that the financial spreadsheets in question were provided to, or relied upon by, Walker Parking in preparing its analysis of the Downtown Plaza garages. Rather, the evidence established that the City provided and that Walker relied upon raw data provided to it on an external hard drive. The decision to allocate overhead expenses on a per stall basis was made by Walker Parking, consistent with the City's historical budget practices and with the industry standard.

Dr. Haveman admitted that he never contacted anyone at the City to inquire what data had been sent to Walker Parking or what specific data Walker Parking used for its analysis. Dr. Haveman simply assumed that Walker Parking used the financial spreadsheets and that the financial spreadsheets were accurate and reflective of City practices. The only evidence to support Dr. Haveman's assumption is an email from Ms. Cherisse Knapp to Janelle Gray, et al., dated June 26, 2014, in which Ms. Knapp attaches the financial data and indicates it is the "same information that was provided to Walker during their review." (Plaintiffs' Exhibit 459.)

It is not clear from the testimony at trial whether information attached to Ms. Knapp's email was actually sent to Walker Parking. The testimony suggests that a portion of it might have been, specifically the information above line 29 in the spreadsheet included in Exhibit 135. The evidence established that the information above line 29 is historical financial results for the City's garages. The information below line 29, in contrast, is a "quick and dirty" analysis of the Downtown Plaza garages, produced apparently to attempt to determine what would be the financial impact of removing the garages from the City's (aborted) monetization plan. It is not clear who prepared the analysis, or why the person decided to allocate expenses on a "per revenue" basis in the financial spreadsheets, if indeed that is what was done. But it was established that the information below line 29 is not reflective of the City's budgeting practices, was not part of the City's audited financials, and was not sent to, or relied upon, by Walker Parking for purposes of its analysis.

It is Plaintiffs' burden to show the Walker Parking analysis is deliberately wrong. Plaintiffs succeeded only in showing it is different. (Cf. Plaintiffs' Exhibits 135, 455, 457, 459, with Plaintiffs' Exhibit 454 and Joint Exhibit 10, p.6.) Plaintiffs may speculate on why overhead is allocated on a "per revenue" basis in the draft financial spreadsheets, but such speculation does not prove fraud. Mr. Lee testified that he did not intentionally undervalue the Downtown Plaza garages and that no one asked him to do so. His testimony is credible and persuasive.

Dr. Haveman also criticized Walker Parking for including "in lieu and cost plan" overhead expenses in its analysis of the Downtown Plaza garage, but excluding such items from its analysis of other City-operated garages, suggesting that this too was an effort to artificially inflate the expenses associated with the Downtown Plaza garages. However, Dr. Haveman, who is an economist, not a parking expert, never explained why it was improper for Walker Parking to include such expenses its analysis. Dr. Haveman simply presumed that because both analyses were prepared by Walker Parking, they should use the same assumptions.

Dr. Haveman ignores that the two Walker Parking reports were prepared for different reasons and serve different purposes.[4] The testimony of Mr. Chan, Mr. Eierman, and Mr. Lee establish that the "in lieu and cost plan" allocations were excluded from the "Walker III" report because the City wanted a picture of the performance of its garages based on direct operating revenues and expenses. The "in lieu and cost plan" were included in the final analysis of the Downtown Plaza garages – for lack of a better term, the "Downtown Plaza valuation report" – because it was a "status quo" analysis, and those expenses are part of the "status quo" for those garages. In essence, to assess the value of the Downtown Parking garages, Mr. Lee included expenses that properly would be expected to adversely affect the price received if the garages were sold to a private party. This is entirely reasonable.

The court is persuaded that the differences between the valuations of Walker Parking and Dr. Haveman amounts to nothing more than a disagreement among experts as to the appropriate methodology to use in estimating the value of the garages. Since only one expert, Mr. Lee, has the expertise and qualifications to opine on the appropriate method for valuing parking assets, the court finds his testimony persuasive.

Moreover, even if Plaintiffs could show the Walker Parking analysis is flawed, this still would not prove fraud. To prove fraud, Plaintiffs must prove that Defendants had the necessary element of scienter and intentionally sought to deceive the public. Here, Plaintiffs must prove not only that the Walker Parking analysis report is wrong, but that Defendants knew it was wrong and intentionally concealed this from the public. Plaintiffs have failed to meet this burden.

Plaintiffs point to nothing more than speculation that City staff and Walker Parking conspired to "devalue" the Downtown Plaza parking garages. In contrast, Mr. Shirey, Mr. Dangberg, Mr. Parrington, Mr. Chan, Mr. Eierman, and Mr. Lee all testified that they did

[4] For the same reason, one cannot compare the "value" of the Downtown Plaza garages from an asset-monetization perspective, to the market value of the garages under status quo conditions. Among other differences, the monetization approach assumes construction of the Arena.

not misrepresent or conceal the value of any assets conveyed as part of the Arena deal, nor were they asked to do so. Mr. Parrington specifically testified that if anyone had asked him to do so, he would have quit. This testimony is credible and persuasive. It is not reasonable to assume that Mr. Lee, in particular, would risk his reputation and career to perpetrate a fraud on the public to support a project in which he has no personal stake.

In addition to the testimony of Dr. Haveman, Plaintiffs rely on the testimony of Assemblymember McCarty, who testified that it was his personal opinion that the parking garages were undervalued by the City. McCarty based his opinion on (i) the fact that the City's parking system as a whole had been estimated to be worth $90 to $130 million for purposes of the monetization plan, and (ii) City staff told him the "replacement cost" of a parking garage is at least several thousand dollars per stall.

Mr. McCarty occupies an esteemed position in our government, but he is not a parking expert. His opinion on how the garages should be valued and what they are worth carries no weight. Even if he were a parking expert, his opinion would amount to nothing more than a disagreement about methodology, which is not enough to prove fraud.

In any event, his opinion is misguided. The value of the City's parking system as a whole, for purposes of monetization, is of little relevance in assessing the value of a particular component of that parking system. The evidence shows that all parking "assets" are different. In this case, the Downtown Plaza garages were the worst-performing part of the City's off-street parking garage system. They brought in very little revenue, were costly to operate, and had large capital improvement needs. It should not be surprising that the garages were not a significant component of the monetization valuation.

Mr. McCarty's focus on replacement value makes even less sense. For a variety of reasons, the garages were an underperforming "asset." It would have been highly misleading to the public to value the garages based on replacement cost and ignore their operational history.

City staff told Mr. McCarty before the Term Sheet was approved that the Downtown Plaza garages had little value to the City.[5] He simply refused to believe them.

Plaintiffs also fault the City for not disclosing the value of the parking garage revenues to the Kings. However, as discussed above, the City had no obligation to disclose the potential revenue that the Kings might generate from the garages in the future. The relevant question for taxpayers is what the City gave up.

To the extent the City discussed the potential value of the parking garages (and signage) to the Kings, it is because the Kings communicated they wanted additional revenues to make the deal "pencil out" and the City wanted to know how much leverage these items would give the City in the course of its negotiations. But the potential value of the assets to the Kings has nothing to do with the value of the assets to the City. Plaintiffs fail to appreciate this distinction.[6]

Plaintiffs have failed to establish that Defendants knowingly misrepresented or concealed any material facts concerning the valuation of the Digital Billboard Lease and parking garages.

Plaintiffs likewise have failed to establish that there was a "private backroom" agreement to subsidize the investor group's purchase of the team, separate from the Arena deal. Plaintiffs argument is based on documentary evidence purportedly showing that (1) the Sacramento investor group asked for an additional subsidy to compensate them for their perceived "overpayment" for the Kings franchise; (2) the City subsequently provided additional "assets" to the investor group; and (3) the City admitted to the NBA that the assets were provided for the purpose of ensuring the "viability" of the team. This

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[5] City staff always believed the Downtown Plaza garages had little or no value after accounting for the capital improvement needs of the garages. Thus, it should be no surprise that there are communications reflecting this. (See, e.g., Plaintiffs' Exhibit 343.)

[6] It would appear that it was the potential additional value to the Kings that someone suggested was "politically tough" and "couldn't be put in writing." (See Plaintiffs' Exhibit 166 [handwritten notes of Mayor Johnson describing the potential additional revenue to the Kings from, among other things, the up-zoning, digital signs, and corporate support]; see also Exhibit 415.) It would make little sense to construe the notes, which clearly refer to the potential value to the Kings for all of the other assets, as referring to value to the City for the parking garages. A similar conclusion may apply to Mayor Johnson's March 22, 2013, email to Ron Burkle, (see Plaintiffs' Exhibits 318 and 225), although it is equally possible that the Mayor was simply referring to the original cost of the parking garages in order to assert leverage on Mr. Burkle.

proves, Plaintiffs contend, that Defendants agreed to convey assets to the investor group to cover their perceived overpayment for the team.

Once again, Plaintiffs' arguments amount to nothing more than speculation, based largely on taking statements out of context and assuming facts not in evidence.

Defendants do not dispute that the Sacramento investor group asked for an additional subsidy from the City, in addition to the City's cash contribution toward development of the Arena. Defendants also do not dispute that the investor group stated they wanted an additional subsidy to offset their perceived overpayment for the team. Further, Defendants do not dispute that the City agreed to convey additional "assets" to the investor group as part of the Arena deal. What is in dispute is whether the City agreed to contribute additional assets for the purpose of subsidizing the acquisition of the team.

Plaintiffs contend there was a "secret agreement" between the individual Defendants and the Sacramento investor group to offset the difference between the purchase price of the Kings and the perceived value of the team. The court is not persuaded.

At most, the evidence shows that the investor group *wanted* the City to compensate them for "overpaying" for the team.[7] The evidence does not support that the City agreed to do so. Both Mayor Johnson and Mr. Dangberg testified, credibly, that the City denied the request to help the investor group purchase the team, and this testimony is supported by Mr. Dangberg's personal notes from the meeting on February 13, 2013.[8] While the City agreed to convey additional assets to the investor group, there was no "meeting of the minds" that the purpose of these additional assets was to offset the perceived overpayment for the team.

It may be true that the investor group believed it was "overpaying" for the team,

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[7] It is also possible that it was nothing more than a negotiation technique.

[8] Assemblymember Kevin McCarty likewise testified that he was not aware of any covert agreement to convey a secret subsidy to the investor group.

and looked to "make some of that up" on the Arena deal, as Kunal Merchant's January 27, 2013, email suggests. But that is not fraudulent or unlawful.[9] Outside of a "secret agreement" to gift public assets to the Kings with no concomitant public benefit, it is for the most part irrelevant *why* the investors wanted additional assets from the City. It could have been for any reason, or no reason at all. What's important is not why the assets were requested, but why they were given.

Plaintiffs have attempted to prove that the assets were "gifted" to the Kings with no concomitant public benefit. Plaintiffs have attempted to do this by parsing out the additional assets and treating them as an isolated transaction, separate from the Arena deal. However, the evidence shows that the additional assets conveyed to the Kings are essential components of a single, integrated Arena deal. The City agreed to convey the assets as part of its total consideration for the Arena deal. In exchange, the City received valuable consideration back from the Kings, including at least $391 million in annual lease payments, payment by the Kings of all predevelopment expenses, and the Kings' agreement to take full responsibility for any cost overruns (which currently are estimated to be in the tens of millions of dollars). These were important terms that the City received, at least in part, in consideration for its agreement to convey the additional assets.[10]

Plaintiffs emphasize the timing of the City's agreement, coming shortly after the investor group requested additional assets to offset their perceived overpayment. However, both parking and signage were components of the City's earlier arena deal, negotiated with the previous owners of the Kings. It is no surprise that they were "on the table" for this Arena deal as well. In any event, as discussed above, there was no "meeting of the minds" that the City would subsidize the purchase of the team.

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[9] It is not difficult to conceive of a hypothetical Arena deal in which the Kings agree to pay 100% of the cost of constructing the Arena, while the City agrees to convey hundreds of millions of dollars of "additional assets" to the Kings. By Plaintiffs' logic, all of the additional assets would be fraudulent gifts of public funds, even though it would be the City's consideration for the Arena deal.

[10] In this sense, the Arena deal is not unlike other municipal agreements that, in one way or another, "subsidize" private businesses, such as awarding tax credits to a private business to persuade it to locate/relocate/stay in a particular city or county.

The evidence shows that Mayor Johnson, in his presentation to the NBA Board of Governors, referred to the City as providing significant additional value to the Kings, beyond its capital contribution to the cost of the Arena. In "selling" the deal to the NBA, which had to approve the sale of the team to make the deal happen, Mayor Johnson emphasized that the additional value would support the long-term viability of the team. This was important to the NBA.

Plaintiffs argue that this shows the City's intent to subsidize the team. The court does not agree. It simply reflects an understanding that money is fungible and that any additional revenues generated by the Kings will make the team more profitable, and therefore more "viable" in the long run. It is noteworthy that, in addition to potential revenue generated by the parking and signage, the presentation to the NBA noted other sources of potential revenue to the Kings – e.g., TV rights and sponsorship commitments – that were not provided by the City and which clearly are not intended to "subsidize" the team. In this court's view, the additional value provided by the City is no different. To the Kings, the additional value might be used to ensure the long-term viability of the team. But the City didn't provide additional value to subsidize the team; it provided it to make the Arena deal happen.

(As an aside, it is not obvious to this court that an agreement to subsidize a professional sports team in the absence of an arena deal necessarily would constitute an unlawful use of public funds. It would seem that a professional sports team may be a public benefit to a city, just as an orchestra, ballet company, aquarium, art museum, convention center, parade, music festival, or farmers' market, etc., may be a public benefit. When it comes to spending public funds, the only certainty is that public opinion will diverge on what is a blessing and what is a curse. Fortunately, this court is not required to venture into this prickly thicket, because the City agreed to convey the additional assets as part of an integrated Arena deal.)

It is undisputed that the City agreed to convey additional assets to the Kings investors as part of the Arena deal. However, Plaintiffs have failed to prove their claim

that there was a "secret" agreement to subsidize the investor group's purchase of the team, separate from the Arena deal, and that Defendants hid the subsidy within the financial arrangements for the Arena. The testimony consistently showed that there was no secret subsidy asked for or given. Accordingly, the Plaintiffs' First and Second Causes of Action, for fraud and concealment, are denied.

B. The Third and Fourth Causes of Action

Plaintiffs' Third and Fourth Causes of Action are taxpayer representative actions under California Code of Civil Procedure section 526a to restrain "illegal" and "wasteful" expenditures of public funds. To state a claim under section 526a, the proposed expenditures must be illegal or wasteful, not merely improvident or unwise. Plaintiffs allege that the City's approval of the Arena project constitutes waste and an illegal gift of public funds because it includes a "secret" subsidy to the Sacramento investor group for purchasing the "overvalued" Kings franchise. Plaintiffs further allege that the Arena plan constitutes an illegal expenditure of public funds because the City's financing plan illegally proposes to increase on-street parking meter revenues to make debt service payments on the lease-revenue bonds.

It is well settled that the primary question to be considered in determining whether an appropriation of public funds is an unlawful gift of public funds is whether the funds are to be used for a public or private purpose. Money spent for public purposes is not a gift even though private persons may benefit. (*Community Memorial Hospital v. County of Ventura* (1996) 50 Cal.App.4th 199, 207; *Jordan v. Department of Motor Vehicles* (2002) 100 Cal.App.4th 431, 450.) The determination of what constitutes a public purpose is primarily a matter for the governing body, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 746; *Sturgeon v. County of Los Angeles* (2008) 167 Cal.App.4th 630, 639.)

The term "waste" as used in section 526a means something more than an alleged

mistake by public officials in matters involving the exercise of judgment or discretion. (*Sundance v. Municipal Court* (1986) 42 Cal.3d 1101, 1138-39.) Section 526 does not allow the judiciary to exercise a veto "merely because the judge may believe that the expenditures are unwise, that the results are not worth the expenditure, or that the underlying theory . . . involves bad judgment." (*Id.* at p.1138; see also *Humane Society v. State Bd. of Equalization* (2007) 152 Cal.App.4th 349, 356.) Waste occurs only where no public benefit can, within the limits of reasonable legislative judgment, be found for the expenditure. If reasonable minds possibly could differ, legislative judgment must prevail and the court may not interfere. (See *Sundance, supra*, 42 Cal.3d at pp.1137.)

Plaintiffs' claim of waste and an illegal gift of public funds is predicated primarily on their theory that the City has given the Kings a gift of public funds to subsidize the purchase of the team, for which the City received no public benefit. Plaintiffs do not claim that the Arena will provide no public benefits and, in fact, concede that construction of the Arena will provide some public benefits, although Plaintiffs dispute the extent to which the public will benefit. The evidence before the court supports finding that the Arena will provide public benefits.

For the reasons described above, the court has rejected the claim that the City conveyed a second subsidy to the investor group to compensate them for their alleged "overpayment" for the Kings franchise, and hid that subsidy within the financial arrangements for the Arena. Accordingly, the court finds no waste or illegal gift of public funds on this basis.

In their Closing Brief, Plaintiffs raise – for the first time – a new claim that the City violated California Government Code § 53083 by failing to adequately describe the subsidy conveyed to the Kings and disclose the public purpose of the subsidy. Obvious reasons of fairness militate against consideration of this issue. (*Neighbours v. Buzz Oates Enterprises* (1990) 217 Cal.App.3d 325, 335.) To withhold a point until the closing brief deprives the opposing party of an opportunity to answer it. The court therefore refuses to consider this new claim.

Plaintiffs further allege that the Arena plan constitutes an illegal expenditure of public funds because the City proposes to increase on-street parking meter rates for the purpose of raising general revenues to pay debt service on the lease-revenue bonds, in violation of City Code section 10.40.130 and Proposition 26. Plaintiffs have failed to prove a violation of City Code section 10.40.130 or Proposition 26.

In general, City Code section 10.40.130 provides that fees from on-street parking meters/machines must be used for the regulation of traffic on public streets and the installation, maintenance, and regulation of parking in parking meter zones. (See Parties' Joint Statement of Undisputed Issues, ¶ 1 [City Code § 10.40.130].) Proposition 26 prohibits charges imposed for a specific government benefit or service that exceed the reasonable costs to the government of providing the service or benefit. (Cal. Const. Art. XIIIC, § 1.) Plaintiffs allege that the City's plan is to increase parking meter rates, in excess of the cost of providing the service/benefit, and use the increased revenues to pay the debt service on the lease-revenue bonds.

Plaintiffs' allegations have no merit. Although the City refers to "parking net revenue" as a source of "repayment" of the bond debt, the staff report for the bond Resolution explains that net parking revenues are not actually dedicated to bond debt service:

> Importantly, net parking revenues are not actually dedicated to debt service. By law, the on-street parking revenues may be used only to cover the costs of regulating and controlling traffic on the City's streets, of providing public off-street parking facilities, and of operating and maintaining the City's on-street and off street parking spaces. These costs greatly exceed available parking revenues, and the excess is paid from the General Fund. When net parking revenues increase, the General Fund's payment of the excess costs decreases, thereby providing additional funding capacity in the General Fund. (Joint Exhibit 14, p.9.)

In sum, because the costs of regulating and controlling traffic and parking currently exceed revenues, the City uses its General Fund to subsidize the costs. By increasing net parking revenues, the City can reduce the subsidy and free up more of its General Fund for other uses, such as paying debt service on the bonds. This arrangement does not violate City Code section 10.40.130 or Proposition 26.

In their Closing Brief, Plaintiffs take aim at Defendants' statement that the plan to increase parking revenues is part of a "parking modernization" plan that already was underway, suggesting this is false. Plaintiffs have failed to prove the statement is false,[11] but even if they had, the court fails to see how this would prove that the financing plan is illegal.

C. The Fifth (Reverse Validation) Cause of Action

Plaintiffs' final cause of action is a reverse validation action under Government Code section 6599.3 challenging the City's Resolution authorizing the issuance of bonds under the Marks-Roos Local Bond Pooling Act of 1985.

The Marks-Roos Act permits local agencies to form a public financing authority to finance public capital improvements and other projects. Under the Act, an authority may issue bonds to finance projects "whenever there are significant public benefits for taking that action." (Cal. Gov. Code § 6586.) Section 6586 describes a significant public benefit as any of the following: "(a) Demonstrable savings in effective interest rate, bond preparation, bond underwriting, or bond issuance costs. [¶] (b) Significant reductions in effective user charges levied by a local agency. [¶] (c) Employment benefits from undertaking the project in a timely fashion. [¶] (d) More efficient delivery of local agency services to residential and commercial development." (*Ibid.*)

The City's bond Resolution finds that financing the City's share of the Arena with bonds issued under the Act will produce significant public benefits including, but not limited to:

- The maintenance and promotion of economic development and increased employment within the City and the region.
- The improvement of the feasibility and enhancement of the development and redevelopment of the City's downtown core.

[11] The evidence at trial establishes that the City adjusts its parking meter rates based on the market and the need for "turnover" of parking spaces.

- The maintenance and generation of increased tax revenues to the City.
- The promotion of the general welfare, sense of community, and quality of life within the City and the region.
- The development of a multi-purpose entertainment-and-sports center to provide recreational and entertainment activities, amenities, and attractions to the people of the City and the region.
- The provision of a new facility for use by a National Basketball Association basketball team as the primary user in order to assure the continued presence of professional basketball in the City and the region, and the beneficial and frequent media exposure and recognition that the continued presence of professional sports would bring to the City and the region.
- The demonstrable savings in effective interest rate and the costs of bond preparation, bond underwriting, and bond issuance that will result from financing the City's share of the Project through the Authority.

Plaintiffs contend that only the findings of "employment benefits" and "demonstrable savings" are relevant here, and that those findings are not supported by the evidence. Plaintiffs also claim to have incorporated into their reverse validation cause of action their allegations of fraud, collusion, and concealment. Plaintiffs seek an order invalidating the Bond Resolution.

Defendants argue that the reverse validation cause of action must be denied, not only because the City's finding of "significant public benefits" has evidentiary support, but also because Plaintiffs failed to name the Sacramento Public Financing Authority as an indispensable party.

The determination of whether a party is indispensable is governed by Code of Civil Procedure section 389, which sets out, in subdivision (a), a definition of persons who ought to be joined in an action if possible (sometimes referred to as "necessary" parties). (*Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 848.) If a

person is a necessary party but cannot be made a party, subdivision (b) sets forth the factors to determine whether "in equity and good conscience" the action should proceed among the parties before it, or be dismissed, the absent person being thus regarded as "indispensable." (*Ibid.*)

In this case, the court agrees that the Sacramento Public Financing Authority is a "necessary" party. The Authority, not the City, is the entity who will actually issue the bonds and its rights may be affected by the outcome of this litigation. However, due in large part to Defendants' lack of diligence in raising this issue, the court does not find the Authority "indispensable." (*Id.* at p.848.) The court shall proceed to consider Plaintiffs' claim on its merits.

Where, as here, the Legislature has vested a local agency with discretion to act, courts exercise very limited review out of deference to the separation of powers, to the legislative delegation of authority to the agency, and to the presumed expertise of the agency within the scope of its authority. (See *American Board of Cosmetic Surgery v. Medical Board* (2008) 162 Cal.App.4th 534, 539.) The reviewing court may not reweigh the evidence before the agency or substitute its judgment for that of the agency. (*Ibid.*) The court's review is limited to determining whether the agency's decision was arbitrary, capricious, or entirely lacking in evidentiary support, or whether it failed to conform to the procedures required by law. (*Id.* at p.547.)

Where there is a contested issue of fact, the court may receive additional evidence from the parties, as well as that contained in any official record of proceedings. (*Lewin v. St. Joseph Hospital* (1978) 82 Cal.App.3d 368, 387 n.13; cf. *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 573-74 [courts may consider only the administrative record in determining whether a quasi-legislative decision is supported by substantial evidence].) However, the determination whether an administrative decision is arbitrary, capricious, or entirely lacking in evidentiary support must be based on the evidence considered by the administrative agency. (*Lewin, supra*, 82 Cal.App.3d at p.387 fn.13; *Pomona Police Officers' Assn. v. City of Pomona* (1997) 58

Cal.App.4th 578, 584; see also *Western States Petroleum Assn., supra*, 9 Cal.4th at p.574.)

Here, the "evidence" considered by the City includes many of the documents admitted at trial, but does not include evidence created after-the-fact, including the expert testimony presented in this case.

Based on the evidence considered by the City, Plaintiffs' claim must be denied. There is evidence to support the City's finding that issuing the bonds will result in "employment benefits" to the City and "demonstrable savings" in effective interest rate, bond preparation, bond underwriting, or bond issuance costs. The City received reports from staff that the Arena project is expected to retain 800 jobs and create between 2,000 and 6,000 new ones, and generate between $260 million and $400 million total economic output locally and nearly $1 billion regionally and statewide. The City further received evidence that the anticipated "ancillary development" would add additional jobs and economic output. (AR 3529-30 [same as Joint Exhibit 15].)

The economic impacts were projected using the "CSER" and "CRA" economic models, which City staff has used for other projects. The CSER model, in particular, is based on the well-known "IMPLAN input-output" model and is an accepted tool for modeling economic impacts of projects.

Plaintiffs' expert testified that he would have applied the economic models differently than staff. However, his testimony was not before the City when it made its decision and, even if it had been, it would have amounted to nothing more than a classic disagreement among experts on methodology, which is insufficient to overturn the City's finding.

There also is evidence to support the City's finding that its decision to issue lease-revenue bonds, rather than monetizing the City's parking assets, would result in a better deal for the City because the bonds are "stronger credit" and the City would receive "better market reception," "better credit rating," and, ultimately, a "better interest rate." (AR 5303-04.)

In reviewing a decision under the arbitrary and capricious standard, the agency's decision comes before the court with a presumption that it is correct. (*Cal. Teachers Ass'n v. Ingwerson* (1996) 46 Cal.App.4th 860, 865; Cal. Evid. Code § 664.) It is Plaintiffs' burden to prove that the City's findings are arbitrary, capricious, or entirely lacking in evidentiary support. Plaintiffs failed to show that there is no evidence to support the finding that issuance of the bonds will result in demonstrable savings in interest rate, bond preparation, bond underwriting, or bond issuance costs.

As described above, Plaintiffs' claims of fraud, collusion, and concealment – to the extent they are even relevant to this claim – were not proven. Thus, such claims also cannot invalidate the City's Resolution.

In their Closing Brief, Plaintiffs argue that the Resolution should be invalidated because the City's findings were insufficient to bridge the analytic gap between the raw evidence and ultimate decision, in accordance with *Topanga Association for Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. However, the rule of *Topanga* applies to quasi-adjudicatory decisions reviewed under the administrative mandamus standard set forth in Code of Civil Procedure section 1094.5. It does not apply here. (*Heist v. County of Colusa* (1984) 163 Cal.App.3d 841, 848; *Great Oaks Water Co. v. Santa Clara Valley Water Dist.* (2009) 170 Cal.App.4th 956, 970; see also *Mahdavi v. Fair Employment Practice Com.* (1977) 67 Cal.App.3d 326, 335 [no requirement to issue findings].) There is no *Topanga* violation.[12]

Plaintiffs have failed to meet their burden to show that the City's finding was arbitrary, capricious, or entirely lacking in evidentiary support.

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[12] Furthermore, when an administrative agency's findings are found inadequate under *Topanga*, the appropriate remedy is simply to remand the matter so that proper findings can be made. (See *Glendale Mem'l Hosp. & Health Ctr. v. State Dep't of Mental Health* (2001) 91 Cal.App.4th 129, 140; *Saad v. City of Berkeley* (1994) 24 Cal.App.4th 1206, 1214.)

IV.

Disposition

Plaintiffs have failed to meet their burden of proof on any of their causes of action. Judgment shall be entered against Plaintiffs and in favor of Defendants. Defendants shall be entitled to recover their costs of suit.

Date: July 24, 2015

Timothy M. Frawley
Judge of the Superior Court of California
County of Sacramento