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13 *Isidro D. Ortiz, and Michael W. McConnell*

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SAN DIEGO

16 CITY OF SAN DIEGO,

17 Plaintiff,

18 v.

19 ALL PERSONS INTERESTED IN THE MATTER OF
20 MEASURE C AND THE VALIDITY OF THE
21 TRANSIENT OCCUPANCY TAX INCREASE AND
22 THE VALIDITY OF THE AUTHORIZATION TO
23 ISSUE BONDS FOR HOMELESS PROGRAMS AND
24 FOR MODERNIZATION IMPROVEMENTS AT THE
25 DOWNTOWN SAN DIEGO CONVENTION CENTER,
26 AND ALL OTHER MATTERS AND PROCEEDINGS
27 RELATING THERETO,

28 Defendants.

NO. 37-2021-00024607-CU-MC-CTL

**ANSWER TO COMPLAINT FOR
VALIDATION**

Complaint Filed: June 4, 2021
Response Due: July 30, 2021
Trial Date: TBD
Department: C-65
Judge: Hon. Ronald F. Frazier

1 To protect their interests and preserve their claims and rights of action, interested parties
2 Alliance San Diego, Isidro D. Ortiz, and Michael W. McConnell (collectively “Defendants”) respond
3 to and answer the Complaint for Validation (“Complaint”) of Plaintiff City of San Diego (“City”) as
4 follows:

5 **ANSWER TO COMPLAINT FOR VALIDATION**

6 **Parties**

7 1. Answering Paragraph 1 of the Complaint, Defendants admit that the City is a municipal
8 corporation, a charter city. Defendants admit that the Complaint purports to commence a validation
9 action under Code of Civil Procedure section 860 *et seq* and Government Code section 53511.
10 Defendants admit that the City is also responsible, through its various bodies and officials, for
11 certifying and declaring the results of an election as set forth in Elections Code sections 10262-10264
12 and 15400. Other than as expressly admitted, Defendants deny each and every allegation of Paragraph
13 1.

14 2. Answering Paragraph 2 of the Complaint, Defendants admit that the Complaint names,
15 as defendants, “all persons interested in the matter of Measure C and the validity of the transient
16 occupancy tax increase and the validity of the authorization to issue bonds for homeless programs and
17 for modernization improvements at the downtown San Diego Convention Center.” No response is
18 required to the second sentence of Paragraph 2 of the Complaint, which calls for a legal conclusion.
19 Defendants admit that they are persons interested in the matter of Measure C and the validity of the
20 transient occupancy tax increase and the validity of the authorization to issue bonds for homeless
21 programs and for modernization improvements at the downtown San Diego Convention Center, and
22 all other matters and proceedings relating thereto, including the validity of the City Council’s April 6,
23 2021, Resolution declaring Measure C to have been approved by the voters. Except as expressly so
24 admitted, Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 2 and,
25 on that basis, deny each and every remaining allegation of Paragraph 2 and allege the following facts
26 concerning these answering Defendants:

- 27 a. Defendant ALLIANCE SAN DIEGO is a non-profit, non-partisan 501(c)(3)
28 community organization whose mission is to create a more inclusive

1 democracy. Among other priorities, Alliance San Diego educates San Diego
2 residents to participate in the civic process and specifically engages voters,
3 especially from underserved communities, to participate in elections. Alliance
4 San Diego often has to overcome distrust of the electoral process, and it
5 motivates voters by telling them that their vote matters and that they — the
6 voters — decide elections. Defendant Alliance San Diego appears in this
7 lawsuit to restore confidence in the integrity of San Diego elections and to
8 vindicate an important principle of democratic elections: the threshold for
9 adopting a ballot measure may not retroactively be changed months after an
10 election has been completed and contrary to what the voters were told the
11 threshold would be prior to the election. Defendant Alliance San Diego is a
12 Petitioner and Plaintiff in *Alliance San Diego et. al. v. City of San Diego et. al.*,
13 Case No. 37-2021-00024590-CU-MC-CTL, which seeks a court order
14 (a) commanding the City to rescind the City Council’s April 6, 2021,
15 Resolution declaring Measure C to have been approved by the voters,
16 (b) enjoining the City from enforcing Measure C, and (c) declaring Measure C
17 to be null and void.

18 b. Defendant ISIDRO D. ORTIZ is the Board Chair of Alliance San Diego and
19 has dedicated his professional life to teaching civil rights and advancing social
20 justice. He was also co-petitioner in a lawsuit challenging the ballot language
21 of Measure C in December 2019 in which he sought to ensure that the voters
22 were provided fair and impartial language on which to decide the measure.
23 Defendant Ortiz is a resident, registered voter, elector, and taxpayer of the City
24 of San Diego. Defendant Ortiz is also a Petitioner and Plaintiff in *Alliance San*
25 *Diego et. al. v. City of San Diego et. al.*, Case No. 37-2021-00024590-CU-MC-
26 CTL.

27 c. Defendant MICHAEL W. MCCONNELL is a homeless advocate who was a
28 co-plaintiff with Dr. Ortiz in a lawsuit challenging the ballot language of

1 Measure C in December 2019 in which he sought to ensure that the voters were
2 provided fair and impartial language on which to decide the measure.

3 Defendant McConnell is a resident, registered voter, elector, and taxpayer of
4 the City of San Diego. Defendant McConnell is also a Petitioner and Plaintiff
5 in *Alliance San Diego et. al. v. City of San Diego et. al.*, Case No. 37-2021-
6 00024590-CU-MC-CTL.

7 **Jurisdiction and Venue**

8 3. Answering Paragraph 3 of the Complaint, Defendants admit that this Court has
9 jurisdiction pursuant to the validation statutes, Code of Civil Procedure section 860 *et. seq.*

10 4. Answering Paragraph 4 of the Complaint, Defendants admit that venue is proper in the
11 County of San Diego.

12 **Measure C, The March 2020 Election, and Related Actions**

13 5. Answering Paragraph 5 of the Complaint, Defendants admit that a Municipal Primary
14 Election and Special Election were held in the City on March 3, 2020. Defendants admit that one
15 measure on the ballot was denominated Measure C. Defendants deny that the ballot title included the
16 words “Bond Authorization.”

17 6. Answering Paragraph 6 of the Complaint, Defendants admit the allegations therein.

18 7. Answering Paragraph 7 of the Complaint, Paragraph 7 purports to describe Measure C
19 and as such, requires no response. The text of Measure C speaks for itself.

20 8. Answering Paragraph 8 of the Complaint, Paragraph 8 purports to describe Measure C
21 and as such, requires no response. The text of Measure C speaks for itself.

22 9. Answering Paragraph 9 of the Complaint, Paragraph 9 purports to describe Measure C
23 and as such, requires no response. The text of Measure C speaks for itself.

24 10. Answering Paragraph 10 of the Complaint, Paragraph 10 purports to describe Measure
25 C and as such, requires no response. The text of Measure C speaks for itself. Defendants deny the
26 allegation regarding funding levels for “Homelessness Programs” for “Years 1 through 5.”

27 11. Answering Paragraph 11 of the Complaint, Paragraph 11 purports to describe Measure
28 C and as such, requires no response. The text of Measure C speaks for itself.

1 12. Answering Paragraph 12 of the Complaint, Paragraph 12 purports to describe Measure
2 C and as such, requires no response. The text of Measure C speaks for itself. Defendants deny that
3 all bonds issued pursuant to Measure C are payable solely from the Additional Tax Revenues.

4 13. Answering Paragraph 13 of the Complaint, Paragraph 13 purports to describe Measure
5 C and as such, requires no response. The text of Measure C speaks for itself. Measure C also
6 provides that “[n]otwithstanding the foregoing, the City may . . . supplement Additional Tax
7 Revenues with other legally available funds to make payments on the Bonds.” (Measure C,
8 § 35.0210, subd. (g), emphasis added.)

9 14. Answering Paragraph 14 of the Complaint, Defendants admit the allegations therein.

10 15. Answering Paragraph 15 of the Complaint, Paragraph 15 sets forth quotations from the
11 City Council’s April 7, 2020, Resolution No. R-312901 and, to that extent, requires no response. The
12 April 7, 2020, Resolution No. R-312901 speaks for itself. To the extent that Paragraph 15 may be
13 deemed to allege that the April 7, 2020, Resolution No. R-312901 “declared” whether Measure C had
14 been approved or defeated in the March 3, 2020, election, Defendants deny such allegations. To the
15 extent Paragraph 15 may be deemed to contain characterizations of applicable law, Defendants deny
16 all such allegations.

17 16. Answering Paragraph 16 of the Complaint, Paragraph 16 purports to describe the City
18 Council’s April 7, 2020, Resolution No. R-312901 and, to that extent, requires no response. The
19 April 7, 2020, Resolution No. R-312901 speaks for itself. Defendants deny that the April 7, 2020,
20 Resolution No. R-312901 references “the usual practice in California at the time of submittal of
21 Measure C to the voters.” To the extent that Paragraph 16 may be deemed to contain allegations of
22 fact or characterizations of applicable law not expressly admitted, Defendants deny all such
23 allegations.

24 17. Answering Paragraph 17 of the Complaint, Defendants deny all allegations therein.

25 18. Answering Paragraph 18 of the Complaint, Defendants admit that three appellate
26 decisions have been issued since adoption of the April 7, 2020, Resolution No. R-312901.
27 Defendants deny the legal relevance of these decisions and deny the City’s characterization of their
28 holdings. To the extent that Paragraph 18 may be deemed to contain allegations of fact or

1 characterizations of applicable law not expressly admitted, Defendants deny all such allegations.

2 19. Answering Paragraph 19 of the Complaint, Defendants admit that the City Council
3 passed Resolution No. R-313485 on April 6, 2021. Defendants admit that the April 6, 2021,
4 Resolution No. R-313485 purports to declare Measure C to have been approved in the Municipal
5 Special Election held on March 3, 2020, based on the Council’s previous declaration of the voting
6 results. Defendants admit that the April 6, 2021, Resolution No. R-313485 purports to “supersede” its
7 previous April 7, 2020, Resolution No. R-312901, and to declare that Measure C actually passed in
8 the March 3, 2020, municipal election; however, Defendants deny the City’s characterizations of the
9 legal effects of the April 6, 2021, Resolution No. R-313485. To the extent that Paragraph 19 may be
10 deemed to contain allegations of fact or characterizations of applicable law not expressly admitted,
11 Defendants deny all such allegations.

12 20. Answering Paragraph 20 of the Complaint, Paragraph 20 purports to describe Measure
13 C and the City Council’s April 6, 2021, Resolution No. R-313486 and, to that extent, requires no
14 response. Measure C and the April 6, 2021, Resolution No. R-313486 speak for themselves.
15 Defendants deny the City’s characterization that the April 6, 2021, Resolution No. R-313486 was
16 “[c]onsistent with the intent of the voters in approving Measure C,” because Defendants deny that
17 Measure C could be approved by a simple majority, rather than the two-thirds majority voters were
18 led to believe was required. Defendants deny the City’s characterization of the Homeless Program
19 Bonds as payable solely by the tax increases set forth in Measure C. To the extent that Paragraph 20
20 may be deemed to contain allegations of fact or characterizations of applicable law not expressly
21 admitted, Defendants deny all such allegations.

22 21. Answering Paragraph 21 of the Complaint, Paragraph 21 purports to describe Measure
23 C and the City Council’s April 6, 2021, Resolution No. R-313487 and, to that extent, requires no
24 response. Measure C and the April 6, 2021, Resolution No. R-313487 speak for themselves.
25 Defendants deny the City’s characterization that this resolution was “[c]onsistent with the intent of the
26 voters in approving Measure C,” because Defendants deny that Measure C could be approved by a
27 simple majority, rather than the two-thirds majority voters were led to believe was required.
28 Defendants deny the City’s characterization of the Convention Center Modernization Bonds as

1 payable solely by the tax increases set forth in Measure C. To the extent that Paragraph 21 may be
2 deemed to contain allegations of fact or characterizations of applicable law not expressly admitted,
3 Defendants deny all such allegations.

4 22. Answering Paragraph 22 of the Complaint, Paragraph 22 purports to describe the City
5 Council's April 6, 2021, Resolution No. R-313485 and, to that extent, requires no response. To the
6 extent that Paragraph 21 may be deemed to contain allegations of fact or characterizations of
7 applicable law not expressly admitted, Defendants deny all such allegations.

8 **Authorization and Nature of This Action**

9 23. Answering Paragraph 23 of the Complaint, Paragraph 23 purports to describe the City
10 Council's April 6, 2021, Resolution Nos. R-313485, R-313486, and R-313487 and, to that extent,
11 requires no response. These resolutions speak for themselves. To the extent that Paragraph 23 may
12 be deemed to contain allegations of fact or characterizations of applicable law not expressly admitted,
13 Defendants deny all such allegations.

14 24. Answering Paragraph 24 of the Complaint, Defendants admit the allegations contained
15 therein.

16 25. Answering Paragraph 25 of the Complaint, Defendants admit the allegations contained
17 therein.

18 26. Answering Paragraph 26 of the Complaint, Defendants deny each and every allegation
19 contained therein.

20 **Service By Publication**

21 27. Answering Paragraph 27 of the Complaint, Paragraph 27 purports to calls for legal
22 conclusions, and to that extent, requires no response. To the extent that Paragraph 27 contains factual
23 allegations, Defendants lack sufficient knowledge to admit or deny those allegations. To the extent
24 that Paragraph 27 may be deemed to contain allegations of fact or characterizations of applicable law
25 not expressly admitted, Defendants deny all such allegations.

26 **First Cause of Action**

27 28. Answering Paragraph 28 of the Complaint, Defendants refer to their answers to ¶¶ 1-
28 27.

1 29. Answering Paragraph 29 of the Complaint, Defendants deny each and every allegation
2 contained therein.

3 30. Answering Paragraph 30 of the Complaint, Paragraph 30 purports to summarize
4 California Code of Civil Procedure section 870, subdivision (a) and, to that extent, requires no
5 response. Code of Civil Procedure section 870, subdivision (a) speaks for itself.

6 **Second Cause of Action**

7 31. Answering Paragraph 31 of the Complaint, Defendants refer to their answers to ¶¶ 1-
8 30.

9 32. Answering Paragraph 32 of the Complaint, Defendants admit the allegation therein.

10 33. Answering Paragraph 33 of the Complaint, Defendants admit that the City now alleges
11 that Measure C needed only a simple majority to pass. Defendants admit that three appellate
12 decisions issued since the March 3, 2020 election have discussed requisite voting thresholds for a
13 special tax proposed by citizens' initiative. However, Defendants deny the legal relevance of these
14 decisions and deny the City's characterization of their holdings. To the extent that Paragraph 33 may
15 be deemed to contain allegations of fact or characterizations of applicable law not expressly admitted,
16 Defendants deny all such allegations.

17 34. Answering Paragraph 34 of the Complaint, Defendants admit the allegations therein.

18 35. Answering Paragraph 35 of the Complaint, Defendants admit the allegations therein.

19 **Prayer for Relief**

20 36. Answering Paragraphs 1 through 7 of the City's Prayer for Relief, Defendants deny
21 that the City is entitled to any of the relief requested therein, or to any other form of relief whatsoever.

22 **AFFIRMATIVE ALLEGATIONS AND DEFENSES**

23 Without admitting that Defendants have the burden of proof on any of these defenses,
24 Defendants alleges as follows:

25 37. On November 4, 2019, the City Council passed Ordinance No. O-21143, submitting
26 Measure C to the City's voters at a special municipal election called for March 3, 2020. In enacting
27 Ordinance No. O-21143, the City Council declared that "the initiative measure seeks to increase the
28 Transient Occupancy Tax, which is a special tax, and thus *the initiative measure requires approval by*

1 *a two-thirds majority* of the local electorate to be adopted by the voters,” and the City Council
2 formally resolved that “[p]assage of this measure *requires an affirmative vote of two-thirds of those*
3 *qualified electors* voting on the matter at the Municipal Special Election.” (Emphasis added.)

4 38. Pursuant to Ordinance No. O-21143, Measure C appeared on the ballot and was voted
5 upon by San Diego’s voters at the March 3, 2020, special municipal election, which was consolidated
6 with the statewide Presidential Primary election held on that same date.

7 39. On the *very first page* of the official ballot title and summary for Measure C, San
8 Diego’s voters were expressly told — *not once but twice* — that approval of Measure C required a
9 two-thirds majority vote. Immediately above the “OFFICIAL TITLE AND SUMMARY,” the sample
10 ballot sent to all voters notified them that “[p]assage of this measure *requires the affirmative vote of*
11 *two-thirds of those qualified electors* voting on the matter.” (Emphasis added.) A few paragraphs
12 later, in the “BALLOT SUMMARY” for Measure C itself, voters were again informed that because
13 Measure C “authorizes a special tax . . . [it] *thus requires a two-thirds vote for approval.*” (Emphasis
14 added.) Nothing in the ballot materials contained any suggestion that Measure C could take effect if
15 less than a two-thirds vote were obtained.

16 40. At the time the City Attorney prepared the ballot materials for Measure C — December
17 2019 — a few legal challenges to the supermajority requirement for a special tax imposed by initiative
18 were winding their way through the courts. The ballot materials nevertheless stated unequivocally
19 that “[t]he measure authorizes a special tax, meaning the additional revenue is designated for specific
20 purposes, and thus requires a two-thirds vote for approval.”

21 41. Notably, while other language in the ballot materials submitted by the City for
22 Measure C was challenged prior to the election as being “false, misleading, or inconsistent with the
23 requirements of [law],” nobody — not even the proponents of Measure C — challenged the accuracy
24 of these categorical statements in the official ballot materials that Measure C required a two-thirds
25 vote for passage. Nor did any of the ballot arguments for or against Measure C suggest that there was
26 any dispute or doubt regarding the two-thirds vote requirement for Measure C’s approval.

27 42. On April 2, 2020, in accordance with Elections Code section 10262 and San Diego
28 Municipal Code section 27.0411, City Clerk Elizabeth Maland certified the results of the March 3,

1 2020, election. As set forth in the City Clerk’s certification, Measure C received 239,024 “Yes” votes
2 — the approval of only 65.24% of the electorate — so it fell shy of the requisite two-thirds majority
3 necessary for passage. Consistent with what the voters were told prior to the election, the City Clerk’s
4 certification again unequivocally stated: “This proposition [Measure C] requires a two-thirds majority
5 to be adopted by the voters.”

6 43. In accordance with Elections Code sections 10262, 10263, and 15400, the City Council
7 received the City Clerk’s certification and passed Resolution No. R-312901 on April 7, 2020. For
8 each municipal office on the ballot, Resolution No. R-312901 listed the number of votes received by
9 each candidate and declared which two candidates had received the highest number of votes and
10 would advance to the municipal general election in November. The Resolution also listed the certified
11 vote results for another measure on the March 3, 2020, ballot (Measure D), stating that “[t]his measure
12 required a majority vote for approval” and that it “did receive an affirmative vote of a majority of the
13 qualified voters . . . and is hereby declared to have been approved.” Resolution No. R-312901,
14 however, singled out Measure C for different treatment: In contrast to all of the other races and
15 measures on the ballot, it conspicuously did not “declare” whether Measure C had been approved or
16 defeated in the March 3, 2020, election.

17 44. Indeed, the City Council intentionally failed to declare whether Measure C had been
18 approved or rejected based on the voting results. Minutes from the Council’s April 7, 2020, meeting
19 document that the City Council voted to strike language from the Resolution stating that Measure C
20 “required a two-thirds vote for approval,” and that it “did not receive the affirmative vote of at least
21 two-thirds of the qualified voters . . . and is hereby declared to have been defeated.”

22 45. Defendants are informed and believe, and on that basis allege, that never before has the
23 City Council purported to “declare” the results of an election without specifying whether an initiative
24 measure had received or had failed to receive the requisite number of votes for passage.

25 46. Defendants are also informed and believe, and on that basis allege, that the April 7,
26 2020, Resolution No. R-312901 was the first — and only — time that the City Council failed to
27 declare the results of a municipal election as reported and certified by the appropriate elections
28 official.

1 47. As press accounts reflect, in the months following the March 2020 election, the
2 proponents and other supporters of Measure C “discussed behind the scenes a strategy for resurrecting
3 the initiative should ongoing court cases go their way.” (“Measure C, Which Would Expand
4 Convention Center, Passed Last Year, San Diego Council Says. Or Did It?,” *The San Diego Union-*
5 *Tribune*, April 6, 2021, available at [https://www.sandiegouniontribune.com/business/story/2021-04-](https://www.sandiegouniontribune.com/business/story/2021-04-06/measure-c-which-would-expand-convention-center-passed-last-year-san-diego-council-says-or-did-it)
6 [06/measure-c-which-would-expand-convention-center-passed-last-year-san-diego-council-says-or-](https://www.sandiegouniontribune.com/business/story/2021-04-06/measure-c-which-would-expand-convention-center-passed-last-year-san-diego-council-says-or-did-it)
7 [did-it.](https://www.sandiegouniontribune.com/business/story/2021-04-06/measure-c-which-would-expand-convention-center-passed-last-year-san-diego-council-says-or-did-it))

8 48. On October 19, 2020, concerned about these behind-the-scenes machinations,
9 Defendants sent the City Council a letter in advance of the Council’s closed-session meeting to
10 consider changing the vote threshold for the adoption of Measure C. Defendants’ letter made clear
11 that they took no position on whether in the future an initiative proposing to impose a special tax may
12 lawfully be adopted by a majority vote or whether such a measure may only be adopted if it receives
13 an affirmative two-thirds vote of the electorate. Defendants’ objection was — and remains — to the
14 *retroactive* application of a majority-vote threshold announced *months after the election was already*
15 *held and its results were certified.*

16 49. On February 26, 2021, Defendants sent the City Council yet another letter, once again
17 urging it to recognize that the *voters* had already determined the fate of Measure C because the *voters*
18 did not pass Measure C with the two-thirds majority that they were expressly told was necessary for
19 passage. Defendants’ letter reiterated that the City Council had no authority to retroactively change
20 the vote threshold for Measure C’s passage.

21 50. By mid-spring 2021, however, it was growing clear the City was “seek[ing] to grab
22 victory from jaws of defeat for [the] 2020 hotel tax hike that fell short of two-thirds approval.” (“New
23 San Diego legal strategy aims to revive failed convention center ballot measure,” *The San Diego*
24 *Union-Tribune*, March 31, 2021, available at
25 [https://www.sandiegouniontribune.com/news/politics/story/2021-03-31/new-san-diego-legal-strategy-](https://www.sandiegouniontribune.com/news/politics/story/2021-03-31/new-san-diego-legal-strategy-aims-to-revive-failed-convention-center-ballot-measure)
26 [aims-to-revive-failed-convention-center-ballot-measure.](https://www.sandiegouniontribune.com/news/politics/story/2021-03-31/new-san-diego-legal-strategy-aims-to-revive-failed-convention-center-ballot-measure))

27 51. Almost a year to the day after the City Council had initially “declared the results” of
28 the March 3, 2020, municipal election, the City Council passed its April 6, 2021, Resolution No. R-

1 313485. In so doing, the City Council purported to assume for itself the discretion to determine the
2 proper vote threshold for Measure C, stating that as a result of new legal precedent that it determined
3 was valid, “the Council believes that sufficient clarity now exists as to the proper vote threshold
4 governing Measure C and wishes to declare that Measure C has been approved.” The Resolution
5 acknowledged that “the ballot and ballot pamphlet stated a two-thirds vote threshold for approval of
6 Measure C,” but a majority of the City Council evidently believed that they could retroactively change
7 the vote threshold after the election had been held and despite what the voters had been told prior to
8 the election.

9 52. Local news reports widely — and rightly — characterized the April 6, 2021,
10 Resolution No. R-313485 as an effort to reverse the failure of Measure C. The *San Diego Union-*
11 *Tribune*, for example, told readers that “San Diego’s elected leaders took key steps Tuesday to
12 *transform a loss at the polls a year ago into a victory* that could potentially clear the way for funding a
13 long-stalled expansion of the city’s convention center, services for the homeless and road repairs.”
14 (“Measure C, Which Would Expand Convention Center, Passed Last Year, San Diego Council Says.
15 Or Did It?,” *The San Diego Union Tribune*, April 6, 2021, available at
16 [https://www.sandiegouniontribune.com/
17 business/story/2021-04-06/measure-c-which-would-expand-convention-center-passed-last-year-san-
18 diego-council-says-or-did-it](https://www.sandiegouniontribune.com/business/story/2021-04-06/measure-c-which-would-expand-convention-center-passed-last-year-san-diego-council-says-or-did-it) [emphasis added].) Similarly, ABC10 wrote that “San Diego Mayor
19 Todd Gloria and City Council leaders made another push Tuesday to *reverse the failed citizens*
20 *initiative* to expand the downtown convention center by increasing the city’s hotel tax on guests.”
21 (“San Diego City Council Votes to Validate Measure C, Sending Measure to Courts to Decide,”
22 ABC10, April 6, 2021, available at [https://www.10news.com/news/local-news/san-diego-news/san-
23 diego-mayor-civic-leaders-make-another-push-to-reverse-measure-cs-outcome](https://www.10news.com/news/local-news/san-diego-news/san-diego-mayor-civic-leaders-make-another-push-to-reverse-measure-cs-outcome) [emphasis added].)

24 53. Concurrent with the April 6, 2021, Resolution No. R-313485 purporting to declare that
25 Measure C had been approved in the March 3, 2020, election, the City Council enacted two other
26 resolutions authorizing the issuance of Homelessness Program and Convention Center Bonds pursuant
27 to Measure C. Resolutions No. R-313486 related to the Homelessness Program Bonds and Resolution
28 No. R-313487 dealt with Convention Center Bonds. Both resolutions expressly rely upon and

1 incorporate by reference the April 6, 2021, Resolution No. R-313485, which declared that Measure C
2 was approved by voters.

3 **FIRST AFFIRMATIVE DEFENSE**

4 **(Violation of Due Process)**

5 54. Defendants hereby re-allege and incorporate by reference herein all of the allegations
6 in the preceding paragraphs.

7 55. As required by San Diego Municipal Code section 27.0504, the City Attorney prepared
8 a ballot title and summary of Measure C for inclusion in the official ballot materials sent to all voters
9 at taxpayer expense for the March 3, 2020, special municipal election.

10 56. In preparing the ballot title and summary, the City Attorney was required by law to
11 “give a true and impartial statement of the proposed measure in language that shall not be an
12 argument, or likely to create prejudice, for or against the proposed measure.” (San Diego Mun. Code,
13 § 27.0504, subd. (c).) The City Attorney’s title and summary expressly told voters that because
14 Measure C “authorizes a special tax . . . [it] *thus requires a two-thirds vote for approval.*”

15 57. Indeed, the official ballot materials for Measure C expressly notified voters the
16 measure was subject to a two-thirds majority *twice* on the *very first page* of Measure C’s title and
17 summary. The first reference stated: “Passage of this measure requires the affirmative vote of two-
18 thirds of those qualified electors voting on the matter.” The second reference stated: “The measure
19 . . . requires a two-thirds vote for approval.”

20 58. Although the official ballot materials expressly told the voters that Measure C required
21 a two-thirds vote to pass, the City has contradicted what the voters were told and has retroactively
22 decided that Measure C passed by a simple majority vote of the electorate. By changing the vote
23 threshold after the election was held, the City prevented the voters from making an informed decision
24 regarding how they should cast their vote on Measure C, and it prevented the supporters and
25 opponents of Measure C from properly planning and implementing their campaigns for and against
26 the measure. The City’s retroactive application of a different vote threshold to the Measure C election
27 *after the election had already been held* is patently and fundamentally unfair, and it so permeates the
28 lawmaking process that it constitutes a violation of due process.

1 59. Validation is therefore barred by principles of due process.

2 **SECOND AFFIRMATIVE DEFENSE**

3 **(Equitable Estoppel)**

4 60. Defendants hereby re-allege and incorporate by reference herein all of the allegations
5 in the preceding paragraphs.

6 61. Acting pursuant to legally imposed duties, the San Diego City Council submitted
7 Measure C to a vote of the electorate in the March 3, 2020, municipal election with an explicit
8 declaration that it “requires approval by a two-thirds majority of the local electorate to be adopted by
9 the voters,” and the City then provided the voters with official ballot materials unequivocally
10 informing them that a two-thirds vote was needed for Measure C to be adopted. The respective
11 campaigns for and against Measure C and the electorate reasonably relied upon this official
12 information and acted in accordance with that information. Both the campaigns for and against the
13 initiative and the voters themselves were legally entitled to rely upon the official information that they
14 were provided by the City prior to the election and to shape their conduct accordingly.

15 62. Had the City or any of the supporters of Measure C believed that the official ballot
16 materials were incorrect in informing the voters that a two-thirds affirmative vote of the electorate was
17 necessary to adopt Measure C, and that a simple majority vote in favor of the initiative should have
18 been sufficient — or even that it was uncertain whether a two-thirds or a majority vote was required
19 for Measure C’s passage — they had an available *pre-election* remedy for challenging the contrary
20 statements in the official ballot materials. (See Cal. Elec. Code §§ 9295, 13314.) But neither the
21 City nor any other persons sought to avail themselves of this remedy or otherwise challenged the
22 statements in the official ballot materials regarding the two-thirds vote requirement for the passage of
23 Measure C.

24 63. Having caused and allowed the official ballot materials for the March 3, 2020, election
25 to inform the voters that a two-thirds vote of the electorate was required for the passage of Measure C,
26 and having made no effort to challenge the accuracy of the statements to that effect in the official
27 ballot materials, the City is therefore estopped from now arguing — after the election has been held
28 and Measure C failed to achieve the required two-thirds vote threshold — that a different threshold

1 applies and that Measure C actually passed by a simple majority vote of the electorate.

2 **THIRD AFFIRMATIVE DEFENSE**
3 **(Violations of Elections Code, §§ 10262, 10263, 15400)**

4 64. Defendants hereby re-allege and incorporate by reference herein all of the allegations
5 in the preceding paragraphs.

6 65. The validation sought by Plaintiff would violate the California Elections Code, as
7 described below.

8 66. In the San Diego City Council’s April 7, 2020, Resolution No. R-312901 and again in
9 its April 6, 2021, Resolution No. R-313485, it repeatedly acknowledged that “declaring the results of a
10 municipal election as certified by the Registrar of Voters and the City Clerk is a ministerial act
11 required by California Elections Code section 10263.”

12 67. The City Clerk’s April 2, 2020, certification of the results of the March 3, 2020,
13 municipal election on Measure C explicitly stated that “[t]his proposition requires a two-thirds
14 majority to be adopted by the voters” and certified that Measure C only received 65.24% “yes” votes
15 — fewer than the two-thirds majority required for passage.

16 68. Even though the City Council enjoys no discretion to declare the results of a municipal
17 election to be any *different* from the results of the election as certified by the City Clerk, the City
18 Council’s April 6, 2021, Resolution No. R-313485 purported to “declare” Measure C “to have been
19 approved in the Municipal Special Election held on March 3, 2020” by less than a two-thirds majority
20 vote of the electorate.

21 69. Elections Code section 10263 also imposes a mandatory duty on the City Council to
22 “declare the results” at specific times following an election: (a) “no later than the fourth Friday after
23 the election” (Elec. Code, § 10263, subd. (a)); or (b) “no later than the next regularly scheduled city
24 council meeting following presentation of the 28-day canvass of the returns” (*id.*, § 10263, subd. (b)).
25 (See also *id.*, §§ 10262, 15400.)

26 70. Having intentionally failed to declare whether Measure C was “approved” or “rejected”
27 in the City Council’s April 7, 2020, Resolution No. R-312901, the City Council’s April 6, 2021,
28 Resolution No. R-313485 purporting to “supersede” its previous resolution and to declare that

1 Measure C actually passed in the March 3, 2020, municipal election — a year after the statutory
2 deadline to “declare the results” of that election — is untimely, void, and without legal effect. As
3 such, the April 6, 2021, Resolution No. R-313485 cannot be validated as duly enacted by the City
4 Council, valid, and binding.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 **(Cal. Const., art. XVI, § 18; San Diego City Charter, § 99)**

7 71. Defendants hereby re-allege and incorporate by reference herein all of the allegations
8 in the preceding paragraphs.

9 72. Article XVI, § 18, subd. (a), of the California Constitution states that “[n]o county [or]
10 city . . . shall incur any indebtedness or liability in any manner or for any purpose exceeding in any
11 year the income and revenue provided for such year, without the assent of two-thirds of the voters of
12 the public entity voting at an election to be held for that purpose.” San Diego City Charter section 99
13 similarly provides in pertinent part that “[t]he City shall not incur any indebtedness or liability in any
14 manner or for any purpose exceeding in any year the income and revenue provided for such year
15 unless the qualified electors of the City, voting at an election to be held for that purpose, have
16 indicated their assent as then required by the Constitution of the State of California.”

17 73. Measure C authorizes the City to issue bonds to fund homelessness program costs,
18 street repair costs, and Convention Center expansion and modernization costs without a further vote of
19 the people. (Measure C, § 35.0210, subds. (a)-(c).) Indeed, in reliance upon Measure C, the City
20 Council on April 6, 2021, approved the issuance and sale of Homelessness Program Bonds (No. R-
21 313486) and Convention Center Modernization Bonds (No. R-313487) without any further vote of the
22 people.

23 74. Measure C permits these bonds to be payable from other city funds beyond the
24 Measure C hotel visitor tax revenues because Measure C provides that “[n]otwithstanding the
25 foregoing, the City may . . . supplement Additional Tax Revenues with other legally available funds to
26 make payments on the Bonds.” (Measure C, § 35.0210, subd. (g), emphasis added.)

27 75. Measure C therefore qualifies as a bond measure subject to City Charter section 99 and
28 art. XVI, section 18 of the California Constitution, which requires a two-thirds vote for approval.

1 Accordingly, Measure C and both City Council Resolutions approving the issuance and sale of bonds
2 (Resolutions Nos. R-313486 and R-313487) cannot be validated. For this reason, too, validation is
3 inappropriate as to the City Council’s April 6, 2021, Resolution No. R-313485 purporting to declare
4 that Measure C was approved by a majority vote in the March 3, 2020, municipal election.

5 **FIFTH AFFIRMATIVE DEFENSE**
6 **(Statute of Limitations — Elections Code)**

7 76. Defendants hereby re-allege and incorporate by reference herein all of the allegations
8 in the preceding paragraphs.

9 77. Elections Code sections 10262, 10263, and 15400 impose mandatory time limits for
10 Plaintiff to declare Measure C to have been approved by the voters. Section 10263 of the Elections
11 Code required the City Council to “declare the results” either “no later than the fourth Friday after the
12 election” or “no later than the next regularly scheduled city council meeting following presentation of
13 the 28-day canvass of the returns.” (*See also* Elec. Code, §§ 10262, 15400.) These time periods
14 elapsed in 2020.

15 78. The City Council’s April 6, 2021, Resolution No. R-313485 purporting to “supersede”
16 its previous resolution and to declare that Measure C passed in the March 3, 2020 Municipal Special
17 Election, is untimely and validation is therefore barred.

18 **SIXTH AFFIRMATIVE DEFENSE**
19 **(Statute of Limitations — Code of Civil Procedure)**

20 79. Defendants hereby re-allege and incorporate by reference herein all of the allegations
21 in the preceding paragraphs.

22 80. Validation is also barred because, at its core, the City seeks to validate the voters’
23 approval of Measure C in the March 3, 2020, election. However, under California Code of Civil
24 Procedure section 860, a public agency may only commence a validation action “upon the existence of
25 any matter which under any other law is authorized to be determined pursuant to this chapter, and for
26 60 days thereafter.”

27 81. The City’s validation action is therefore barred as untimely because it was not filed
28 within 60 days of the supposed adoption of Measure C in the March 3, 2020, election.

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SEVENTH AFFIRMATIVE DEFENSE
(Laches)

82. Defendants hereby re-allege and incorporate by reference herein all of the allegations in the preceding paragraphs.

83. As discussed in Paragraph 62, the City had an available *pre-election* remedy for altering the official ballot materials to reflect its position that only a simple majority was necessary to pass Measure C. (See Cal. Elec. Code, §§ 9295, 13314.) But neither the City nor any other persons availed themselves of this remedy.

84. Instead, the City waited more than a year following the March 3, 2020, municipal election before it purported to determine that only a simple majority vote was needed for approval of Measure C and to “declare the results” of the election in the City Council’s April 6, 2021, Resolution No. R-313485. In so doing, the City intentionally delayed its declaration of the results of the March 3, 2020, municipal election for an unreasonable period of time.

85. Electoral integrity and finality suffer when officials refuse to declare election results in a timely fashion. As demonstrated by the multiple press accounts characterizing the City’s efforts to “resurrect” Measure C (“Measure C, Which Would Expand Convention Center, Passed Last Year, San Diego Council Says. Or Did It?,” *The San Diego Union-Tribune*, April 6, 2021), to “grab victory from jaws of defeat” (“New San Diego legal strategy aims to revive failed convention center ballot measure,” *The San Diego Union-Tribune*, March 31, 2021), or to “transform a loss at the polls a year ago into a victory” (*ibid.*), the City’s delay injured the public’s confidence in the integrity and certification process, because it confirms a growing belief among voters that those in power may unilaterally reverse election outcomes they do not agree with.

86. The April 6, 2021, Resolution No. R-313485 purporting to declare election results is therefore barred by the doctrine of laches, and may not be validated.

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28

EIGHTH AFFIRMATIVE DEFENSE
(Unclean Hands)

87. Defendants hereby re-allege and incorporate by reference herein all of the allegations in the preceding paragraphs.

1 April 6, 2021, Resolution No. R-313485 purporting to declare that Measure C was approved by a
2 majority vote in the March 3, 2020, municipal election, and (b) to refrain from implementing or
3 enforcing Measure C and any other resolutions or actions that are dependent upon the passage of
4 Measure C;

5 7. That the Court issue temporary, preliminary, and permanent injunctions ordering
6 Plaintiff City of San Diego and San Diego City Council, and all persons acting by, through, or in
7 concert with them, (a) to rescind and set aside the City Council's April 6, 2021, Resolution No. R-
8 313485 purporting to declare that Measure C was approved by a majority vote in the March 3, 2020,
9 municipal election, and (b) to refrain from implementing or enforcing Measure C and any other
10 resolutions or actions that are dependent upon the passage of Measure C;


11 8. That the Court award Defendants their costs and attorneys' fees pursuant to Code of
12 Civil Procedure section 1021.5 or other applicable law; and

13 9. That the Court grant Defendants such other, different, or further relief as the Court may
14 deem just and proper.

15 DATED: July 29, 2021

Respectfully submitted,

16 STRUMWASSER & WOOCHELLP
17 Fredric D. Woocher
18 Beverly Grossman Palmer
19 Julia Michel

20 By: 
Fredric D. Woocher

21 *Attorneys for Defendants*
22 *Alliance San Diego, Isidro D. Ortiz, and*
23 *Michael W. McConnell*

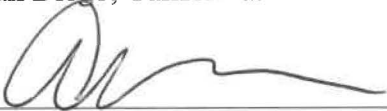
VERIFICATION

I, Andrea Guerrero, declare:

I am the Executive Director of Defendants Alliance San Diego and am authorized to make this verification on its behalf. I have read the foregoing Answer To Complaint for Validation and know the contents thereof. Said contents are known to me to be true except those matters alleged on information and belief, and as to those matters I believe them to be true.

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

Executed this 29th day of July, 2021 at San Diego, California.



Andrea Guerrero

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF SAN DIEGO

4 Re: *City of San Diego v. All Persons Interested in the Matter of Measure C*
Case Number 37-2021-00024607-CU-MC-CTL

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not
6 a party to the within action. My business address is 10940 Wilshire Boulevard, Suite 2000, Los Angeles,
California 90024. My electronic email address is loliver@strumwooch.com.

7 On **July 29, 2021**, I served the foregoing documents described as **ANSWER TO COMPLAINT**
8 **FOR VALIDATION** on all appropriate parties in this action, as listed below, by the method stated:

9 Mara W. Elliott, City Attorney
10 George F. Schaefer, Assistant City Attorney
11 M. Travis Phelps, Chief Deputy City Attorney
12 Office of the City Attorney
13 1200 Third Avenue, Suite 1100
14 San Diego, California 92101-4100
Telephone: (619) 533-5800
Facsimile: (619) 533-5856
Email: mphelps@sandiego.gov

15 *Attorneys for Plaintiff City of San Diego*

16
17 If Electronic Filing Service (EFS) is indicated, I electronically filed the document(s) with
18 the Clerk of the Court by causing the documents to be sent to One Legal, the Court’s Electronic Filing
19 Services Provider for electronic filing and service. Electronic service will be effected by One Legal’s
case-filing system at the electronic mail addresses indicated on the attached Service List.

20 If electronic-mail service is indicated, by causing a true copy to be sent via electronic
21 transmission from Strumwasser & Woocher LLP’s computer network in Portable Document Format
(PDF) this date to the email address(es) stated, to the attention of the person(s) named.

22 I declare under penalty of perjury under the laws of the State of California that the above is true
and correct.

23 Executed on **July 29, 2021**, at Los Angeles, California.

24
25 
26 _____
LaKeitha Oliver