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Attorneys for Defendants CITY OF SAN JOSE, CITY COUNCIL OF THE CITY OF SAN JOSE, REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE and the DIRIDION DEVELOPMENT AUTHORITY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

UNLIMITED JURISDICTION

STAND FOR SAN JOSE; EILEEN HANNON, Petitioners and Plaintiffs, v. CITY OF SAN JOSE, CITY COUNCIL FOR THE CITY OF SAN JOSE, REDEVELOPMENT AGENCY FOR THE CITY OF SAN JOSE, DIRIDON DEVELOPMENT AUTHORITY, and DOES 1 through 10, inclusive, Respondents and Defendants. ATHLETICS INVESTMENT GROUP LLC, DOES 11 through 20, inclusive Real Parties in Interest.	**Case Number: 1-11-CV-214196** **EX PARTE APPLICATION TO SHORTEN TIME TO NOTICE A MOTION TO CONTINUE THE TRIAL DATE IN THE WITHIN MATTER** DATE: May 14, 2014 TIME: 9:00 A.M DEPT: 21

APPLICATION FOR ORDER SHORTENING TIME TO NOTICE A MOTION TO CONTINUE THE TRIAL DATE IN THE WITHIN MATTER

Respondent, CITY OF SAN JOSE, hereby applies for an order to shorten the time for hearing a motion to continue the trial date in the within matter so that the motion to

continue can be heard on May 19, 2014 at 9:00 a.m. in Department 21 of this Court pursuant to service on May 14, 2014.

Good cause to shorten time for hearing the motion exists because a conflict of interest has arisen for defense counsel in that the Successor Agency Oversight Board has requested separate legal representation and a trial date presently is set for August 8, 2014 with a pre-trial briefing schedule that required Plaintiffs to file their brief on May 14, 2014, which date this Court has extended until after it rules on this motion to continue the trial date.

The memorandum of points and authorities and declaration of Ardell Johnson, below, support this application.

MEMORANDUM IN SUPPORT OF APPLICATION TO SHORTEN TIME TO NOTICE A MOTION TO CONTINUE THE TRIAL DATE

Defendants bring this application to shorten the time for the Court to hear an urgent motion to continue the trial date. The motion is necessary because on May 2, 2014, the Successor Agency Oversight Board voted to seek independent representation. Trial in this matter is set for August 8, 2014. Because the Oversight Board is a public agency, it must select new counsel through a competitive bidding process. Under the current schedule, Plaintiffs' opening brief was due May 14, 2014, Defendants' responding brief on June 18 and Plaintiffs' reply on July 9. The competitive bid process, which includes preparing a request for proposal, evaluation of proposals and interviewing candidates, and selecting counsel, will likely require at least 60 days, excluding July when the City Council and Oversight Board are not in session. It is doubtful the Oversight Board will, or even can, engage new counsel before the August 8 trial date, or in time to participate in defending Plaintiff's claims.

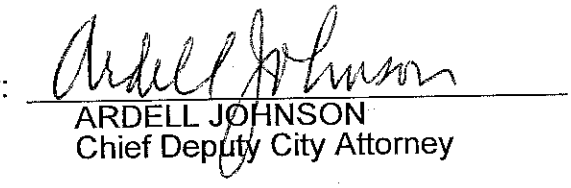
Therefore, Defendants ask the Court to shorten time for notice to hear Defendants' motion to continue the trial date on May 19, 2014. Plaintiff received notice of the Oversight Board's action on May 2, 2014 and Defendants' need to continue the trial date.

As a result Plaintiff obtained an ex parte order that postponed service of its opening brief, so no prejudice has or will accrue to Plaintiff by hearing Defendants' motion on shortened notice.

Respectfully submitted,

Dated: May 13, 2014

RICHARD DOYLE, City Attorney

By: 
ARDELL JOHNSON
Chief Deputy City Attorney

Attorneys for Defendant
CITY OF SAN JOSE

DECLARATION OF ARDELL JOHNSON IN SUPPORT OF EX PARTE APPLICATION TO SHORTEN TIME TO NOTICE A MOTION TO CONTINUE THE TRIAL DATE

1. I am licensed to practice law in the State of California. I am a Chief Deputy City Attorney in the Office of the City Attorney, which represents the City of San Jose, the City Council of the City of San Jose, the Successor Agency to the Redevelopment Agency of the City of San Jose and the Diridon Development Authority in the within action. I have personal knowledge of the matters stated in this declaration. If called as a witness I would testify competently to the matters stated in this declaration.

2. On May 2, 2014, I sent an email to Plaintiffs' counsel, Blaine Greene, and counsel for the Real Party in Interest, Geoff Robinson, informing them the Oversight Board for the Successor Agency had voted to seek a new independent counsel to represent them in this lawsuit and asking if they would stipulate to continue the trial date.

3. Mr. Greene informed me on May 5, 2014, he would not stipulate to a continuance.

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4. Due to work-related travel, I was out of the office from May 7 through May 9 and could not prepare the pleadings to bring this application until this week (the week of May 12).

5. Exhibit A to this declaration is a true copy of an email string that contains the aforementioned foregoing communications.

6. An order shortening time to hear Respondents' motion to continue the trial date is necessary because the Oversight Board's decision to seek independent counsel precludes the City Attorney's Office from representing the Oversight Board going forward, and it is doubtful the Oversight Board will have new counsel in place in time to prepare a brief on the Oversight Board's behalf or represent it on the merits of Petitioners' claims at trial.

7. I provided 24 hours' notice of this ex parte application to Mr. Greene and Mr. Robinson by email, a copy of which is attached as Exhibit B to this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in San Jose, California.

Dated: May 13, 2014

ARDELL JOHNSON

Johnson, Ardell

From: Green, Blaine I. <blaine.green@pillsburylaw.com>
Sent: Monday, May 05, 2014 2:47 PM
To: Johnson, Ardell; grobinson@perkinscoie.com
Cc: Doyle, Richard; Frimann, Nora; Van Buskirk, Ronald E.; Sussman, Marne S.
Subject: RE: Today's Oversight Board meeting

Ardell,

The Oversight Board was named as a defendant-respondent when the *SFSJ II* suit was filed in July 2013—more than 9 months ago—and our trial date of August 8 has been in place since February of this year. In March 2014, all parties *including* the Oversight Board stipulated to a briefing schedule, pursuant to which petitioners' opening trial brief is due 9 days from today. In these circumstances and at this late date, we cannot stipulate to a continuance that would substantially delay the trial set for August 8.

If you wish to file a motion for continuance, we will stipulate to having the motion heard on shortened notice—and/or we will not oppose such application being considered on an *ex parte* basis—so long as the motion or application is heard *by this Friday*, which is normally Judge Huber's motion day. As you know, our opening brief is due on Wednesday, May 14, so this matter must be heard and decided as soon as possible to avoid prejudice caused by the timing of your request on the eve of our opening brief.

We look forward to your prompt reply.

--Blaine

Blaine Green | Partner
Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111-5998
t 415.983.1476 | f 415.983.1200

From: Johnson, Ardell [mailto:Ardell.Johnson@sanjoseca.gov]
Sent: Friday, May 02, 2014 2:48 PM
To: Green, Blaine I.; grobinson@perkinscoie.com
Cc: Doyle, Richard; Frimann, Nora
Subject: Today's Oversight Board meeting

Blaine, Geoff,

This afternoon the Oversight Board decided it needs to engage independent counsel in the SFSJ litigation. I've been instructed to seek a continuance so the Board can get counsel in place. The Board instructed staff to issue an RFP. The best estimate is it will take about 60 days to complete the process and get new counsel on board. Before I make a motion to continue the hearing, I thought I'd see if we can reach a stipulation. Can we discuss this on a conference call early next week?

Ardell Johnson

Chief Deputy City Attorney

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Johnson, Ardell

From: Johnson, Ardell
Sent: Tuesday, May 13, 2014 8:02 AM
To: 'Green, Blaine I.'; 'grobinson@perkinscoie.com'
Cc: 'Van Buskirk, Ronald E.'
Subject: Notice of ex parte application

Blaine, Geoff,

This will serve as notice that I will appear tomorrow at 8:30 a.m. in Room 104 at Superior Court to make an ex parte application for an order shortening time for the Court to hear a motion to continue the August 8 trial date in *Stand For San Jose v. City of San Jose, et al.* , Case Nos. 113CV250372 and 111CV214196.

Ardell Johnson
Chief Deputy City Attorney
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