

1 Raychele B. Sterling, Esq. SBN 190881
2 LAW OFFICES OF RAYCHELE B. STERLING
3 P.O. Box 2769
4 Riverside, CA 92516

5 rbsterlinglaw@gmail.com

6 Attorney for Petitioner/Plaintiff

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 28 2016

E. OLIVAS

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF RIVERSIDE

11 RICHARD OLQUIN, an individual)

12 Petitioner and Plaintiff)

14 v.)

15 CITY OF RIVERSIDE AND THE CITY)
16 COUNCIL OF THE CITY OF)
17 RIVERSIDE; and DOES 1-10)

18 Respondents and Defendants.)
19 _____)

Case No.: **RIC 1605106**

VERIFIED PETITION FOR WRIT
OF MANDATE (CCP §1085); AND
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(CCP §1060, §526)

PETITION FOR WRIT OF
MANDATE - Adoption and Imposition
of Taxes in Violation of California
Constitution Article XIII C §1(a)(e)(2)
and §2(b)(d).

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF - Adoption
and Imposition of Taxes in Violation of
California Constitution Article XIII C
§1(a)(e)(2) and §2(b)(d).

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF - Imposition
of Penalty Provisions of Government Code
§53728.

1 Petitioner/Plaintiff Richard Olquin alleges as follows:

2 **I.**

3 **INTRODUCTION**

- 4
- 5 1. Petitioner/Plaintiff brings this action to compel Respondent/Defendant CITY OF
- 6 RIVERSIDE (“CITY”) to comply with California Proposition 26, codified in Article XIII
- 7 C of the California Constitution. Specifically, Petitioner/Plaintiff seeks to enjoin CITY
- 8 from transferring any funds collected as electric utility charges to CITY’s general fund.
- 9
- 10 Petitioner/Plaintiff also requests that CITY be ordered to restore to the electric utility fund,
- 11 all prior illegal transfers since May 1, 2013.
- 12

13 **II.**

14 **PARTIES**

- 15 2. Petitioner/Plaintiff Richard Olquin is a disabled citizen residing in the City of Riverside,
- 16 who at all times pertinent herein holds an account with Riverside Public Utilities to pay for
- 17 current and ongoing charges for electric services. Petitioner/Plaintiff Richard Olquin has an
- 18 interest in advocating fair, reasonable and lawful electric rates for himself and generally for
- 19 all rate payers in the City of Riverside, particularly the poor, elderly and disabled who are
- 20 most adversely impacted.
- 21
- 22
- 23 3. Respondent/Defendant CITY OF RIVERSIDE (hereafter referred to as CITY or
- 24 Respondent or Defendant) was and is at all times mentioned herein a California charter city
- 25 and municipal corporation located in the County of Riverside. Riverside Public Utilities
- 26 referred to herein as “RPU” is a department of CITY and has no separate legal identity
- 27 from CITY. References herein to “RPU” (for convenience or clarity) are references to
- 28

1 Respondent/Defendant CITY.

2 4. Respondent/Defendant CITY COUNCIL OF THE CITY OF RIVERSIDE (hereafter
3 referred to as the COUNCIL), is and at all times herein mentioned was, the resident
4 legislative body of officials in the City of Riverside with the authority to adopt
5 resolutions/and or ordinances establishing rates, fees and charges for CITY electric
6 services, and approve recommendations regarding the methodology utilized to calculate
7 such rates, fees and charges, in particular the Electric General Fund Transfer.
8
9

10 5. Petitioner/Plaintiff is unaware of the true names and capacities of Respondents/Defendants
11 sued herein as DOES 1 through 10, inclusive, and therefore sue those
12 Respondents/Defendants by such fictitious names. Petitioner/Plaintiff is informed and
13 believes, and thereon alleges, that each of the fictitiously named Respondents/Defendants is
14 in some manner responsible for the acts, violations, and injuries alleged herein.
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16 Petitioner/Plaintiff will amend this complaint to allege the true names and capacities of the
17 fictitiously-named Respondents/Defendants when the same have been ascertained.
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19 6. Petitioner/Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, each of the Respondents/Defendants was the agent, employee, representative,
21 partner, joint venturer, and/or alter ego of each of the other Respondents/Defendants and, in
22 doing the things alleged herein, was acting within the course and scope of such agency,
23 employment, representation, on behalf of such partnership or joint venture, and/or as such
24 alter ego, with the authority, permission, consent, and/or ratification of each of the other
25 Respondents/Defendants.
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III.

GENERAL ALLEGATIONS

7. CITY owns an electric utility which is operated by RPU and overseen by its Board of Public Utilities. According to the 2015 Riverside Public Utilities audited Financial Report, Note 1 (hereafter, "Note 1"), the electric utility exists under, and by virtue of, the City of Riverside Charter ("Charter") enacted in 1883, and is responsible for the generation, transmission, and distribution of electric power for sale in the City. A true and correct copy of Note 1 is attached hereto as Exhibit "A" and incorporated herein by reference.
8. Pursuant to the authority granted under Charter §1204, CITY has engaged in the practice of transferring up to 11.5% of the electric utility's "gross operating revenues" to the CITY's general fund. This transfer is referred to as the Electric General Fund Transfer ("Electric GFT"). The funds transferred are not earmarked or designated for any specific purpose (i.e. for reimbursement of shared costs), but instead are used for general governmental purposes.
9. The Charter does not provide a definition of "gross operating revenues" for the purpose of calculating the Electric GFT. However, prior to 2013, RPU had historically defined "operating revenues" as: 1) retail sales net of bad debt and 2) other operating revenue; exclusive of Transmission Revenue Requirement (TRR) revenues. In addition, Note 1, referenced above, defines "operating revenues" as those which generally result from providing services and producing and delivering goods in connection with RPU's principal ongoing operations. The principal operating revenues are charges to customers for electric sales and services. All revenues not meeting this definition are reported as non-operating

1 revenues. RPU and CITY have routinely classified the TRR as non-operating revenue, as
2 is demonstrated in the calculations set forth in the RPU Memoranda of Final General Fund
3 Transfer Amounts for Fiscal Years 2003-2012, where the TRR is completely separate from
4 Total Operating Revenues. True and correct copies of the Memoranda are attached hereto
5 as Exhibit "B" and incorporated herein by reference.
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- 7
8 10. CITY is a Participating Transmission Owner ("Participating TO") in the California
9 Independent System Operator ("CAISO") system and is paid a TRR for its transmission
10 costs by the CAISO, by way of CAISO's collection of a Transmission Access Charge
11 ("TAC") from all users of the CAISO grid. The TAC is a formula rate based on the TRRs
12 of all Participating TOs. Rate changes that impact the CAISO TAC must be approved by
13 the Federal Energy Regulatory Commission ("FERC").
14
- 15 11. The TRR is a cost pass-through designed to allow RPU to recover its transmission costs in
16 return for handing over control of its electric transmission facilities to the CAISO as part of
17 the wholesale electric market deregulation in the early 2000's.
18
- 19 12. Despite its consistent characterization of the TRR as non-operating revenue in internal
20 CITY documents, RPU has consistently misrepresented its TRR to the FERC by including
21 an Electric GFT in its filings to obtain additional funds from CAISO market participants.
22
- 23 13. In 2002, RPU petitioned the FERC to establish its TRR and sought inclusion of an
24 additional 9% of its transmission costs in the TRR for its Electric GFT. Pacific Gas and
25 Electric (PG&E) intervened in the proceeding and argued that §1204 of the Charter applied
26 to Riverside ratepayers and did not extend to CAISO's other market participants, which
27 included PG&E. RPU's retained expert, Albert E. Clark, of Fred Saffer & Associates, Inc.,
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1 argued that Riverside prefers to recover all of its actual out of pocket costs and include the
2 GFT in the TRR as a proxy for a return allowance. In essence, the Electric GTF represents
3 a return on investment to Riverside residents that is akin to the returns paid by CAISO
4 users to other investor owned utilities' shareholders.
5

6 14. The argument raised by PG&E is consistent with §1200 of the Charter which creates the
7 Department of Public Utilities to manage and control all aspects of "supplying the City and
8 its inhabitants with such utilities." The Charter never contemplated supplying customers
9 outside the CITY's boundaries.
10

11 15. In lieu of proceeding to a hearing on the issues, the parties entered into an uncontested
12 settlement agreement certified by the FERC wherein CITY received \$17,500,000.00 as its
13 TRR, commonly referred to by RPU as a "black box settlement" to settle all issues.
14 According to RPU internal documents, \$856,947.00 of the settlement was determined to
15 represent the CITY's return on investment to be included in the Electric GFT.
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18 16. This process repeated itself in 2009 and 2011, when RPU sought an additional 11.5% of its
19 transmission costs in the TRR for its Electric GFT. In 2009, CITY received a
20 \$21,404,508.00 black box settlement, of which \$1,095,990.00 was deemed to be the
21 CITY's return on investment to be included in the Electric GFT. In 2011, CITY received a
22 \$28,374,324.00 black box settlement, of which \$1,040,617.00 represented the CITY's
23 return on investment to be included in the Electric GFT.
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26 17. None of the settlement agreements entered into by CITY and certified by the FERC
27 validated the inclusion of the CITY's Electric GFT in the TRR. In fact, all agreements
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1 contained a provision making them non-precedential with respect to any future proceeding
2 before the FERC or any court or other forum for the purpose of supporting or opposing any
3 specific approach to any issue.
4

5 18. On November 2, 2010, the voters of the State of California approved the initiative measure
6 known as Proposition 26 to eliminate the imposition of “hidden taxes” imposed by state
7 and local legislators who sought to bypass the voter approval requirements of the California
8 Constitution. A true and correct copy of the voter pamphlet information is attached hereto
9 as Exhibit “C” and incorporated herein by reference.
10

11 19. Proposition 26 amended Article XIII C of the California Constitution to place significant
12 limitations on the ability of local governments to raise, extend or impose charges for
13 government services or products. In particular, Proposition 26 added a new section 1(e)
14 which defined “tax” to mean any levy, charge, or exaction of any kind imposed by a local
15 government, with seven (7) listed exceptions. Among those exceptions is section 1(e)(2),
16 which provides that a charge is exempt from the voter approval requirement for taxes only
17 if the charge for the government service or product “does not exceed the reasonable cost to
18 the local government of providing the service or product.”
19

20 20. Proposition 26 further amended California Constitution Article XIII C to provide that the
21 local government bears the burden of proving by a preponderance of the evidence that the
22 charge is not a tax and that it is no more than necessary to cover the reasonable costs of the
23 governmental activity.
24
25

26 21. Proposition 26 is further subject to the definitions created by the Proposition 218
27 Omnibus Implementation Act codified in Government Code § 53750. More specifically,
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1 §53750(h)(1) which defines an “increase” to include an increase in the rate or revision of
2 the methodology used to calculate the tax, assessment, fee or charge.

3
4 22. On December 17, 2013, during a regularly scheduled City Council Meeting, the
5 COUNCIL approved a recommendation brought forth by the CITY’s Finance Department
6 to revise the methodology used to calculate the Electric GFT in order to increase the
7 amount transferred to the general fund retroactively to July 1, 2012. A true and correct
8 copy of the City Council Memorandum for this item is attached hereto as Exhibit “D” and
9 incorporated herein by reference. The increase was needed so that the general fund could
10 pay the first \$3.3 million installment of a \$10 million litigation settlement related to the
11 Water General Fund Transfer (“Water GFT”). Under the revised methodology, the CITY
12 would, for the first time, include the TRR as operating revenue and would transfer 11.5%
13 of the entire TRR to the general fund. The revised methodology is shown in the
14 calculations set forth in the RPU Memoranda of Final General Fund Transfer Amounts for
15 Fiscal Years 2013-2015, where the TRR is included in Total Operating Revenues. True
16 and correct copies of the Memoranda are attached hereto as Exhibit “E” and incorporated
17 herein by reference.
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22 23. Prior to the COUNCIL’s approval of the revised methodology, the CITY had calculated
23 the Electric GFT by transferring 11.5% of its gross operating revenue to the general fund,
24 excluding the TRR. In addition, in violation of Charter §1204, the CITY also transferred
25 non-operating revenue in the form of the return on investment portion of the black box
26 settlements to the general fund. While this violated the Charter, it did not trigger
27 Proposition 26, as a new or increased tax was not imposed on the electric utility rate payers
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1 by the transfer of the return on investment funds.

2 24. Under the revised methodology adopted by the COUNCIL, the tax imposed upon electric
3 utility ratepayers was increased, as electric utility ratepayer funds in the form of reserves
4 were utilized to satisfy the remainder of the 11.5% transfer not paid by the return on
5 investment portion of the 2011 black box settlement.
6

7 25. The COUNCIL's action of approving the recommendation to revise the methodology by
8 which the transfer is calculated to increase the Electric GFT, resulted in an expansion of the
9 Electric GFT and an increase in the tax imposed upon electric utility ratepayers. This
10 increase served to forfeit CITY's grandfathered pre-Proposition 26 Electric GFT, and
11 triggered the 2/3 voter approval requirements of Proposition 26 for the entire Electric GFT.
12 Plaintiff/Respondent contends that all transfers since May 1, 2013 and all future transfers,
13 are subject to the approval of the voters under the mandate of Proposition 26. It is
14 estimated that approximately \$115,046,399.50 has been transferred from the electric utility
15 to the general fund since May 1, 2013.
16
17
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19 26. The Electric GFT has been a subject of controversy in the CITY for many years. Since the
20 Electric GFT inflates RPU electric rates without regard to the cost of service, the CITY
21 overcharges all RPU customers, and it causes/contributes to the economic and personal
22 hardship suffered by customers who struggle to pay their electric bills, particularly the
23 elderly, poor and disabled. Despite consistent protest by rate payers and community action
24 groups that the Electric GFT is subject to the voting requirements of Proposition 26, the
25 CITY and its COUNCIL continue to contend that the Electric GFT is legal and that its rates
26 are competitive with the rates imposed by other California cities.
27
28

1 27. As a direct consequence of the revised methodology and the increase in the Electric GFT,
2 CITY is charging its utility customers higher charges and fees than it would otherwise be
3 required to charge. In other words, the electric utility fees CITY imposes exceed the
4 reasonable costs to CITY of providing the electric utility services.
5

6 **IV.**

7 **FIRST CAUSE OF ACTION**
8 **Petition for Writ of Mandate**
9 **C.C.P. § 1085**
10 **(Against All Respondents)**

11 28. Petitioner hereby incorporates by reference each of the preceding allegations as though
12 fully set forth therein.

13 29. Petitioner alleges: that the Electric GFT is unconstitutional, invalid, and void, on the
14 grounds that it was increased after the passage of Proposition 26 and adopted in violation of
15 Article XIII C of the California Constitution.
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17 30. That the Electric GFT is purely a device for collection of revenue from the RPU rates, so
18 that the revenue may be transferred to the CITY general fund.
19

20 31. That the Electric GFT is not attributable to any costs incurred by RPU or CITY for electric
21 service, and that it violates Article XIII C 1(a)(e)(2) in that the charge exceeds the
22 reasonable costs to the CITY/RPU of providing the service or product and therefore is a
23 “tax”.
24

25 32. That the Electric GFT is a “general tax” insofar as it is deposited in the CITY general fund
26 and is used for general governmental purposes.

27 33. That the Electric GFT was not submitted to the voters for approval as a “tax” as required
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1 by California Constitution Article XIII C §2(b)(d) and Government Code §53723.

2 34. Respondents refuse and continue to refuse to comply with California Constitution Article
3 XIII C §1(a)(e)(2) and §2(b)(d). Specifically, they charge electric utility fees that exceed
4 the cost of providing electric services, and use revenues generated from electric users to
5 illegally fund CITY's general fund, which is used for general governmental services.
6

7 35. Petitioner has no plain, speedy, or adequate remedy at law. Petitioner will be irreparably
8 harmed unless the court exercises its equitable jurisdiction to enter a judgment and issue a
9 writ of mandate to order Respondent to comply with the substantive and procedural
10 directives of California Constitution Article XIII C §1(a)(e)(2) and §2(b)(d), as well as
11 Government Code §53723; and to provide such other equitable relief as will make
12
13 Petitioner whole and as the court deems proper.
14

15 36. Prosecution of this action will result in the enforcement of important rights affecting the
16 public interest, for which Petitioner will be entitled and shall seek an award of attorney's
17 fees pursuant to CCP §1021.5.
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19 37. Accordingly, Petitioner is entitled to a writ of mandate pursuant to C.C.P. § 1085 as
20 specified more fully below.
21

22 V.

23 **SECOND CAUSE OF ACTION**
24 **Declaratory and Injunctive Relief**
25 **(Against All Defendants)**

26 38. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully
27 set forth herein.

28 39. An actual, present, and substantial controversy exists between Plaintiff and Defendants in

1 that Plaintiff contends that Defendants have violated and will continue to violate California
2 Constitution Article XIII C §1(a)(e)(2) and §2(b)(d).

3
4 40. Defendants contend that they have complied, and will continue to comply with these
5 Constitutional provisions.

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7 41. Plaintiff desires a declaration as to the validity and enforceability of the Electric GFT and
8 the Constitutional and legal issues raised in connection therewith. A judicial declaration is
9 necessary and appropriate at this time so that Plaintiff may determine his ongoing rights
10 and obligations with respect to the validity of the Electric GFT that rate payers are subject
11 to pay indefinitely into the future.

12
13 42. Plaintiff has no adequate remedy at law for the dispute and controversy as alleged herein.
14 Further, Plaintiff will suffer irreparable harm if the unlawful Electric GFT is imposed on
15 Plaintiff into the future. To prevent such harm it is necessary for the Court to issue its
16 Order and Final Judgment enjoining and restraining Defendants from enforcing the Electric
17 GFT against Plaintiff.
18

19 **VI.**

20 **THIRD CAUSE OF ACTION**
21 **Declaratory Relief – Proposition 62**
22 **Reduction in Property Tax Allocation (GC §53728)**
23 **(Against All Defendants)**

24 43. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully
25 set forth herein.

26 44. Plaintiff alleges that the revision of the methodology utilized to calculate the Electric GFT
27 to increase the amount transferred to the CITY's general fund, without first submitting the
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1 matter to the voters for approval as a tax, created and imposed an unlawful "tax" in
2 violation of Article XIII C of the California Constitution and "Proposition 62" (added by
3 initiative measure November 4, 1986; at Government Code §53720-§53730).

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5 45. Plaintiff also alleges that the Electric GFT is a general tax and was not put before the
6 voters for prior approval as required by Government Code §53723.

7
8 46. Plaintiff further alleges that, as a consequence of the Defendants' violation of Government
9 Code §53730, the CITY is subject to and bound by the provisions of Government Code
10 §53728 requiring a dollar for dollar reduction in the amount of property tax revenue
11 allocated to the CITY pursuant to Chapter 6 of part 0.5 of Division 1 of the Revenue and
12 Taxation Code. The exact amount of unlawful taxes for which the CITY would be subject
13 to the provisions of Government Code §53728 is not known at this time, and will be subject
14 to further proof and full disclosure and accounting by Defendant CITY upon trial of the
15 matter, but it is estimated that it would be equal to the amount of the unlawful transfer
16 since May 1, 2013, which is approximately \$115,046,399.50 and increasing with the
17 further collection of unlawful taxes in the RPU rates.

18
19
20 47. An actual controversy has arisen and now exists between Plaintiff and Defendants
21 concerning their respective rights and duties, in that Plaintiff contends that the revision of
22 the methodology utilized to calculate the Electric GFT to increase the amount of the
23 transfer to the CITY's general fund levies unlawful "taxes" by imposing RPU rates that are
24 in excess of the reasonable cost of providing services, due to the unlawful transfer of
25 revenues to the CITY's general fund; and that CITY is subject to the provisions of
26 Proposition 62 (Government Code §53723 and §53728).
27
28

1 48. Plaintiff desires a judicial determination of his rights and duties, and a declaration as to
2 whether Defendant CITY is subject to and bound by the provisions of Government Code
3 §53728, and in what amount.
4

5 49. A judicial declaration is necessary and appropriate at this time, under the facts and
6 circumstances herein before alleged, in order that the rights and duties of Plaintiff and all
7 other citizens, rate payers and tax payers of the City of Riverside, may be ascertained and
8 finally determined by the Court. Government Code §53728 is the only express provision of
9 law that gives local government an incentive to take care and caution in the imposition of
10 fees so as to collect them only with proper legal authority and to avoid over-collection of
11 excess fees which constitute unlawful taxes. Defendant CITY will continue to overcharge
12 and collect excessive and arbitrary fees with impunity unless and until it is given an
13 incentive to take requisite care and caution, by judicial determination and application of
14 Government Code §53728.
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18 **PRAYER FOR RELIEF**

19 WHEREFORE, Petitioner/Plaintiff prays for judgment as follows:

20 **ON THE FIRST CAUSE OF ACTION AS TO ALL RESPONDENTS**

21 For judgment and issuance of a writ of mandate directing Respondents to cease any and
22 all transfers of electric utility funds to CITY's general fund and restore to the electric utility all
23 previously transferred funds since May 1, 2013.
24

25 **ON THE SECOND CAUSE OF ACTION AS TO ALL DEFENDANTS**

26 For a judgment declaring that Defendants' practices have violated and will continue to
27 violate California Constitution Article XIII C §1(a)(e)(2) and §2(b)(d); and
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1 For issuance of a permanent injunction restraining and enjoining Defendants from
2 transferring any electric utility funds to the City of Riverside's general fund.

3 **ON THE THIRD CAUSE OF ACTION AS TO ALL DEFENDANTS**

4
5 For a judgment decreeing and declaring that Defendant CITY is subject to and bound by
6 the provisions of Government Code §53728 for dollar-for-dollar reductions in property tax
7 subventions, in the amount of the unlawfully imposed taxes levied by the Electric GFT, and
8 subsequent increase to the CITY's general fund, as found by the Court upon proof of the matter.
9

10 **ON ALL CAUSES OF ACTION AS TO ALL RESPONDENTS/DEFENDANTS**

- 11 1. For attorney's fees and costs, including those recoverable pursuant to California Code
12 of Civil Procedure § 1021.5; and
13
14 2. For such other relief as the Court deems necessary and proper.

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16 DATED: April 28, 2016

LAW OFFICES OF RAYCHELE B. STERLING

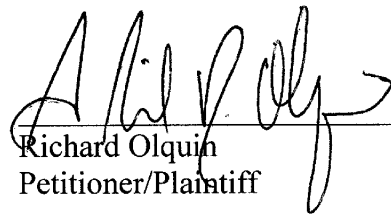
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20 Raychele B. Sterling, Esq.
21 Attorney for Petitioner/Plaintiff
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VERIFICATION

I have read the forgoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know the contents thereof. The matters stated therein are true and correct of my own knowledge.

I declare under penalty of perjury under the laws of the United States and of the State of California that the forgoing is true and correct.

Executed on April 28, 2016 in Riverside, California.



Richard Olquin
Petitioner/Plaintiff

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