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10 and County Recorders Association of California

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

13 **GATEWAY BLVD HOLDINGS LLC,**

Case No. 22STCV21036

14 **Plaintiff,**

**APPLICATION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF AND PROPOSED
AMICUS CURIAE BRIEF BY CALIFORNIA
STATE ASSOCIATION OF COUNTIES AND
COUNTY RECORDERS ASSOCIATION OF
CALIFORNIA IN SUPPORT OF
DEFENDANTS STATE OF CALIFORNIA
OFFICE OF THE CONTROLLER MOTION
FOR JUDGMENT ON THE PLEADINGS**

15 **v.**

16 **STATE OF CALIFORNIA OFFICE OF
17 THE CONTROLLER, et al.**

18 **Defendants.**

19 Hearing Date: November 2, 2023
20 Time: 1:45 p.m.
21 Location: Dept. 11
22 Judge: Hon. David S. Cunningham III
23 Trial Date: Not Scheduled
24 Action Filed: June 28, 2022

25 The California State Association of Counties (CSAC) and County Recorders' Association
26 of California (CRAC) request permission to submit the attached amicus brief in support of
27 Defendant State of California Office of the Controller's Motion for Judgment on the Pleadings in
28 the above-entitled matter.

**AUTHORITY OF THE TRIAL COURT
TO GRANT LEAVE FOR FILING OF AMICUS BRIEF**

Amicus briefs are ordinarily considered in appellate courts in accordance with California
Rules of Court, rules 8.200(c) and 8.487(e). However, an amicus brief may be filed in a matter
pending in Superior Court at the court's discretion. *See CEB, California Civil Appellate*

1 *Practice*, § 14.50 B. See also *In re Veteran's Industries, Inc.* (1970) 8 Cal.App.3d 902, 924;
2 *People v. City of Long Beach* (1960) 183 Cal.App.2d 271, 276. The trial court has the inherent
3 power to adopt any suitable method of practice not prohibited by statute or rules adopted by the
4 Judicial Council. (Code Civ. Proc., § 187; *Citizens Utilities Co. v. Superior Court* (1963) 59
5 Cal.2d 805, 812-813; *In Re Amber S.* (1993) 15 Cal.App.4th 1260, 1265; see also, *NVG Gaming,*
6 *Ltd. v. Upstream Point Molate, LLC* (N.D.Cal. 2005) 355 F.Supp. 1061, 1066-1067 ["District
7 courts frequently welcome amicus briefs from non-parties concerning legal issues that have
8 potential ramifications beyond the parties directly involved or if the amicus has 'unique
9 information or perspective that can help the court beyond the help that the lawyers for the parties
10 are able to provide.'"]; *Cobell v. Norton* (D.D.C. 2003) 246 F.Supp.2d 59, 62 (quoting *Ryan v.*
11 *Commodity Futures Trading Comm'n* (7th Cir. 1997) 125 F.3d 1062, 1064.)

12 The application and proposed amicus brief are submitted in support of the motion for
13 judgment on the pleadings with sufficient time for the Plaintiff to fully brief any opposition it
14 may wish to assert with respect to the pending motion.

15 STATEMENT OF INTEREST

16 CSAC is a non-profit corporation. The membership consists of all 58 California
17 counties. CSAC sponsors a Litigation Coordination Program, which is administered by the
18 County Counsel's Association of California and is overseen by the Association's Litigation
19 Overview Committee, comprised of county counsels throughout the state. The Litigation
20 Overview monitors litigation of concern to counties statewide and has determined that this case
21 is a matter affecting all counties. This case came to the attention of county counsels as a result of
22 the service of a Deposition Subpoena for Production of Business Records by the plaintiff's
23 counsel on all 58 County Recorders.

24 CRAC is an unincorporated association affiliated with CSAC. The members of CRAC
25 are the County Recorders of all 58 California Counties¹. County Recorders are responsible for

26 _____
27 ¹ County Recorders in general law counties are usually elected county officers, per Gov. Code, §
28 24009 (a), although frequently combined with other county elected positions, such as the county
clerk, assessor, or auditor. Either through voter approval or county charter, the recorder's office
may be an appointed position. Under the Los Angeles County Charter, Dean C. Logan, the

1 recording and indexing documents required by California law, maintaining recorded documents,
2 and charging and collecting recording fees and other fees as required by law, including the
3 Documentary Transfer Tax and many other fees. Most pertinent to this litigation, County
4 Recorders are responsible for calculating the amount and collecting the fee required by
5 Government Code section 27388.1, enacted as part of the Building Homes and Jobs Act, (SB 2
6 (Atkins 2017); Stats 2017, Ch. 364), commonly referred to as the “SB 2 Housing Fee,” that is the
7 central dispositive issue in this case. CRAC publishes the 454-page Document Reference and
8 Indexing Manual (DRIM), last revised in 2022, as a training and reference manual for statewide
9 recording and indexing personnel in County Recorder’s offices. The DRIM includes a seven-
10 page section on the administration of the SB 2 Housing Fee. If authorized to file as an amicus in
11 the case, CSAC and CRAC will also seek to have the court take judicial notice of the DRIM SB
12 2 fee analysis, and corresponding online information provided by county recorder’s offices
13 explaining the calculation of SB 2 Housing Fees applicable to real estate transactions.

14 CSAC, CRAC and their constituent counties have a substantial interest in this litigation
15 as it addresses the relationship between the counties and the State of California in the
16 administration and disbursement of the SB 2 Housing Fee to support the development of
17 affordable housing throughout the state. Once the SB 2 Housing Fee is collected and remitted to
18 the State Controller, it is placed in a trust account that is allocated by the Legislature and
19 disbursed through the Department of Housing and Community Development for eligible
20 affordable housing projects and programs by cities and counties throughout the state in
21 accordance with a prescribed formula. At this late juncture none of the funds generated by the
22 SB 2 Housing Fee are available for belated claims for refunds of (mistakenly) alleged
23 overpayment.

24 This issue has statewide significance notwithstanding that it is pending in Superior Court
25 in Los Angeles County, based on an alleged error in calculating the appropriate amount of the
26 SB 2 Housing Fee involving a single transaction in Los Angeles County, in that it seeks class

27 _____
28 County Clerk/Recorder and Registrar of Voters is appointed by the elected County Board of
Supervisors.

1 action certification to recover alleged overpayment of SB 2 Housing Fees, potentially throughout
2 the State of California by multiple claimants, regardless of where the fee was collected.

3 No party or counsel for a party in this case authored any part of the accompanying amicus
4 curiae brief. No party or party's counsel made any monetary contribution to fund the preparation
5 of the brief. Counsel for Defendants have consented to the filing of this application and
6 proposed amicus brief. Counsel for Plaintiff has been advised of the application and filing of the
7 proposed brief with sufficient time before the hearing on the motion to dismiss to respond to the
8 law and argument set forth in the proposed amicus brief.

9 **ISSUES TO BE ADDRESSED BY PROPOSED AMICUS BRIEF**

10 As more fully addressed in the proposed amicus curiae brief below, the SB 2
11 Housing Fee is statutorily mandated to be calculated in an amount varying between
12 \$75.00 and \$225.00 based on the number of document titles to be recorded in association
13 with each non-exempt real estate transaction from and after January 1, 2018. This is
14 based on the language of Government Code section 27388.1 read *in peri materia* with
15 section 27361.1, first enacted in 1967.

16 The proposed brief will also provide additional background of the legislative
17 intent of the applicable statutory provisions with SB 2 and subsequent amendments and
18 will provide context to the court on how the SB 2 Housing Fee is designed so that various
19 government agencies work together to fund and develop affordable housing projects
20 throughout the State of California. At this juncture no funds are available to satisfy
21 Plaintiff's belated claims.

22 **CONCLUSION**

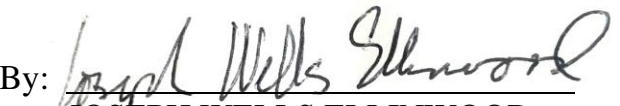
23 Because the decision in this case will have wide-reaching impact on counties and
24 county recorders, CSAC and CRAC request leave to submit the attached amicus curiae
25 brief for due consideration by this Court.

26 ///

27 ///

28 ///

1 DATED: September 25, 2023

2 By: 
3 JOSEPH WELLS ELLINWOOD
4 Attorney for Proposed Amicus Curiae
5 California State Association of Counties
6 and County Recorders Association of California
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1 I.

2 INTRODUCTION

3 Plaintiff Gateway Blvd Holdings, LLC (hereinafter “Plaintiff”) filed this action on June
4 28, 2022, alleging it had been overcharged by \$75.00 for the SB 2 Housing Fee mandated by
5 Government Code section 27388.1,² first enacted as Section 3 of SB 2 (Atkins, 2017), Stats.
6 2017, Ch. 364. Even though Plaintiff specifically alleged that the Los Angeles County
7 Recorder’s Office “improperly” charged and collected \$150.00 from Plaintiff in connection with
8 the recordation of a document entitled “Substitution of Trustee and Full Reconveyance” on July
9 14, 2021³, it did not name the Los Angeles County Recorder as a defendant, but instead alleges
10 that the only named defendant, the State of California Office of the Controller, and “DOES 1 –
11 200” have violated Section 27388.1 by overcharging the SB 2 Housing Fee. By this subterfuge
12 of failing to name and serve the party responsible for determining the amount of the fee to be
13 charged within the range of \$75.00 to \$225.00 specified by the statute, Plaintiff has so far
14 avoided putting at issue the central question in the case – how is the proper amount of the SB 2
15 Housing Fee to be determined?

16 As will be seen below, the Los Angeles County Recorder properly determined the
17 amount of the SB 2 Housing Fee for Plaintiff’s July 14, 2021 transaction fully in accordance
18 with the statute for calculating fees involving documents that combine two or more legal
19 instruments (in this case the two instruments are (1) a substitution of trustee with (2) a full
20 reconveyance), section 27361.1, to determine the specific amount of the SB 2 Housing Fee. As
21 specified in section 27388.1 (a)(1), the fee is \$75.00 for “every real estate instrument, paper, or
22 notice required or permitted by law to be recorded . . . per each single transaction per parcel of
23 real property . . . not to exceed \$225.00.” In this case, Plaintiff’s real estate transaction required
24 the recordation of two legal instruments combined in one document, hence the fee of \$150.00.

25 The State of California Office of the Controller (hereinafter “State Controller”) has a very

26 ² All further statutory references are to the Government Code unless otherwise indicated.

27 ³ First Amended Complaint (FAC), p. 2, ¶ 3; p. 3, ¶ 5; p. 5, ¶ 22

1 limited role in connection with the collection and administration of SB 2 Housing Fees,
2 analogous to a banker. It plays no role whatsoever (regulatory, supervisory or advisory) in a
3 county recorder's determination of the amount of the fee for any given real estate transaction. It
4 merely receives quarterly deposits from the 58 County Recorder's offices of the fees that have
5 been collected in each county during the previous quarter, and places them in the Building
6 Homes and Jobs Trust Fund to be allocated by the Legislature for the specific purposes specified
7 in Health and Safety Code section 50470, et seq. The funds are then to be allocated by the
8 Legislature and disbursed by the Department of Housing and Community Development to local
9 governments (cities and counties) to further the development and provision of affordable housing
10 throughout the State of California. The Office of State Controller has appropriately asserted in its
11 defense of this action its limited role in the administration of the Building Homes and Jobs Act,
12 but given that limited role, the party briefing does not provide the Court of the bigger picture on
13 the appropriate methodology for determining the proper amount of the SB 2 Housing Fee, and
14 appropriate remedies for any alleged overpayment. CSAC and CRAC respectfully submit this
15 amicus brief in support of the motion for judgment on the pleadings to fill in the gap resulting
16 from Plaintiff's failure to name and serve the Los Angeles County Recorder, a necessary party.

17 Plaintiff failed to timely avail itself of its available administrative remedies to recoup its
18 claim of overpayment (were it meritorious) by contemporaneously contesting the charge with the
19 Los Angeles County Recorder, or by filing a claim with the County of Los Angeles. The time for
20 seeking those remedies has long since expired. Accordingly, this action should be dismissed,
21 with prejudice.

22 II.

23 **THE SB 2 HOUSING FEE AMOUNT WAS PROPERLY DETERMINED BY THE LOS** 24 **ANGELES COUNTY RECORDER BASED ON THE NUMBER OF INSTRUMENTS TO** 25 **BE RECORDED IN ASSOCIATION WITH PLAINTIFF'S TRANSACTION.**

26 Defendant State Controller correctly stated the legal standard for granting a motion for
27 judgment on the pleadings on pages 8 and 9 of its memorandum of points and authorities filed in
28 support of its motion. The motion is properly granted where the facts alleged in the complaint

1 show the defendant is entitled to judgment as a matter of law, accepting as true all properly plead
2 allegations of the complaint, subject to matters of which the court can or must take judicial
3 notice. (*Lopez v. Escamilla* (2020) 48 Cal.App.5th 763, 765.) The facts of this case present a
4 pure question of law, though not one previously briefed by any of the parties:

5 Did the Los Angeles County Recorder properly interpret the provisions of section 27388.1(a)(1)
6 in assessing a SB 2 Housing Fee of \$150.00 for recording Plaintiff’s Substitution of Trustee and
7 Full Reconveyance document on July 14, 2021?

8 The pertinent portion⁴ of section 27388.1 reads as follows:

9 (a) (1) Commencing January 1, 2018, and except as provided in paragraph (2), in
10 addition to any other recording fees specified in this code, a fee of seventy-five
11 dollars (\$75) shall be paid at the time of recording of *every* real estate instrument,
12 paper, or notice required or permitted by law to be recorded, except those
13 expressly exempted from payment of recording fees, *per each single transaction*
14 *per parcel of real property*. The fee imposed by this section shall not exceed two
15 hundred twenty-five dollars (\$225). “Real estate instrument, paper, or notice”
16 means a document relating to real property, *including, but not limited to*, the
17 following: deed, grant deed, trustee’s deed, deed of trust, *reconveyance*, quit
18 claim deed, fictitious deed of trust, assignment of deed of trust, request for notice
19 of default, abstract of judgment, subordination agreement, declaration of
20 homestead, abandonment of homestead, notice of default, release or discharge,
21 easement, notice of trustee sale, notice of completion, UCC financing statement,
22 mechanic’s lien, maps, and covenants, conditions, and restrictions. [Emphasis
23 added].

24 The Recorder’s methodology for calculating the amount of the SB 2 Housing Fee as due
25 for every separate instrument recorded for each single transaction per parcel of real property is
26 clearly set forth on its website. with the first example of fees being a single document combining
27 instruments of a Substitution of Trustee with a Full Reconveyance, being two instruments per a
28 single transaction per a parcel of real property, assessed \$75 per instrument for a total of \$150 –
exactly the facts set forth in the first amended complaint on file in this action (Amicus Curiae

⁴ Subsection (a)(2) sets forth the documents expressly exempted from payment of SB 2 Housing Fee. Subsection (b) provides for quarterly remittances of the fees, after deduction of actual and necessary administrative costs incurred by the county recorder, to the Controller. Subsection (c) provides that the SB 2 Housing Fee shall only continue to be collected so long as the proceeds are being allocated for the purposes specified by Section 50470 of the Health and Safety Code. Subsection (d) was added by amendment, Stats 2021, Ch. 359 (AB 1466) to specifically include documents executed or recorded by the federal government.

1 Request for Judicial Notice, Attachments 2 and 3, filed herewith). The web page explanation
2 appropriately includes a reference to another section of the recording statutes, section 27361.1
3 which addresses the treatment of documents that combine two separate instruments on a single
4 document or page, as is the case here – they are to be treated for fee determination purposes as
5 two separate documents⁵.

6 The application of section 27361.1 to separate instruments combined in a single
7 document is consistent with the variable fee formula in section 27388.1 itself, which may result
8 in a fee of from \$75 to a maximum of \$225, for three or more instruments (either separate or
9 combined) recorded per each single real estate transaction per parcel. Section 27388.1 includes a
10 list of examples of real estate instruments, which includes a “reconveyance.” (Civ. Code, § 2941,
11 subd. (b)(1)(A).) A substitution of trustee is another legal instrument required by law to be
12 recorded in the ordinary course of administration of deeds of trust securing real estate loans (Civ.
13 Code, § 2934a), although not listed among the other examples in section 27388.1. A substitution
14 of trustee may frequently be combined with a full or partial reconveyance in a single document
15 to release the lien of the deed of trust upon payment of the underlying loan obligation. [cite to
16 Miller Starr?] Nevertheless, a full reconveyance and a substitution of trustee are two independent
17 legal instruments. Contrary to Plaintiff’s claim throughout the First Amended Complaint the
18 Substitution of Trustee and Full Reconveyance attached to the complaint is not a single legal
19 instrument, but two legal instruments combined in one document, as a matter of law.

20 The administrative interpretation of the SB 2 statutory fee calculation methodology by
21 the Los Angeles County Recorder is informed by and consistent with the County Recorders
22 Association of California official publication, the Document Reference and Indexing Manual
23 (2022 Edition) explanation of SB 2 Housing Fee (Amicus Curiae Request for Judicial Notice,
24 items 1, filed herewith), generally applicable for use by County Recorders offices throughout the

25 _____
26 ⁵ Government Code section 27361.1 states: “Whenever two or more instruments, papers, or
27 notices are serially incorporated on one form or sheet, or are attached to one another, except as
28 an exhibit marked as such, each instrument, paper, or notice shall be considered to be a separate
instrument, paper, or notice for the purpose of computing the fee established by Section 27361 of
this code.” (Added by Stats 1967, Ch. 56, § 4)

1 State of California. The interpretation of a statute by the officials charged with its administration,
2 though not binding, is entitled to consideration and respect. (*Yamaha Corp. of America v. State*
3 *Bd. of Equalization* (1998) 19 Cal.4th 1, 7.)

4 Issues of statutory interpretation are in the final analysis the province of the court.
5 (*Bodinson Mfg. Co. v. California Employment Com.* (1941) 17 Cal.2d 321, 326.) “Courts must,
6 in short, independently judge the text of the statute, taking into account and respecting the
7 agency's interpretation of its meaning, of course, whether embodied in a formal rule or less
8 formal representation. Where the meaning and legal effect of a statute is the issue, an agency's
9 interpretation is one among several tools available to the court.” (*Yamaha Corp. of America v.*
10 *State Bd. of Equalization* (1998) 19 Cal.4th 1, 7.) When interpreting a statute, the core task is to
11 determine and give effect to the Legislature's underlying purpose in enacting the statutes at
12 issue.” (*McHugh v. Protective Life Ins. Co.* (2021) 12 Cal.5th 213 (*McHugh*); accord, *Jarman v.*
13 *HCR ManorCare, Inc.* (2020) 10 Cal.5th 375, 381 (*Jarman*)). “We first consider the words of the
14 statutes, as statutory language is generally the most reliable indicator of legislation's intended
15 purpose. [Citation.] We consider the ordinary meaning of the relevant terms, related provisions,
16 terms used in other parts of the statute, and the structure of the statutory scheme.” (*McHugh,*
17 *supra*, 12 Cal.5th at p. 227; accord, *Jarman, supra*, 10 Cal.5th at p. 381 [“We do not examine
18 that language in isolation, but in the context of the statutory framework as a whole in order to
19 determine its scope and purpose and to harmonize the various parts of the enactment.”]). If the
20 language is clear, courts must generally follow its plain meaning unless a literal interpretation
21 would result in absurd consequences the Legislature did not intend.” (*Jarman, supra*, 10 Cal.5th
22 at p. 381; *Hirschfield v. Cohen* (2022) 82 Cal.App.5th 648, 661.) “It is a basic canon of statutory
23 construction that statutes in pari materia should be construed together so that all parts of the
24 statutory scheme are given effect.” (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1090–
25 1091.) Courts presume that the Legislature, when enacting a statute, was aware of existing
26 related laws and intended to maintain a consistent body of rules. (*Apartment Association of Los*
27 *Angeles County, Inc. v. City of Los Angeles* (2009) 173 Cal.App.4th 13, 21; accord, *Moore v.*

1 *Superior Court* (2020) 58 Cal.App.5th 561, 574.)

2 The plain meaning of section 27388.1 is clear. A fee of \$75 is due for every legal
3 instrument required or permitted by law to be recorded per each single transaction per parcel of
4 real property, with a maximum of \$225 for transactions involving three or more instruments for
5 the transaction. In this transaction two legal instruments were required to be recorded: a
6 substitution of trustee and a full reconveyance, with a \$75 fee for each for a total of \$150. The
7 two instruments were combined in a single document, and therefore pursuant to section 27361.1,
8 (of which the Legislature is presumed to be aware when enacting section 27388.1 and read in
9 *pari materia*) one fee for each instrument is due. The Los Angeles County Recorder (and the
10 recorders in all other California counties) have a ministerial duty⁶ to assess and collect the SB 2
11 Housing Fee in accordance with Government Code sections 27388.1 and 27361.1 and has done
12 so. No error or overcharge occurred. Accordingly, this action must be dismissed, as a matter of
13 law.

14 **III.**

15 **THE SB 2 HOUSING FEE IS A SPECIAL PURPOSE TAX DEDICATED TO**
16 **FUNDING AFFORDABLE HOUSING PROJECTS AND PROGRAMS**
17 **UNAVAILABLE FOR SATISFYING REFUND CLAIMS**

18 The Legislative intent for section 27388.1 cannot properly be understood in
19 isolation without reference to other portions of Senate Bill 2 (Atkins, 2017), Stats. 2017,
20 Ch. 364, the Building Homes and Jobs Act (the Act), of which it was a part. (Amicus
21 Curiae Request for Judicial Notice, Attachment 4, filed herewith.) Section 2 of the Act sets
22 forth extensive findings on the need for additional funding to provide resources for
23 affordable housing and to address homelessness. Section 3 of the Act added section
24 27388.1 (a) to provide a funding source to be collected from non-exempt real estate

25 _____
26 ⁶ A ministerial duty is one that a public officer is required to perform in a prescribed manner in
27 obedience to the mandate of legal authority and without regard to his own judgment or opinion
28 concerning such act's propriety or impropriety, when a given state of facts exists. (*Fair
Education Santa Barbara v. Santa Barbara Unified School District* (2021) 72 Cal.App.5th 884,
893.)

1 transactions by county recorders. Subdivision (b) provides for quarterly remittances of
2 the fees collected to the State Controller for deposit in the Building Homes and Jobs
3 Trust Fund established by section 50470 of the Health and Safety Code (added by Section
4 4 of the Act). Subdivision (c) requires the SB 2 Housing Fee only be collected if the
5 funds in the Building Homes and Jobs Trust Fund are allocated for expenditure for the
6 purposes enumerated in section 50470. Section 4 of the Act adds section 50470 to the
7 Health and Safety Code, which specifies the purposes for which the Trust Fund must be
8 spent. None of the funds are available to the State Controller for refunds or settlement of
9 claims of alleged overpayment.

10 IV.

11 **THE PLAINTIFF'S FAILURE TO TIMELY SEEK ADMINISTRATIVE** 12 **REMEDIES FROM THE RECORDER FOR THE ALLEGED OVERPAYMENT** 13 **PRECLUDES RELIEF**

14 The error alleged by Plaintiff was the claimed overcharging of the SB 2 Housing
15 Fee by the Los Angeles County Recorder on July 14, 2021. Plaintiff fails to allege that it
16 sought to correct that alleged error by promptly filing a complaint with the Los Angeles
17 County Recorder while the Recorder still had custody of the funds and could either
18 explain to the Plaintiff the justification for the amount charged (as set forth above), or if
19 indeed there was an error, refund any amount erroneously charged. Neither does Plaintiff
20 allege that it timely complied with the claims statute by submitting a claim pursuant to
21 Government Code section 910 to the County of Los Angeles within one year of the
22 alleged overcharge. (Gov. Code, § 911.2.)

23 Instead, the FAC alleges that the Plaintiff waited until March 24, 2022, more than
24 seven months, to file its claim with the State of California Office of the Controller, which
25 had no role or responsibility for determining the amount of the SB 2 Housing Fee. At that
26 juncture, the State Controller would have long since received the funds from the Los
27 Angeles County Recorder and, as required by law, deposited them in the Building Homes
28

1 and Jobs Trust Fund

2 Even though Plaintiff specifically alleges that it was the Los Angeles County
3 Recorder that allegedly overcharged the SB 2 Housing Fee, Plaintiff disingenuously fails
4 to name the Los Angeles County Recorder as a defendant in the action – instead naming
5 Does 1 – 200. It is now too late for Plaintiff to amend to cure this defect. It cannot
6 credibly claim that it was unaware of the true identity of the public official responsible
7 for the error as that identification appears on the face of the complaint. Both the time for
8 filing a claim against the Recorder with the County of Los Angeles (one year from
9 accrual – Gov. Code, § 911.2), and for filing an action after rejection of that claim (two
10 years from accrual – Gov. Code, § 945.6, subd. (a)(2)) have passed.

11 The circumstances of this case are similar to *Lipman v. Rice* (1963) 213
12 Cal.App.2d 474. In that action a former school district superintendent filed suit charging
13 several public officials with a malicious course of conduct which was designed to obtain
14 her removal as superintendent and which resulted in harm to her reputation and standing.
15 In her original complaint, the former superintendent identified some officials as
16 defendants and named several “John Doe” defendants. In an amended complaint filed
17 over two years later, the former superintendent prayed for leave to name the principal as a
18 defendant, claiming that she had become aware of his true identity. The trial court
19 dismissed the complaint and the former superintendent appealed only as to the principal.
20 On appeal, the court affirmed and held that the claim against the principal was barred by
21 the one-year statute of limitations of Code of Civil Procedure section 474. The limitations
22 period was not tolled with respect to the principal because the former superintendent did
23 not allege in the original complaint that his true name was unknown to her. There was
24 also evidence that the former superintendent had actual knowledge of the principal’s
25 identity because he was mentioned in the original complaint as having attended meetings
26 with other defendants.

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1 As the defendant State of California Office of the Controller’s motion for
2 judgment on the pleadings amply demonstrates, Plaintiff’s claim against the Controller
3 has no basis in law and the complaint is defective for having failed to name a necessary
4 party – the Los Angeles County Recorder. The limitations period was not tolled to amend
5 to substitute the Los Angeles County Recorder for the Doe defendants because the
6 Plaintiff clearly knew, and even specifically alleged the identity of the public official
7 responsible for the alleged error. In that it is no longer possible to comply with the claims
8 statute or file a timely action against the Los Angeles County Recorder, the action should
9 be dismissed with prejudice and without leave to amend.

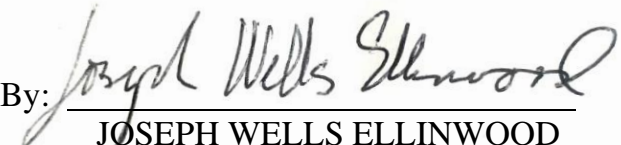
10 **V.**
11 **CONCLUSION**

12 Plaintiff’s underlying claim that it was overcharged the SB 2 Housing Fee when it
13 filed for recording two legal instruments combined as a single document is without merit
14 as a matter of law. Plaintiff chases funds by following the money collected by county
15 recorders offices to the Office of the State Controller, when the funds are on deposit with
16 the Building Homes and Jobs Trust Fund exclusively for expenditure on purposes
17 specified by statute for affordable housing projects and programs, and not available for
18 payment of untimely claims, such as Plaintiff’s. Plaintiff’s apparent attempt conflation to
19 class action status that could involve all 58 California counties and their Recorders
20 should be foreclosed because the original claim of overpayment is simply without legal
21 merit. For all of the reasons set forth above, Amicus Curiae California State Association
22 of County (CSAC) and the County Recorders Association of California (CRAC) join in
23 supporting the motion for judgment on the pleadings filed by the defendant California
24 State Office of the Controller, and respectfully request that the court enter an order
25 dismissing the complaint, with prejudice and without leave to amend.

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27 ///

1 DATED: September 25, 2023

2 By: 
3 JOSEPH WELLS ELLINWOOD
4 Attorney for Amicus Curiae
5 California State Association of Counties
6 and California Recorders Association of
7 California

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