CIVIL NO. C072518
[Sacramento County Superior Court Case No. 34201280001113CUWMGDS]

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

Victor Valley Economic Development Authority,
Plaintiff and Appellant

v.

State of California *et al.*,
Defendants and Respondents

APPEAL FROM A JUDGMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SACRAMENTO
Honorable Lloyd G. Connelly, Judge Presiding
Entered September 5, 2012
Superior Court Case No. 34201280001113CUWMGDS

OPENING APPELLATE BRIEF

Andre de Bortnowsky, (SB# 119676)
Charles R. Green, (SB# 68331)
Jennifer Mizrahi, (SB# 224043)
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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, Third APPELLATE DISTRICT, DIVISION	Court of Appeal Case Number: C072518
ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*: Andre de Bortnowsky (119676), 23801 Calabasas Rd, Suite 1015, Calabasas, CA 91302 Charles R. Green (68331), 23801 Calabasas Rd, Suite 1015, Calabasas, CA 91302	Superior Court Case Number: 34201280001113CUWMGDS
TELEPHONE NO.: (818)704-0195 FAX NO. *(Optional)*: E-MAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*: Victor Valley Economic Development Authority	*FOR COURT USE ONLY*
APPELLANT/PETITIONER: Victor Valley Economic Development Authority RESPONDENT/REAL PARTY IN INTEREST: State of California, et al.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS *(Check one)*: ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party (*name*): Victor Valley Economic Development Authority

2. a. ☑ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

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(1)	
(2)	
(3)	
(4)	
(5)	

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The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: May 14, 2013

Andre de Bortnowsky

(TYPE OR PRINT NAME)

▶ _____

(SIGNATURE OF PARTY OR ATTORNEY)

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I. INTRODUCTION

This action arises from the wrongful application of Assembly Bill x1 26 ("ABx1 26" or the "Dissolution Bill") to the Victor Valley Economic Development Authority ("VVEDA" or "Appellant"). The State Legislature passed ABx1 26 on June 28, 2011, which amended portions of the Community Redevelopment Law (Health and Safety Code sections 33000, *et seq.*) ("CRL") to dissolve all redevelopment agencies and prohibit the receipt of tax increment funds by redevelopment agencies. The simple fact of the matter is ***VVEDA IS NOT A REDEVELOPMENT AGENCY***. ***VVEDA was not formed under the Community Redevelopment Law and***

its powers far exceed those of redevelopment agencies. Nevertheless, Respondents have been enforcing ABx1 26 against VVEDA, in an attempt to wind down VVEDA's affairs and dissolve it. To make matters worse, the trial court sustained Respondents' Demurrer, allowing the continued unwarranted application of ABx1 26 against VVEDA, denying VVEDA its proper day in court. As explained in both the Complaint and herein, VVEDA is not a "redevelopment agency" contemplated for dissolution by ABx1 26, and was in fact, in existence and possession of numerous, diverse powers prior to the effective date of any provision of the California Health and Safety Code making redevelopment powers available to it. VVEDA is not a redevelopment agency, and therefore must retain its right to exist and utilize tax increment financing to fulfill its reuse functions and federal contractual obligations. The lower court's decision sustaining Respondents' Demurrer without leave to amend was a grievous abuse of discretion, which VVEDA appeals herein and respectfully submits that this Court must reverse.

II. STATEMENT OF THE CASE

Appellant filed its Petition for Writ of Mandate and Complaint ("Complaint") on April 12, 2012 alleging causes of action for declaratory and injunctive relief. (Joint Appendix ("JA"), Vol. 1, P. 49-269.) Appellant alleged facts illustrating that it is entitled to declaratory and injunctive relief

on the grounds that: (1) ABx1 26 does not apply to VVEDA because of the simple, basic fact that VVEDA is NOT a redevelopment agency; (2) application of ABx1 26 to VVEDA would impair VVEDA's contracts with Federal Government agencies; and (3) such application is preempted by federal law. (JA, Vol. 1, P. 49–269.) Appellant sought declarations that: (1) because VVEDA is not a redevelopment agency, that the Dissolution Bill does not apply to it; (2) VVEDA should continue to receive tax increment funds; (3) the Dissolution Bill as applied to VVEDA is preempted by federal law; and (4) the Dissolution Bill, as applied to VVEDA, violates the "Contracts Clauses" of the federal and state constitutions. The Complaint also sought injunctive relief restraining and enjoining Respondents from enforcing the Dissolution Bill or any portions or provisions thereof, against VVEDA. (JA, Vol. 1, P. 49–269.)

Respondents, the State of California, the State Controller John Chiang, and the California Director of Finance Ana J. Matosantos filed a demurrer on June 14, 2012 (the "Demurrer"). (JA, Vol. 1, P. 294-311.) Meanwhile, Respondent San Bernardino County Auditor-Controller ("CAC") Larry Walker answered on July 2, 2012, acknowledging the need for a legal ruling from the court on the Respondent's legal obligation to distribute tax increment funds to VVEDA in the wake of the Dissolution Bill, and recognizing that the other Respondents had asserted different legal interpretations of that legislation. (JA, Vol. 2, 324-335.) This also

indicates the need that Appellants have an actual case or controversy and need specific guidance and direction from this honorable court.

VVEDA filed its Opposition to Demurrer on August 9, 2012, and the Superior Court heard the Demurrer on August 24, 2012. (JA, Vol. 2, P. 340-352.) The Superior Court issued its Order Sustaining the Demurrer and Judgment of Dismissal, without leave to amend, on September 5, 2012. (JA, Vol. 2, P. 404-406.)

III. STATEMENT OF APPEALABILITY

This appeal is from the judgment of dismissal and order sustaining demurrer entered by the Sacramento County Superior Court, and is authorized by Code of Civil Procedure section 904.1(a)(1).

IV. STATEMENT OF FACTS

Appellant brought its Complaint to challenge the applicability of the Dissolution Bill to it. (JA, Vol. 1, P. 49-269.) As stated in the Complaint, VVEDA was uniquely created as a joint powers authority under California Government Code section 6500 *et seq.* (the "Joint Powers Act") for the purposes of facilitating the reuse of the former George Air Force Base ("GAFB"), and it is ***not*** a redevelopment agency. (JA, Vol. 1, P. 50.)

The problems which prompted VVEDA's Complaint originated during the 2010-2011 First Extraordinary Session when the California Legislature adopted the Dissolution Bill. The Legislature signed the

Dissolution Bill into law on June 28, 2011, and the California Supreme Court ("Supreme Court") upheld the Dissolution Bill on or around December 29, 2011, in *California Redevelopment Association v. Matosantos*, 53 Cal. 4th 231 (2011) ("*Matosantos*"). The purpose of the Dissolution Bill was to maximize redevelopment property tax increment revenues to be diverted for non-redevelopment purposes, and to that end, it dissolves all redevelopment agencies, which VVEDA is not, and transfers their assets to "successor agencies." Furthermore, it prohibits the receipt of tax increment by redevelopment agencies and requires all redevelopment agencies to cease all redevelopment activities. (JA, Vol. 1, P. 51.)

Specifically, Health and Safety Code section 34172(a)(1)[1] eliminates "all redevelopment agencies and redevelopment agency components created under Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7 (commencing with Section 34100) [of the Health and Safety Code].", and Section 34189(a) states that all provisions of the California Community Redevelopment Law, Health and Safety Code section 33000 *et seq.* (the "Community Redevelopment Law" or "CRL") relating to the distribution of tax increment funds to redevelopment agencies are inoperative. (JA, Vol. 1, P. 51.) However, the provisions of

[1] All statutory references hereinafter are to the California Health and Safety Code unless otherwise specified.

the CRL continue to be in existence, and are currently utilized by other entities, such as the successor agencies.

The crux of the controversy is that Respondents have erroneously classified VVEDA as a redevelopment agency subject to the provisions of the Dissolution Bill. However, VVEDA is not a redevelopment agency nor a redevelopment agency component of a community development agency as contemplated under Section 34172(a)(1). (JA, Vol. 1, P. 51.) This is because, as alleged in the Complaint, ***VVEDA was formed under the Joint Powers Act, Government Code Section 6500 et seq., not under any section of the Health and Safety Code affected by the Dissolution Bill***. (JA, Vol. 1, P. 52.) Although the State Legislature had the power to do so, the Dissolution Bill does not include any language broad enough to include joint powers authorities comprised of *cities and counties* (as opposed to those comprised of redevelopment agencies) which, like VVEDA, were granted special redevelopment powers. (JA, Vol. 1, P. 52-54.)

The factual background concerning VVEDA's formation is critical to understanding the present case, and grasping the importance of the immediately preceding assertion. On or about October 24, 1988, the United States Congress passed the Defense Authorization Amendments and Base Closure and Realignment Act, Public Law 100-526 ("BCRA"), providing the basis for implementing the recommendations of the 1988 Commission on Base Realignment and Closure (the "Commission"). (JA, Vol. 1, P.

62.) In or about December of 1988, the Commission announced the closure of the former GAFB, generally located within the boundaries of the City of Victorville, California, and the former Norton Air Force Base, generally located within the boundaries of the City of San Bernardino, California (the former "NAFB"). The former GAFB and NAFB are both located within the County of San Bernardino, within fifty (50) miles of each other. (JA, Vol. 1, P. 52.)

In order to plan for the closure and reuse of the former GAFB, on or about October 27, 1989, the County of San Bernardino, the City of Hesperia, the City of Victorville, and the Town of Apple Valley entered into a Joint Exercise of Powers Agreement creating the Victor Valley Economic Development Authority ("the VVEDA JPA"). (JA, Vol. 1, P. 53, 65-79.) The purpose of the VVEDA JPA was to provide for the coordination of long range planning of the GAFB territory and surrounding areas. (JA, Vol. 1, P. 69) As the VVEDA JPA acknowledged:

> [t]he parties hereto recognize the immediate necessity for planning for the possible closure of GAFB, and the need to utilize the GAFB facility after closure in a manner which will attract business, create jobs and improve the quality of life for the citizens of the High Desert. (JA, Vol. 1, P. 68.).

As specified in the VVEDA JPA, since its creation, VVEDA has had the power, in its own name, to: make and enter contracts; hire employees; acquire, construct, manage, maintain, and operate any buildings, works or improvements; own property; incur debts, liabilities, or obligations; issue

bonds, notes, etc. to finance projects; receive federal or State grants; sue and be sued; exercise joint powers; enter into agreements with the United States for the purpose of determining the disposition of the GAFB; have such powers that were later conferred on Joint Powers Authorities; and to redevelop GAFB and surrounding areas in accordance with any future law. (JA, Vol. 1, P. 70.)

Subsequently, ***after VVEDA was already in existence and in possession of the foregoing powers***, on or about January 1, 1990, in response to the simultaneous closure of the former GAFB and the former NAFB, Assembly Bill 419, commonly referred to as the "Eaves Bill", Section 33492.40 (formerly Section 33320.5) became effective. (JA, Vol. 1, P. 53-54.) Pursuant to the Eaves Bill, the legislative bodies of the communities having territory within, adjacent to, or in proximity to the former GAFB were granted the authority to create a joint powers agency to effectuate the reuse and redevelopment of the former GAFB and certain properties within eight (8) miles of the boundaries of the former GAFB. Thus, even though VVEDA was ***already in existence and operating prior to the effective date of the Eaves Bill***, the Eaves Bill nevertheless ***provided VVEDA with an additional mechanism for implementing and carrying out plans for the reuse of the former GAFB as directed under BCRA***. (JA, Vol. 1, P. 53-54.)

When the Eaves Bill was adopted, the State Legislature expressly acknowledged that the simultaneous closure of the GAFB and the NAFB would cause "serious economic hardship" in the County of San Bernardino, including "loss of jobs, increased unemployment, deterioration of properties and land utilization and undue disruption of the lives and activities of the people." (JA, Vol. 1, P. 54.) Therefore, the State Legislature declared that "to avoid serious economic hardship and accompanying blight, it is necessary to enact this act which shall apply only within the County of San Bernardino. In enacting this act, it is the policy of the Legislature to assist communities in the County of San Bernardino in their attempt to preserve the military facilities and installations for their continued use as airports and aviation-related purposes." (JA, Vol. 1, P. 54.)

Essentially, the Eaves Bill was a response by local communities to the mandate of the United States of America (the "United States"), acting through the Department of Defense (the "DOD"), requiring VVEDA to demonstrate that it had the financial means to undertake the economic development necessary to begin offsetting the devastating economic impact of the closure of the former GAFB, since the Eaves Bill allowed Appellant to use redevelopment powers even though it was ***not*** a redevelopment agency. (JA, Vol. 1, P. 54.)

As such, on or about May 20, 1991, the parties to the original VVEDA JPA entered into a First Amended JPA, whereby VVEDA availed itself of the redevelopment powers provisions of the Eaves Bill, and added those powers to those it already possessed. As explained in VVEDA's Ordinance No. 2, adopting VVEDA's Redevelopment Plan,

> WHEREAS, under Section 33320.5(b) [former Section 33492.40] of the California Health and Safety Code, the Authority, ***although it is not organized as a redevelopment agency***, has and shall exclusively exercise redevelopment powers in furtherance of redevelopment of a project area approved by the Authority and, in addition to exercising the powers of a redevelopment agency, shall act as the legislative body and planning commission for all approvals and actions of legislative bodies and planning commissions for the adoption and implementation of a redevelopment plan. (*Emphasis added.*) (VVEDA Ordinance No. 2, RJN Exhibit A, P. 1.)

Then, on or about December 28, 1993, by VVEDA's Ordinance No. 2, quoted above, VVEDA adopted the 1993 Victor Valley Redevelopment Plan (the "Redevelopment Plan" or "Plan") to serve as a component of VVEDA's overall reuse plan for the former GAFB. (JA, Vol. 1, P. 55.) The Plan was submitted to and accepted by the United States, acting through the DOD, as the governing document for reuse and development for the former GAFB. (JA, Vol. 1, P. 55.) In particular, the Plan was submitted as part of VVEDA's Request to the DOD for an Economic Development Conveyance ("EDC"), which stated

> [T]he adoption of the Redevelopment Plan provides VVEDA with powers, duties, and obligations to implement and further

> the program generally formulated for redevelopment, rehabilitation, and revitalization of the Project Area. (Request for an Economic Development Conveyance, RJN Exhibit B, P. 1.)

Recognizing the necessity for tax increment financing, the Redevelopment Plan listed tax increment revenue as the primary funding mechanism for financing the Victor Valley Redevelopment Project. (1993 Redevelopment Plan, RJN Exhibit C, P. 30.) It also clearly provided that "Tax Increment Revenues shall be allocated to VVEDA for forty-five (45) years from the date of adoption of the ordinance approving and adopting this Redevelopment Plan" and that these funds were "irrevocably pledged to pay the principal and interest on loans, monies advanced to, or indebtedness (whether funded, refunded, assumed or otherwise) incurred by VVEDA to finance or refinance, in whole or in part, the redevelopment program for the Project Area." (1993 Redevelopment Plan, RJN Exhibit C, P. 30–31.)

Meanwhile, on or about September 21, 1993, the United States issued a "Supplemental Record of Decision – Disposal and Reuse of George Air Force Base" (the "Supplemental ROD") requiring that the portions of the former GAFB which were to be used for public airport purposes be transferred to a "qualified sponsor of a public airport approved by the FAA." (JA, Vol. 1, P. 55, 122-127.)

Then, on or about September 22, 1993, the Federal Aviation Authority (the "FAA") confirmed that VVEDA was a qualified sponsor of a public airport satisfying the requirements of the Supplemental ROD. (JA, Vol. 1, P. 55; FAA Approval Letter, RJN Exhibit D.) In making this determination, the FAA relied on VVEDA's ability to continually operate and ensure the development and reuse of the former GAFB as a public airport. (JA, Vol. 1, P. 55.)

On or about April 29, 1994, having received the requisite federal agency approvals, VVEDA and the United States entered into a Public Benefit Transfer Agreement wherein the United States agreed to transfer to VVEDA certain properties located at the former GAFB (consisting of what is now the Southern California Logistics Airport [the "Airport")] for purposes of operating a public airport (the "PBT Agreement"). (JA, Vol. 1, P. 57, 130-140.) VVEDA and the United States also entered into a Public Benefit Transfer Lease wherein the United States leased VVEDA the property prior to environmental remediation, which remediation is a condition precedent to the transfer ("PBT Lease," submitted concurrently herewith in the Request for Judicial Notice ("RJN"), as Exhibit E). (JA, Vol. 1, P. 56.) The PBT Agreement and PBT Lease shall sometimes hereinafter be collectively referred to as the "PBT Documents."

The PBT Agreement constitutes a contract between VVEDA and the United States. It incorporates by reference several provisions of the PBT

Lease which effectively require that the transferred properties continue to be used for public airport purposes even after the termination of the PBT Lease and requires compliance with all Federal Aviation Administration ("FAA") regulations (JA, Vol. 1, P. 131-132; PBT Lease, RJN Exhibit E, P. 10). Meanwhile, the PBT Lease contains the following restrictions: (1) Section 6.2 states that only those uses which were permitted in the Air Force's Final Environmental Impact Statement, the Record of Decision, and the Supplemental ROD are permissible uses under the Lease, *i.e.*, public airport uses; (2) Section 23 includes several requirements of the FAA, including that property be used for public airport purposes; that landing areas and all structures, improvements, facilities, and equipment transferred "be maintained for the use and benefit of the public at all times in safe and serviceable condition, so as to ensure its efficient operation and use...;" and (3) that VVEDA operate and maintain all Airport facilities in a safe and serviceable condition, and not permit any activities thereon which would interfere with its use for airport purposes. (PBT Lease, RJN Exhibit E, P 50-52, 54). Therefore, per contractual obligation these properties must continue operating for public airport purposes.

About a year later, on or about February 15, 1995, VVEDA submitted a Request for an Economic Development Conveyance ("Request") to the DOD for additional properties adjacent to those conveyed by the PBT Agreement, in order to carry out its tasks related to

operating a public airport. (Request for EDC, RJN Exhibit B). The Request incorporates VVEDA's Redevelopment Plan by reference, with said Plan taking front and center stage. (Request for EDC, RJN Exhibit B, P. 1).

Then, on or about June 19, 1996, after considering and relying on VVEDA's reuse and development plan, VVEDA and the United States entered into an Economic Development Conveyance Agreement for the requested transfer to VVEDA of the former GAFB properties adjacent to the Airport for purposes of redeveloping and reusing the property through economic development (the "EDC Agreement"). (JA, Vol. 1, P. 56, 141-159.) The EDC Agreement required VVEDA to execute a promissory note[2] and a deed of trust for the EDC Agreement properties, obligations which VVEDA could only honor through reliance on tax increment revenues, VVEDA's primary funding source. (JA, Vol. 1, P. 56, 141-159.) VVEDA and the United States also entered into an Economic Development Conveyance Lease wherein VVEDA leased the properties prior to environmental remediation, which is a condition precedent to the transfer (the "EDC Lease.") (JA, Vol. 1, P. 56.) The EDC Agreement and EDC

[2] As stated in the Complaint, the United States initially required VVEDA to execute a promissory note in the amount of twenty-eight million dollars ($28,000,000.00), and the Federal Government relied on VVEDA's ability to utilize tax increment financing to meet this obligation. However, for purposes of clarity, subsequently, through negotiations between VVEDA and the Department of Justice, this amount was reduced to one million, six hundred and seventy thousand dollars ($1,670,000.00).

Lease shall sometimes hereinafter be collectively referred to as the "EDC Documents."

On or about April 11, 1997, the parties to the VVEDA JPA entered into that certain Joint Exercise of Powers Agreement creating the Southern California International Airport Authority ("SCIAA") pursuant to the Joint Powers Act. (JA, Vol. 1, P. 56.) The SCIAA was formed to facilitate the local operation and control of the Airport, and to reduce VVEDA's exposure to any potential catastrophic events which might be associated with Airport operations. (JA, Vol. 1, P. 56.)

On or about October 25, 1999, the City of Victorville and the Victorville Redevelopment Agency entered into a First Amended and Restated Joint Exercise of Powers Agreement which thereby renamed the Southern California International Airport Authority to its current name, the Southern California Logistics Airport Authority ("SCLAA"). (JA, Vol. 1, P. 57.)

On or about June 21, 2000, the parties to the VVEDA JPA entered into a Fourth Amended VVEDA JPA, pursuant to which, and consistent with the parties' original intent to ensure adequate financing for the reuse and development of the former GAFB, the parties thereto pledged tax increment which is generated on the properties comprising the former GAFB (the "GAFB Parcels") to the SCLAA and assigned rights with respect to receipt of tax increment to the SCLAA. (JA, Vol. 1, P. 57, 160-

219.) The parties to the Fourth Amended VVEDA JPA further agreed to pledge fifty percent (50%) of tax increment generated from all other properties located within the project area subject to the Redevelopment Plan to SCLAA. The pledge of tax increment to SCLAA, and consequently, the GAFB Parcels, was made in order for VVEDA to complete its obligations under BCRA and to facilitate VVEDA's primary purpose to reuse the former GAFB as required under the EDC and PBT Documents. (JA, Vol. 1, P. 57.)

As clearly alleged in the Complaint, the receipt of tax increment funds, as contemplated by both the Redevelopment Plan and the Fourth Amended VVEDA JPA is a critical component of VVEDA's ability to fulfill its obligations to reuse and redevelop the former GAFB as prescribed under BCRA. (JA, Vol. 1, P. 59.)

On or about October 25, 2000, VVEDA and SCLAA entered into that certain Assignment Agreement wherein VVEDA assigned all of its rights, title and interest in both the PBT Documents and the EDC Documents to SCLAA, including all obligations and liabilities under the terms of the PBT and EDC Documents. (JA, Vol. 1, P. 57; Vol. 2, P. 225-226.) The United States Air Force approved said transfer of rights and obligations to the SCLAA. (JA, Vol. 2, P. 224.) Therefore, the obligations that the former GAFB properties continue to be maintained and operated for public airport purposes continue to exist.

To date, SCLAA has received a majority of the property to be transferred pursuant to the PBT and EDC Agreements. As the Complaint alleged, property transferred to SCLAA pursuant to the PBT Lease must be used for public airport purposes, while property transferred to SCLAA pursuant to the EDC Agreement must be used for economic development purposes. (JA, Vol. 1, P. 57.)

Then, after each of the above actions had commenced, the State Legislature began its attempt to stop all redevelopment in the State. On or about June 28, 2011, the Dissolution Bill was signed into law. Additionally, on or about June 28, 2011, Assembly Bill x1 27 was signed into law, providing that a redevelopment agency could avoid dissolution under ABx1 26 if the agency made certain payments (the "Forced Payment Bill"). The validity of the Dissolution Bill and the Forced Payment Bill was challenged by petitioners in *Matosantos*, as violating the State Constitution and other laws. (JA, Vol. 1, P. 57.) On or about August 11, 2011, the Supreme Court issued a partial stay in that case, by, among other things, staying the Forced Payment Bill in its entirety and staying all of the Dissolution Bill, with the exception of Sections 34161-34167 of Division 24, Part 1.8 of the Health and Safety Code (the "Partial Stay"). (JA, Vol. 1, P. 57.)

On or about August 17, 2011, the Supreme Court modified the Partial Stay by providing that the request to stay Sections 34161-34169.5 of

Division 24, Part 1.8 of the Health and Safety Code was denied (the "Modified Partial Stay"). (JA, Vol. 1, P. 58.) On or about December 29, 2011, the Supreme Court upheld the Dissolution Bill, invalidated the Forced Payment Bill, and extended certain deadlines set forth in the Dissolution Bill. (JA, Vol. 1, P. 58.)

In response to the Supreme Court's ruling in *Matosantos*, and pending a formal determination that the Dissolution Bill is not applicable to VVEDA, VVEDA *under protest* complied with the provisions of the Dissolution Bill, so as not to jeopardize its ongoing obligations to third parties. In other words, all actions taken by VVEDA in compliance with the Dissolution Bill were taken ***under protest***, consistent with VVEDA's position that it ***never*** has been subject to the provisions of the Dissolution Bill. (JA, Vol. 1, P. 59.) In particular, on or about January 31, 2012, VVEDA, under protest, amended the Enforceable Obligation Payment Schedule it previously adopted in accordance with the terms of the Modified Partial Stay (the "EOPS") and submitted the same to the State Department of Finance ("DOF") for review, as required by the Dissolution Bill. JA, Vol. 1, P. 59.)

Meanwhile, VVEDA actively pursued an administrative resolution of the issues arising out of whether the Dissolution Bill was applicable to VVEDA, particularly by engaging in discussions with the County-Auditor Controller's ("CAC") office. (JA, Vol. 1, P. 59.) On or about January 26,

2012, VVEDA submitted a position paper to the CAC office, setting forth why the Dissolution Bill does not apply to VVEDA (the "Position Paper"). (JA, Vol. 1, P. 59; Vol. 1, P. 254-265.) Additionally, on or about March 12, 2012, in response to certain inquiries by the DOF, VVEDA submitted the Position Paper to the DOF. (JA, Vol. 1, P. 59-60.)

On or about March 6, 2012 and March 28, 2012, the DOF, after having reviewed the Position Paper, informed VVEDA that it had taken the position that while VVEDA is not a redevelopment agency subject to dissolution under the Dissolution Bill, its ability to exercise redevelopment powers was terminated by the Dissolution Bill because "all redevelopment agencies and redevelopment agency components of community development commissions created under Part 1 of Division 24 of the Health and Safety Code are eliminated" by the Dissolution Bill. The DOF instructed VVEDA to comply with the provisions of the Dissolution Bill. The Complaint attached and incorporated as exhibits true and correct copies of the DOF correspondence dated March 6, 2012 and March 28, 2012. (JA, Vol. 2, P. 266-269.) Thus, the DOF has contended that VVEDA is not a redevelopment agency. We agree. However, the DOF also has claimed that even though VVEDA is not a redevelopment agency, it must be dissolved. This position creates uncertainty and is further inconsistent with ABx1 26. The DOF cannot have it both ways.

After receipt of the correspondence from the DOF, VVEDA was similarly informed by the CAC office that the CAC had taken the position that the Dissolution Bill prohibited the CAC office from distributing tax increment to VVEDA. (JA, Vol. 1, P. 59.)

Consequently, Respondents' positions place VVEDA in the precarious position of violating its contractual obligations to the United States under the PBT and EDC Documents, while simultaneously posing a clear obstacle to the United States' intent to maintain a strategically located airport facility to benefit not only the public, as a member of the National Air System, but also the United States military, particularly in the event of an emergency. (JA, Vol. 1, P. 59.)

Furthermore, Respondents' positions obfuscates the State Legislature's intent when it adopted the Eaves Bill, because without redevelopment powers, VVEDA's ability to generate jobs and tax revenues to sustain the local communities would be compromised. (JA, Vol. 1, P. 59.)

Therefore, as set forth in the "Statement of the Case" above, in April, 2012, Appellant filed its Complaint for relief, to which Respondents demurred, and to which the trial court sustained the Demurrer.

V. ARGUMENT

A. STANDARD OF REVIEW

An appeal from an order sustaining a demurrer presents a question of law, which is subject to de novo review. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42; *Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318.) Therefore, this Court must review the trial court's decision *de novo*, in order to determine whether the well-pleaded facts in the complaint state a cause of action under any legal theory, such facts presumed true for this purpose. (*Id.*) This Court may also consider any matters which may be judicially noticed. (*Id.*) Where demurrers are sustained ***without leave to amend***, as in the instant case, the appellate court must decide whether there is ***any reasonable possibility*** that the defect can be cured by amendment. ***If it can, the trial court has abused its discretion, and the appellate court must reverse***. (*Blank v. Kirwan*, 39 Cal.3d at 318.)

Appellant's Complaint did set forth ample facts, which facts must be presumed true, which state valid causes of action. At the very least, if this Court finds any defect with respect to Appellant's alleged causes of action, there is certainly a ***reasonable possibility*** that Appellant is capable of curing such defect. Therefore, Appellant ***must*** be permitted to cure such defect by filing an amended complaint. In either event, the trial court

abused its discretion by sustaining Respondents' demurrer, and such abuse ***must be reversed***.

B. SUSTAINING RESPONDENTS' DEMURRER TO APPELLANTS FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF WITHOUT LEAVE TO AMEND WAS AN ABUSE OF DISCRETION BECAUSE APPELLANT'S DID SET FORTH FACTS CONSTITUTING A CASE OR CONTROVERSY.

i. Because VVEDA was Formed as a Joint Powers of Authority Under the Government Code, it is Not a Redevelopment Agency Under the Community Redevelopment Law.

A complaint requesting declaratory relief is legally sufficient if it sets forth facts showing the existence of an actual controversy related to the parties' legal rights and duties and requests the adjudication of the rights and duties by the court. (*AICCO, Inc. v. Insurance Co. of North America* (2001) 90 Cal.App.4th 579, 590.) Moreover, ***a general demurrer to a cause of action for declaratory relief must be overruled as long as an actual controversy is alleged; the pleader need not establish it is entitled to a favorable judgment***. (*Ludgate Insurance Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 606.)

As stated in the Complaint, VVEDA was created on October 27, 1989, under the Joint Powers Act (Government Code Section 6500, *et seq.*). (JA, Vol. 1, P. 52-54.) VVEDA was ***not*** created under *any* section of the CRL. (JA, Vol. 1, P. 65-79.)

ABx1 26, which is at the heart of this action, added and amended various sections of the Health and Safety Code – in particular, and of utmost importance, Section 34172(a)(1), which eliminated ***only*** those redevelopment agencies and redevelopment agency components which were "created under Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7 (commencing with Section 34100) [of the Health and Safety Code]." (JA, Vol. 1, P. 52.) Because Appellant ***was not created under any of these Health and Safety Code sections***, it ***cannot*** be dissolved.

Respondents argued in their Demurrer that since VVEDA availed itself of the powers of a redevelopment agency, as authorized by the Eaves Bill, Health and Safety Code Section 33492.40, it too is dissolved. (JA, Vol. 2, P. 305-311.) Section 33492.40 allowed joint powers authorities to exercise redevelopment powers in land adjacent to or in proximity to the lands of closed military facilities, including the GAFB. While it is true that VVEDA availed itself of these powers, ***VVEDA was not created under the Eaves Bill***, which became effective January 1, 1990, ***but instead was created and, formed months prior, on October 27, 1989, pursuant to Government Code Section 6500, et seq.***. (JA, Vol. 1, P. 49-50.) Therefore, Respondents' argument that Health and Safety Code Section 33492.40 "sits

squarely in the Community Redevelopment Law," is irrelevant because ***VVEDA was not formed under that Section***. (JA, Vol. 2, P. 305.)

Moreover, it was improper for the trial court to even consider the facts argued by the Respondents in their Demurrer. A demurrer cannot allege facts, deny facts, or otherwise allude to extrinsic evidence not subject to judicial notice. (*Hayward v. Henderson* (1979) 88 Cal.App.3d 64, 71.) A demurrer assumes the correctness and truth of the facts alleged. (*Griffin v. County of Colusa* (1941) 44 Cal.App.2d 915, 918.)

Therefore, because VVEDA alleged facts showing it was ***formed prior to and apart from Section 33492.20 or any other Section of the CRL***, to support the claim that it should ***not*** be dissolved by the Dissolution Bill, VVEDA has demonstrated an actual controversy related to the parties' legal rights and duties, and in this case, one of the parties' *very existence*. VVEDA therefore alleged a valid cause of action for declaratory relief that VVEDA is not dissolved by the Dissolution Bill. Respondents' Demurrer should have been overruled, since VVEDA is, *at the very least*, entitled to a declaration of rights.

ii. **VVEDA has Many Other Powers and Obligations Beyond Redevelopment which Existed Even Prior to the Effective Date of the Eaves Bill.**

Furthermore, VVEDA was not created as were typical "redevelopment agencies" authorized under Section 33100[3] merely for "redevelopment" purposes, as that term is defined in Section 33020.[4]

Instead, VVEDA was formed by its constituent parties (three municipalities and one county) who recognized the immediate necessity for planning for the possible closure of the GAFB, and the need to utilize the GAFB facility after closure in a manner which would attract business, create jobs, and improve the quality of life for the citizens of the High Desert. (JA, Vol. 1, P. 68.) The purpose of forming VVEDA was to provide for the ***long range planning*** of the territory of GAFB and surrounding areas, the interaction with the Federal Government, the possible purchase, administration and management of an airport or other public facilities at GAFB, the possible redevelopment of GAFB and

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[3] "There is in each community a public body, corporate and politic, known as the redevelopment agency of the community."

[4] "Redevelopment" means the planning, development, replanning, redesign, clearance, reconstruction, or rehabilitation, or any combination of these, of all or part of a survey area, and the provision of those residential, commercial, industrial, public, or other structures or spaces as may be appropriate or necessary in the interest of the general welfare, including recreational and other facilities incidental or appurtenant to them and payments to school and community college districts in the fiscal years specified in Sections 33681, 33681.5, 33681.7, 33681.9, and 33681.12.

surrounding areas, and the financing needed to effectuate such activities. (JA, Vol. 1, P. 68.)

Even before the Eaves Bill became effective, and before VVEDA availed itself of the Eaves Bill's powers, VVEDA was in existence and operating with full possession of numerous powers, as listed herein. These include the power to enter contracts, hire employees, own property, incur debts, receive grants, exercise joint powers, *etc.* (JA, Vol. 1, P. 69.) ***The Eaves Bill did not create or bestow on VVEDA the foregoing powers (or such other powers as provided under the Joint Powers Act), but merely granted certain special redevelopment powers to VVEDA without transforming it into a redevelopment agency.***

Furthermore, when VVEDA received the property from the United States Air Force, it assumed the contractual obligation for developing a civil airport facility, and ensuring the continued use of the premises for public airport purposes. (JA, Vol. 1, P. 131-132; PBT Lease, RJN Exhibit E, P. 2.) The Complaint clearly alleged the existence of VVEDA's "unique responsibilities" as the agency designated to oversee the closure and reuse of the former GAFB. (JA, Vol. 1, P. 131-132.) ***It is undeniable that overseeing public airports is not an ordinary function of a "garden variety" redevelopment agency***. Furthermore, ordinary redevelopment agencies are generally ***prohibited*** from funding operations and maintenance costs with tax increment funds, whereas VVEDA is ***required by its***

agreements with the Federal Government to provide and fund certain operations, such as airport security, FAA control tower and fire protection. As such, VVEDA is not and ***cannot*** be treated as a conventional redevelopment agency, nor be dissolved by ABx1 26.

Again, by setting forth facts showing VVEDA is ***not*** a redevelopment agency with typical redevelopment obligations, VVEDA clearly established an actual controversy related to the parties' legal rights and duties, necessitating declaratory relief. Thus, it was abuse of discretion to sustain Respondents' Demurrer to Appellant's first cause of action.

C. VVEDA IS ENTITLED TO CONTINUED RECEIPT OF TAX INCREMENT FUNDS, THEREFORE THE TRIAL COURT ERRONEOUSLY SUSTAINED RESPONDENTS' DEMURRER TO APPELLANT'S SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF.

VVEDA's Complaint alleged facts showing VVEDA is entitled to continued receipt of tax increment. It stated that the EDC Agreement between the United States and VVEDA required VVEDA to execute a promissory note and a deed of trust for the properties, which VVEDA could only honor with the use of tax increment revenues, its primary funding source. (JA, Vol. 1, P. 56.)

Tax increment revenues were in fact VVEDA's primary funding source, as set forth in VVEDA's Redevelopment Plan. (Redevelopment Plan, RJN Exhibit C, P. 28-32) As the Complaint alleged, the

Redevelopment Plan served as VVEDA's reuse plan for the purposes of the BCRA, and was submitted to and accepted by the United States DOD. (Complaint, P. 5-6). In particular, VVEDA's Request for an Economic Development Conveyance referred to and included the Plan. (Request for EDC, Exhibit B, P. 1). As such, the United States granted VVEDA the conveyance based on VVEDA's ability to implement the Redevelopment Plan, and more particularly, ***in reliance on the fact that VVEDA would continue to receive tax increment funding*** necessary to carry out the federal mandate to reuse and develop the former GAFB.

Specifically, the following clearly indicated to the Federal Government that VVEDA would absolutely continue to receive tax increment, because: (1) the general structure of the 1993 Redevelopment Plan indicates that tax increment revenue is ***the primary method*** for financing the Plan, as it lists "Tax Increment Revenue" as the first of four financing methods (Redevelopment Plan, RJN Exhibit C, P. 28–32); and (2) the entire Redevelopment Plan rested on the assumption and requirement that tax increment revenue would be available for ***forty-five (45) years***, *i.e.*, ***until July 12, 2030***. (Emphasis added.) (See, e.g., Redevelopment Plan, RJN Exhibit C, P. 30, "*Tax Increment Revenues shall be allocated to VVEDA for forty-five years from the date of adoption of the ordinance approving and adopting this Redevelopment Plan.*") As such,

based on this requirement and necessity, Section (702)(4) of the Plan proclaimed that

> "VVEDA is authorized to make pledges as to specific advances, loans and indebtedness as appropriate in carrying out this Redevelopment Plan. *The portion of taxes allocated and paid to VVEDA pursuant to subparagraph (3) above is irrevocably pledged to pay the principal and interest on loans, monies advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by VVEDA to finance or refinance, in whole or in part, the redevelopment program for the Project Area*." (Emphasis added.)

In light of the foregoing, it is evident that (1) VVEDA entered into federal contracts, namely the EDC and PBT Agreements, and undertook obligations to the Federal Government, including the promissory note and a deed of trust for the EDC properties, ***on the understanding made clear in VVEDA's Redevelopment Plan that VVEDA shall receive tax increment revenue for a forty-five year term***, (2) that the Redevelopment Plan was based on the authority to receive tax increment granted by the State, and (3) that such authority was granted as a necessity in order to fulfill VVEDA's obligations under BCRA. The Complaint alleged the ultimate facts necessary to demonstrate the actual controversy thus presented by Respondents' denial of VVEDA's continued existence or continued receipt of tax increment. Therefore, it was abuse of discretion for the trial court to sustain Respondents' Demurrer as to Appellant's second cause of action.

D. THE DISSOLUTION BILL IS PREEMPTED BY FEDERAL LAW.

Yet another abuse of discretion must be rectified. VVEDA's Complaint alleged that the federal BCRA directed the reuse of the former GAFB. (JA, Vol. 1, P. 54.) It further alleged that the DOD required VVEDA to demonstrate it had the means to undertake the economic development necessary to offset the devastating impact of the closure of the former GAFB under BCRA. The Eaves Bill was a response to this requirement, allowing VVEDA to use redevelopment powers although it was not a redevelopment agency. Without such powers, VVEDA could not have persuaded the United States to transfer the former GAFB to it. (JA, Vol. 1, P. 54.) Since, if VVEDA ceases to exist or loses tax increment revenues, it cannot possibly continue the reuse of GAFB, Appellant thus stated facts illustrating that the Dissolution Bill poses an obstacle to accomplishing Congress' objective in enacting BCRA, presenting a quintessential case of federal obstacle preemption. Accordingly, sustaining the Demurrer to VVEDA's third cause of action seeking declaratory relief was abuse of discretion.

E. ENFORCING THE DISSOLUTION BILL AGAINST VVEDA INTERFERES WITH FEDERAL CONTRACTS.

Furthermore, as alleged in the Complaint and mentioned above, if VVEDA loses its right to tax increment funding, VVEDA will be in the

precarious position of violating its contractual obligations to the United States under the PBT and EDC Documents. (JA, Vol. 1, P. 59.) As the Redevelopment Plan repeatedly emphasized, tax increment funding is ***necessary*** to carry out the reuse required by the PBT and EDC documents.

First, the PBT Agreement incorporates by reference several provisions of the related PBT Lease. Of critical importance, several of these provisions require the transferred properties continue to be used for public airport purposes in perpetuity, even after the termination of the PBT Lease. (JA, Vol. 1, P. 131-132; PBT Lease, RJN Exhibit E, P. 10, Condition 6.1.) Moreover, one of the PBT Lease conditions requires compliance with all regulations of the FAA. (PBT Lease, RJN Exhibit E, P. 60, Condition 23.4.) Of grave significance, if ABx1 26 dissolves VVEDA, or halts its receipt of tax increment, VVEDA may ***not*** be able to afford operating the Airport, and will thus breach its obligations of this federal contract.

Additionally, the PBT Lease contains the following conditions: (1) Section 6.2, which states that only those uses permitted in the Air Force's Final Environmental Impact Statement, the Record Of Decision, and the Supplemental ROD are the permissible uses under the Lease – that is, ***public airport uses***; and (2) Section 23, which specifies numerous requirements of the FAA, including: again, that the property be used for public airport purposes (PBT Lease, RJN Exhibit E, P. 52.); that the entire

Airport facility including the landing area and all improvements transferred be maintained in a safe and serviceable condition (PBT Lease, Section 23.1.b, P. 50-51); and requires that lessee not permit any activity thereon which would interfere with its use for airport purposes." (PBT Lease, RJN Exhibit E, P. Section 23)

Not only will VVEDA's ability to continue operating a public airport without tax increment revenues be severely compromised, ***without tax increment revenues it will lack funds necessary to maintain the landing area and other structures or improvements in a safe and serviceable condition***, and thus risks breaching these PBT Lease covenants as well.

In short, VVEDA's Complaint clearly alleged that the Dissolution Bill violates the "Contracts Clauses" of the United States and California Constitutions. (JA, Vol. 1, P. 62.) Under these constitutional provisions, no state may pass a law which impairs the obligation of contracts. Therefore, the trial court abused its discretion by sustaining Respondents' Demurrer to VVEDA's fourth cause of action.

F. VVEDA'S COMPLAINT SET FORTH A VALID CAUSE OF ACTION FOR INJUNCTIVE RELIEF.

As to VVEDA's fifth cause of action, injunctions may issue to prevent enforcement of statutes sought to be enforced illegally, where their enforcement would cause irreparable injury. (*Novar Corp. v. Bureau of*

Collection & Investigative Services (1984) 160 Cal.App.3d 1, 5.) Section 526 of the California Code of Civil Procedure sets forth the requirements for injunctive relief and VVEDA's Complaint demonstrated that VVEDA is entitled to such relief. In particular, legal remedies are inadequate because it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. (Code Civ. Proc., § 526(5).)

VVEDA's Complaint properly set forth facts establishing that the Dissolution Bill is ***inapplicable to VVEDA*** as follows: VVEDA was created under the Joint Powers Act on October 27, 1989, months prior to the effective date of the Eaves Bill. (JA, Vol. 1, P. 53.). Even prior to availing itself of redevelopment powers pursuant to the Eaves Bill, VVEDA possessed numerous powers under the VVEDA JPA, including the myriad powers listed hereinabove on page 7. (JA, Vol. 1, P. 232-233.). On June 28, 2011, the California Legislature adopted the Dissolution Bill. (JA, Vol. 1, P. 57.) The Dissolution Bill included Section 34172(a)(1), which ***only*** eliminated redevelopment agencies and redevelopment agency components "created under Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7 (commencing with Section 34100) [of the Health and Safety Code]." (JA, Vol. 1, P. 59.) Therefore, enforcement of the Dissolution Bill as a means to dissolve VVEDA, an entity which was ***not***

created under any of the aforementioned statutes, and which existed, possessed and exercised powers even prior to the Eaves Bill, is illegal.

However, as VVEDA's Complaint alleged, beginning on or about June 28, 2011 Respondents have threatened to and indeed are now enforcing the Dissolution Bill against VVEDA. (JA, Vol. 1, P. 62.) This illegal enforcement will cease VVEDA's redevelopment activities, causing great and irreparable harm to the reuse of the former GAFB, in direct contravention of the mandate under BCRA for the reuse of the former base. (JA, Vol. 1, P. 62.) The Complaint properly stated that Plaintiff has no adequate remedy at law. (JA, Vol. 1, P. 62-63.) It is clear that money damages cannot compensate an entity which is ***no longer in existence***. Thus, VVEDA satisfied the requirements for injunctive relief to enjoin Respondents from enforcing the Dissolution Bill against VVEDA, and it was an abuse of discretion to sustain Respondents' Demurrer thereto.

G. VVEDA'S COMPLAINT SET FORTH A VALID CAUSE OF ACTION FOR WRIT OF MANDATE

Where a Complaint makes a showing of (1) a clear, present, and ministerial duty on the part of the respondent, and (2) a clear, present, and beneficial right of the Plaintiff, and no other adequate remedy is available, the petitioner is entitled to a writ of mandate as a "matter of right" and it is abuse of discretion to deny the writ. (*Williams v. Stockton* (1925) 195 Cal. 743, 749.)

The Complaint alleged that Respondents are wrongfully and unlawfully applying the Dissolution Bill to VVEDA. (JA, Vol. 1, P. 61.) Appellant alleged that VVEDA is a Joint Powers Authority not subject to the Dissolution Bill, as it is neither a redevelopment agency nor a redevelopment agency component of a community development commission as contemplated under Section 34172(a)(1) . (JA, Vol. 1, P. 51-52.) The Complaint alleges that VVEDA is entitled to continue to receive benefits which were given to it by the Legislature in order to comply with federal law. (JA, Vol. 1, P. 63.) The Complaint further alleged that without redevelopment powers, VVEDA's ability to generate jobs and tax revenues in order to sustain the local communities will fail. (JA, Vol. 1, P. 61.) VVEDA was clear that no adequate remedy is available (JA, Vol. 1, P. 62-63.) Because these allegations were to be considered true for the purposes of a demurrer, VVEDA undoubtedly satisfied the requirements for the granting of a writ, and the Demurrer should have been overruled.

H. SOUND PUBLIC POLICY DICTATES ALLOWING VVEDA TO CONTINUE EXISTING AND OPERATING.

As VVEDA's Complaint illustrated, it is clear that the VVEDA is getting short-changed. As the facts show, VVEDA created a Redevelopment Plan to effectuate the reuse of the former GAFB, in accordance with BCRA, over the *long term*, utilizing tax increment

revenues for a period of forty-five years. Federal agencies relied on that Plan, and entrusted VVEDA with the obligations of carrying out that Plan. Now, barely twenty years into that time frame, either the law is being grossly misapplied, or the State Legislature has changed its mind. ***In simple terms, either way, this is unfair.*** If applied to VVEDA, the Dissolution Bill robs VVEDA, mid-way through carrying out its Redevelopment Plan, of its existence and primary financial resource. It is clear that either a gross injustice is being effectuated as Respondents attempt to apply this legislation to VVEDA, or the State Legislature carelessly drafted the Dissolution Bill creating this unintended and wrongful result.

VI. CONCLUSION

Appellant respectfully requests this Court to reverse the lower court's decision. On appeal from the sustaining of a demurrer, the appellate court must decide whether there is ***any reasonable possibility*** that the defect can be cured by amendment. ***If it can, the trial court has abused its discretion, and the appellate court must reverse.*** (*Blank v. Kirwan*, at 318.) As shown herein, VVEDA alleged more than sufficient facts in its Complaint to set forth valid causes of action for declaratory relief, injunctive relief, and a writ of mandate. Appellant further reemphasizes that a general demurrer to a cause of action for declaratory relief must be

overruled as long as an actual controversy is alleged. The pleader need not establish it is entitled to a favorable judgment. Therefore, the lower court absolutely abused its discretion when it sustained Respondents' Demurrer, particularly without leave to amend. At the very least, Appellant asks this Court for the right to amend its Complaint in order to cure any potential defect this Court finds.

Dated: 14th of May, 2013

Respectfully Submitted,
GREEN, DE BORTNOWSKY & QUINTANILLA, LLP

Andre de Bortnowsky

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 9,008 words, including footnotes. In making this certification I have relied on the word count of the computer program used to prepare this brief.

Dated: 14th of May, 2013

Respectfully Submitted,
GREEN, DE BORTNOWSKY & QUINTANILLA, LLP

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PROOF OF SERVICE

Victor Valley Economic Development Authority v. State of California, et al.
Court of Appeal Case No.: C072515
Sacramento County Superior Court Case No. 34201280001113CUWMGDS

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of 18, employed in the County of Los Angeles and not a party to the within action. My business address is 23801 Calabasas Road, Suite 1015, Calabasas, California 91302.

On May 14, 2013, I served the foregoing document described as **OPPENING APPELLATE BRIEF**, on the parties in this action, by placing a true and correct copy thereof, enclosed in a sealed envelope addressed as follows: **[SEE ATTACHMENT]**

[ ] BY MAIL
I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Calabasas, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[X] BY FEDERAL EXPRESS
I served the foregoing document described above on the parties in this action, by placing a true and correct copy thereof in the Federal Express overnight service location at 23801 Calabasas Road, Calabasas, California, said location being a Federal Express pick-up station regularly maintained, all charges thereon for overnight delivery fully prepaid, addressed as follows: [SEE ATTACHED LIST]

[ ] BY FAX
Using facsimile machine telephone number: (818)704-4729, transmitting to the following:
[SEE ATTACHED LIST]
The facsimile machine I used complied with California Rules of Court, Rule 2003, and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

[ ] BY PERSONAL SERVICE
I delivered such envelope by hand to the offices of the addressee.

[X] (State) I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the

bar of this court at whose direction the service was made.

Executed May 14, 2012, at Calabasas, California.

SHARON L. KAISERMAN

ATTACHMENT TO PROOF OF SERVICE

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ATTACHMENT TO PROOF OF SERVICE

Victor Valley Economic Development Authority v. State of California, et al.
Court of Appeal Case No.: C072515
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