

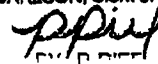
ELECTRONICALLY RECEIVED  
Superior Court of California,  
County of Orange

05/20/2014 at 10:52:22 AM  
Clerk of the Superior Court  
By Enrique Velez, Deputy Clerk

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

JUL 09 2014

ALAN CARLSON, Clerk of the Court



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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

DANIEL WALKER, as Trustee for the 1997  
Walker Family Trust, and W. JUSTIN  
MC CARTHY,

Plaintiffs and Petitioners,

v.

CITY OF SAN CLEMENTE, CITY COUNCIL  
OF SAN CLEMENTE, Does 1 through 50,

Defendants and Respondents.

Case No. 30-2012 00591239

Assigned to: Judge Thierry P. Colaw  
Dept. C25

~~PROPOSED~~ JUDGMENT

1 This matter came on for final hearing on January 10, 2014, regarding the relief requested  
2 by Petitioners. Petitioners were represented by Brad Malamud. Paul Rosenfield of Gans &  
3 Rosenfield, LLP, and Madison S. Spach, Jr. of Spach, Capaldi & Waggaman, LLP. Respondents  
4 were represented by Robert Owen and Jeffrey Goldfarb of Rutan & Tucker, LLC.

5 The Court has considered the Petition and the Response thereto, the Stipulated Record, the  
6 memoranda of points and authorities filed by the parties, the arguments of counsel at the hearing,  
7 and such other matters as the Court deems appropriate. Based thereon, the Court has issued the  
8 ruling reflected in the Order entered by the Court on May 15, 2014 which incorporates by  
9 reference within that Order the Court's Minute Orders of January 23, 2014 and March 28, 2014.  
10 For the reasons set forth in the Ruling, and good cause appearing therefore, the Court hereby  
11 ORDERS, ADJUDGES and DECREES, by and through this Writ of Mandamus, that  
12 Respondents/Defendants shall take all necessary actions to support and carry out this Order and  
13 Writ of Mandamus, including each of the following:

- 14 1. Respondents shall return the unexpended balance in the Beach Parking Impact Fee  
15 Fund (the "BPIF") based on the BPIF Fund balance as of the filing of the Petition  
16 on August 15, 2012 (the "Unexpended Balance"), plus interest earned thereon,<sup>1</sup>  
17 together with interest thereon through the date of payment, to the exacted lot  
18 owners as described below.
- 19 2. Respondents shall compile a list of all payments of BPIF accessed Fees, including  
20 the following:
  - 21 A. the lot address or addresses for which each such payment was made,
  - 22 B. the date each such payment was made,
  - 23 C. the amount of each such payment, and
  - 24 D. the name of each property owner of each said lot(s) as described in the last  
25 official County Assessors' Property Tax List (based on the date of the entry  
26 of this judgment), each such refund to be made to the identified exacted

27  
28 <sup>1</sup> According to Petitioners, the Unexpended Balance in the BPIF Fund is approximately  
\$10,511,114 as of June 30, 2013 (per Agenda Report-San Clemente City Council- December 3,  
2013), plus accrued interest and additional BPIF Fees paid into the BPIF Fund after June 30, 2013.

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lot(s) owner/ distributee ("Distributee").

E. The City shall be responsible, at its own cost and expense, and at no cost to the BPIF Fund, to compile the above list in a spreadsheet or database format compatible with the program/application known as Microsoft Excel. Said list shall be compiled within 90 days of the issuance of this Order. The list shall be provided to Petitioners in hard copy as well as in computer (Excel) readable format by the applicable deadline as soon as compiled for Petitioners review.

3. Based on the above, the amount to be distributed, pro rata, to each Distributee will be calculated based on the following rules/formulas:

- A. the year the BPIF Fee payment was made;
- B. the amount of the BPIF Fee payment;
- C. the percentage interest earned on BPIF Fund balances each year shall be added to the original fee payment, calculated based on the actual percentage interest earned each year on BPIF Fund balances;
- D. the year, rather than the exact date, of each BPIF Fee payment shall be used to determine the interest accrued on BPIF Fee payments, resulting in the same refund to each Distributee that made the same BPIF Fee payment during the same year,
- E. because the above formula will result in total distributions that exceed the amount available for distribution (an amount in excess of the BPIF Fund balance), a mathematical adjustment is to be applied to account for proper charges/expenses paid using BPIF Funds. This mathematical adjustment shall be applied to reduce the interest earned by the percentage reduction in the actual interest earned by the BPIF Fund, taking into consideration the proper expenditures. All proper expenditures will be deemed paid for solely out of interest, thus insuring that all refund payments will be calculated beginning with full reimbursement of the original BPIF Fee paid. For

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example, if total interest earned by the BPIF Fund was \$4,000,000 and there are \$400,000 of proper/allowed expenditures, then interest, as preliminarily calculated, will be reduced by 10%, resulting in interest to exacted lot owners of \$3,600,000- the amount available in the BPIF Fund balance for distribution. The Parties shall work together to agree upon the formula and amounts to be distributed to each Distributee.

4. The Court denies Petitioners' Prayer for the sale of the ECR property and the return of the sales proceeds to the BPIF Fund.

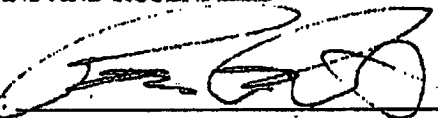
5. The Court denies Petitioners' Prayer for a refund of administrative charges paid out of BPIF Funds prior to the filing of the Writ of Mandamus action.

The Court shall retain continuing jurisdiction to oversee all aspects of this Writ of Mandamus and the Order and Judgment.

**APPROVED AS TO FORM:**

Dated: June 2, 2014

GANS AND ROSENFELD

By: 

Paul W. Rosenfield  
Attorneys for Plaintiffs and Petitioners  
DANIEL WALKER, as Trustee for the 1997  
Walker Family Trust, and W. JUSTIN  
MC CARTHY

Dated: June 2, 2014

RUTAN & TUCKER, LLP  
ROBERT O. OWEN  
AJIT THIND

By: 

Robert O. Owen  
Attorneys for Defendants and Respondents  
CITY OF SAN CLEMENTE, CITY  
COUNCIL OF SAN CLEMENTE

**SO ORDERED:**

Dated: June \_\_, 2014

*9 July 2014*



Honorable Therry P. Colaw  
Judge of the Superior Court

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**PROOF OF SERVICE BY E-MAIL**

*(Walker v. City of San Clemente, OCSC Case No. 30-2012 00591239)*

**STATE OF CALIFORNIA, COUNTY OF ORANGE**

I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 611 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-1931. My electronic notification address is kwilson@rutan.com.

On June 20, 2014, I served on the interested parties in said action the within:

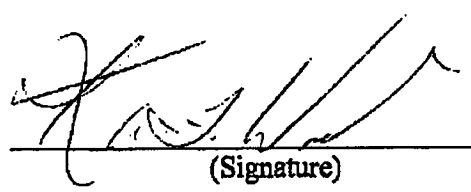
**[PROPOSED] JUDGMENT**

by transmitting a true copy of the foregoing document(s) to the e-mail addresses set forth as stated on the attached mailing list.

Executed on June 20, 2014, at Costa Mesa, California.

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

Karen F. Wilson  
(Type or print name)



(Signature)

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*Attorneys for Plaintiffs/Petitioners*