

1 Kelly T. Smith 196821  
THE SMITH FIRM  
2 1541 Corporate Way, Suite 100  
Sacramento, CA 95831  
3 T: (916) 442-2019

4 Attorney for Petitioners

**FILED**  
**Superior Court Of California,**  
**Sacramento**  
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Case Number:  
**34-2014-80001840**

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF SACRAMENTO**

10  
11 ADRIANA GIANTURCO SALTONSTALL,  
12 WILLIAM REANY, JEANIE KELTNER,  
13 DELPHINE CATHCART, BOB BLYMYER,  
14 HELEN MAGGIE O'MARA, J. BOLTON  
15 PHILLIPS, KEVIN COYLE, KAREN REDMAN,  
RONALD H. EMSLIE, CHRISTINE HANSEN and  
SARAH E. FOSTER,

16 Petitioners,

17 vs.

18 CITY OF SACRAMENTO,

19 Respondent,

20 SACRAMENTO BASKETBALL HOLDINGS, LLC,

21 Real Party in Interest.  
22  
23

Case No.

**PETITION FOR WRIT OF MANDATE;  
PRELIMINARY INJUNCTION;  
DECLARATORY RELIEF**

SACRAMENTO ARENA CEQA  
CHALLENGE AND ENVIRONMENTAL  
LEADERSHIP CEQA CHALLENGE

[Public Resources Code §§ 21168.5,  
21168.6.6; Code of Civil Procedure §§ 1085  
and 1094.5]

24 **I. INTRODUCTION**

25 1. Consummating a deal already brokered with the National Basketball Association, the  
26 Sacramento City Council, led by former NBA player Mayor Kevin Johnson, voted on May 20, 2014 to  
27 leave behind a perfectly good sports arena in the middle of urban north Sacramento to demolish a major  
28 section of downtown Sacramento and build a hideously-designed sports arena there (the "Project"). The

1 new arena capacity would differ from the abandoned “Sleep Train” arena only in the larger number of  
2 luxury “box suites” which are sold at a premium, generating more money for the NBA owners.

3 2. In its quest to grease the project for the developers and citing an unsubstantiated threat that  
4 the Sacramento Kings corporate basketball team would be moved unless a new arena was built, the City  
5 of Sacramento and the wealthy Project promoters sought special-interest state legislation to modify the  
6 California Environmental Quality Act (CEQA) to eliminate steps in the environmental review required  
7 for all other projects. Their wishes were fulfilled in Senate Bill 743, authored by state Sen. Darrell  
8 Steinberg.

9 3. Despite the overwhelming opposition of Sacramento voters to using public funds, the  
10 Project commits the City’s general fund to underwrite the half billion dollar corporate sports palace.<sup>1</sup>

11 4. The Environmental Impact Report (EIR) for a downtown sports arena built for the National  
12 Basketball Association and the Sacramento Kings is defective under the California Environmental  
13 Quality Act (CEQA) and invalid under the California constitution.

14 5. The environmental impacts of the Project will be staggering, including long back-ups on  
15 already crowded local freeway on-and-off ramps; amplified noise belching from open hanger doors of  
16 the arena onto the historic downtown Sacramento streets; crowds up to 17,000 pouring out after games  
17 onto the darkened streets where Sacramento has been unable to prevent violence and murder from  
18 smaller events such as the Thursday Night Market and Second Saturday; choking parking in the  
19 residential neighborhoods from cruising attendees seeking to avoid the higher parking rates and more  
20 meters planned to pay the extravagant expense of funding the bonds to build the facility.

21 6. The Court’s writ and relief are urgently required to protect the physical environment from  
22 unnecessary environmental impacts and any further commitment to the Project before proper  
23 environmental analysis, mitigation and alternatives.

24 7. Meanwhile, the already clogged Sacramento court must address the unconstitutionality of  
25 Public Resource Code §21168.6.6, created by the Steinberg bill, which strips environmental review of  
26 the public accountability that is the essence of CEQA, while imposing a 270-day timeframe for review.

27  
28 <sup>1</sup> Eye on Sacramento, May 18, 2014 report on the arena Project, citing three separate ballot measures where Sacramento  
citizens rejected public subsidy of a corporate sports arena, the latest in 2006 by near 80 percent margin.

1 **II. PARTIES**

2 8. Petitioners ADRIANA GIANTURCO SALTONSTALL, WILLIAM REANY, JEANIE  
3 KELTNER, DELPHINE CATHCART, BOB BLYMYER, HELEN MAGGIE O'MARA, J. BOLTON  
4 PHILLIPS, KEVIN COYLE, KAREN REDMAN, RONALD H. EMSLIE, CHRISTINE HANSEN and  
5 SARAH E. FOSTER are twelve City of Sacramento residents (the "Citizens"). Some object that City  
6 voters were denied a vote on the Project after 23,000 certified residents petitioned, only to have the City  
7 Clerk deny the vote on technical defects in the petition's form. Others strongly resent massive spending  
8 of Sacramento city funds for a corporate sports arena at the expense of other city needs including  
9 libraries, fire, police, symphonies, the arts, the Community Center and local performances such as B  
10 Street Theater. Several are concerned that essential services such as police and fire will be compromised  
11 by putting the City general fund at risk to guarantee the NBA's already-wealthy corporate cartel. All  
12 however are harmed by the pep-squad promotion of the Project by City officials which deprived them  
13 and all other City residents of full debate and input on the Project; all are harmed by the paper blizzard  
14 environmental impact report which ignored a potential traffic disaster on surrounding interstate high-  
15 ways from cars piling up at off ramps, by evading disclosure and mitigation of the amplified noise and  
16 after-game crowds that will drive them from downtown Sacramento and Old Sacramento, and harmed  
17 by the EIR's failure to fully analyze the current Sleep Train arena as an alternative, an alternative  
18 lacking only "luxury suites" that the NBA wants to make more money. Finally, all California citizens  
19 are harmed by state Sen. Darrell Steinberg's special-interest legislation, SB 743, eviscerating CEQA  
20 review afforded citizens on other projects, unconstitutionally impinging on court operations and powers.

21 9. Petitioners participated fully in the public comment process leading to the City's adoption  
22 of the Project and certification of the EIR. Petitioners have exhausted all administrative remedies,  
23 objecting consistently throughout the Project review process.

24 10. Respondent City of Sacramento is a charter city of the State of California. The privately  
25 operated corporate sports arena Project would be located in downtown Sacramento.

26 11. Real Party in Interest Sacramento Basketball Holdings, LLC, organized under the laws of  
27 Delaware with an office in Sacramento, is a franchise of the National Basketball Association, which is  
28 an association of wealthy private owners and owner groups from around the country.

1 **III. JURISDICTION AND VENUE**

2 12. This court has jurisdiction under Public Resources Code (PRC) §21168.5 and California  
3 Code of Civil Procedure (CCP) §§ 1085, 1094.5. Real Party in Interest does business in Sacramento  
4 County, the Project site is in Sacramento County and the Project approval which is the subject of this  
5 action was undertaken by the Sacramento City Council in Sacramento County.

6  
7 **IV. GENERAL ALLEGATIONS**

8 13. Petitioners make the following allegations based upon information and belief. The para-  
9 graphs below will refer to information in numerous documents relating to this lawsuit, all of which will  
10 be duly filed with this court as part of the record of proceedings, here incorporated by reference.

11 14. On May 20, 2014, the Sacramento City Council adopted a resolution approving the  
12 following agenda item: “Certifying the Environmental Impact Report and Adopting the Mitigation  
13 Monitoring Program and Statement of Overriding Considerations for the Sacramento Entertainment and  
14 Sports Center & Related Development Project (P13-065) (SCH No. 2013042031).”

15 15. The Environmental Impact Report (EIR) describes the project as follows: “The project  
16 applicant proposes entitlement, construction and operation of the proposed Sacramento Entertainment  
17 and Sports Center (ESC), approximately 1.5 million square feet of surrounding mixed-use development,  
18 the entitlement of up to six (6) offsite digital billboards on City of Sacramento-owned property, and the  
19 transfer of ownership of certain City-owned properties to the project applicant. These activities are  
20 referred to collectively as the Proposed Project.”

21 16. The approvals by the City May 20 also included approval of “CEQA Findings of Fact and  
22 Statement of Overriding Considerations for the Sacramento Entertainment and Sports Center & Related  
23 Development;” and “Mitigation Monitoring Program for the Sacramento Entertainment and Sports  
24 Center & Related Development.”

25 17. The EIR has numerous substantive flaws and omissions, addressed below. However the  
26 entire document is corrupted because it was prepared consistent with unconstitutional legislation  
27 muscled through by state Senator Darrell Steinberg in the opaque final days of the last legislative  
28 session. The Steinberg bill, SB 743, was enacted as California Public Resources Code §21168.6.6.

1 18. The judicial fire drill required by the Steinberg bill just for this corporate sports venue  
2 facially impinges upon the power of the courts to review the misdeeds of elected and public officials.

3 19. PRC §21168.6.6 significantly infringes on the constitutional power of both trial and appeal  
4 courts to grant extraordinary relief, such as injunction or writ of mandate. Cal. Const. art. VI, §§ 1, 10;  
5 *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231. *In re Quantification Settlement*  
6 *Agreement Cases* (2011) 201 Cal.App.4th 758, 845.

7 20. Further, as prepared under PRC §21168.6.6, the Sacramento “Downtown Arena” EIR here  
8 violates the due process and equal protections of the Citizens. The EIR and SB 743 make it impossible  
9 for the Citizens to equally access the courts for the redress of this enormous special interest project.

10 21. As has been the pattern of state and local officials in promoting this Arena, the environ-  
11 mental review prejudices the Citizens by thwarting the open decision making that is the fundamental  
12 purpose of CEQA. For example, comments to changes in the DEIR or upon a Final EIR made after the  
13 SB 743 cutoff were not considered.

14 **The “throwaway” Sleep Train arena.**

15 22. Several glaring defects in the EIR are obvious. Initially however is the failure to describe  
16 and evaluate abandoning the Sleep Train arena, which currently functions as it has for years as a  
17 corporate sports arena. The project would mothball the arena and its surrounding lands. The “new”  
18 Kings contract would prohibit its use as a sports arena or for any other use.

19 23. The “throwaway arena” is a blight fostered by the public money thrown to corporate sport  
20 promotion. No funding is identified in the DEIR for the maintenance or demolition of the existing arena.  
21 No timeline of its fate is even attempted in the document.

22 24. Yet the land use implications of removing the Sleep Train are obvious. The surrounding—  
23 and potentially competing—land use ranges from habitat conservation preserve in the north, to new  
24 subdivisions to the south and suburban commercial to the east. Which will it be? No discussion is  
25 provided.

26 25. Meanwhile, the cracking blacktop and unmaintained structure of the Sleep Train will sit.  
27 As evident from the history of other national arenas, they become instant blight.

28 26. None of these potentially significant environmental impacts are addressed in the EIR.



1           27. Finally, the EIR fails to describe and analyze a remodel of the Sleep Train as a viable  
2 alternative to the downtown project Arena proposed. Clearly, costs of remodel versus demolition versus  
3 doing nothing with the Sleep Train arena will be vital to such an analysis. Yet the FEIR refused to  
4 consider this evaluation at all.

5 **Six mammoth digital billboards at landmark City locations flashing NBA promotion.**

6           28. Regardless of whether Sacramento residents care about corporate sports, it will be in their  
7 face at prominent locations of their city in the form of six LED-lighted digital signs, as high as 90 feet  
8 and double sided. Presumably flashing purple fan gear and ticket promotions, at least six of these  
9 billboards will be located among ten of the most prominent roadsides of Sacramento, including at the  
10 iconic water tower at I-5 and Freeport, and the already billboard cluttered Sutter's Landing on Business  
11 80.

12           29. The EIR fails to consider the fact that the Project will double the number of such billboards  
13 allowed in the City, failing to address the blight which was the purpose of the original City ordinance  
14 limiting their number. The cumulative effect on City aesthetics was not analyzed or mitigated.

15           30. Nor does the EIR describe the actual billboards. Extensive discussion is given about sign  
16 regulations. But the actual sizes, placement, content and times of the billboards at the actual sites is  
17 never provided.

18           31. This failure to describe the billboards is especially glaring at the iconic I-5 water tower,  
19 near Meadowview Road, at Sacramento's southern entry point. By evading description of the proposed  
20 there, the Project improperly defers analysis of its potentially significant environmental impact and  
21 potential mitigations of that impact.

22 **Impacts of after-game crowds and riots.**

23           32. The once vibrant shopping experience of the downtown mall will be replaced, under the  
24 Project, by an enormous cavern that looks like a crushed aluminum can. From this giant crushed can up  
25 to 17,000 people at one time will disgorge, after games where alcohol is sold, into the tight, dark urban  
26 streets of downtown Sacramento.

27           33. The Project EIR fails entirely to account for how these crowds will be controlled,  
28 particularly where riot conditions may arise, as occurs often in conjunction with NBA events, such as

1 when the Los Angeles Lakers fans took over the streets of downtown Los Angeles after the 2010  
2 championship games.

3 34. Potentially significant impacts of the crowds include conflicts with other existing uses,  
4 such as other entertainment and shopping, traffic interference by crowds flowing onto the streets,  
5 bonfires, teargas if necessary to disperse crowds, destruction of surrounding property and consequent  
6 blight—all impacts which have occurred in other cities by crowds flowing out from NBA arenas.

7 **The City entirely ignores impacts to historical Old Sacramento.**

8 35. Old Sacramento is the historical waterfront attraction of Sacramento, the mandatory  
9 destiny of every out-of-town visitor, home to the Railroad Museum and many other attractions.

10 36. Many of Old Sacramento's attractions take place outside, including the internationally  
11 popular Sacramento Music Festival (jazz festival), the Saint Patrick's Day, Mardi Gras and Halloween  
12 parades and street side events.

13 37. Yet the EIR completely ignores Old Sacramento and any Arena impacts upon it. Both  
14 locations are primarily accessed at I-Street and J Street. At the northwest corner of the arena, closest to  
15 Old Sacramento, "...outdoor speaker operations during events would be expected to exceed the exterior  
16 daytime and nighttime noise standards..." DEIR p. 4.8-24.

17 38. Even the DEIR "Recreation impacts" discussion fails to describe Old Sacramento. This  
18 section, beginning at p. 4.9-17, is glaring in its ignorance of Old Sacramento. While the discussion of  
19 parking in the DEIR transportation section reveals a significant impact of the Arena on Old Sacramento  
20 parking, the nature of that impact on Old Sacramento use is not presented. See Figure 4.10-8 at p. 4.10-  
21 29. Mitigation of such potentially significant impacts are not presented.

22 39. The DEIR lacks discussion of project impacts on Old Sacramento from noise, including  
23 vibration noise and sensation during construction and noise conflicts with outside events such as the  
24 Music Festival and the parades. The cumulative impact of such events is entirely ignored.

25 40. The DEIR lacks discussion of traffic access impacts on Old Sacramento. The Arena traffic  
26 will create a significant impact upon I-5 freeway access and egress. The project will thereby cause a  
27 substantial physical deterioration of recreational parking and create a need for construction or expansion  
28 of recreational facilities beyond what was anticipated in local plans.

1 41. Finally the dislocation of existing Old Sac small businesses and traffic to other locations  
2 during construction, or permanently, is not considered in the EIR.

3 42. The description and analysis of environmental impacts is a mandatory element of the EIR.  
4 “The environmental impact report shall include a detailed statement setting forth... (1) All significant  
5 effects on the environment of the proposed project.” PRC §21100(b).

6 43. It must include potentially significant indirect as well as direct impacts, including any  
7 which are reasonably foreseeable. Guideline §15126, §15126.2. That guideline specifically calls for  
8 description of impacts resulting from bringing people to a project site. Guideline §15126.2(a).

9 44. The EIR fails to complies with these requirements concerning Project impacts to Old  
10 Sacramento.

11 **The EIR’s willful ignorance of freeway interchange impacts and mitigation.**

12 45. The EIR’s transportation section reveals what any resident could have told the City’s  
13 traffic consultants—driving downtown freeways with a basketball game at the proposed Arena is going  
14 to be a nightmare. Not only I-5 freeway access and egress, but all the freeway interchanges around,  
15 including Interstate 80 and State Route 160, would be significantly impacted.

16 46. The tables and maps and figures of the DEIR traffic analysis hide the most significant  
17 defect of the study—failure to consider modifications to the interstate highway interchanges to mitigate  
18 the significant backups which will occur before and after Arena games.

19 47. Although only VIP parking will be provided at the actual Arena itself, the VIPs can join  
20 everybody else backed up from the J Street off-ramps far onto I-5 itself. “The majority of the delay  
21 increase during the pre-event peak hour occurs at the J Street/3rd Street/I-5 ramps intersection.” DEIR p.  
22 4.10-71. The EIR fails to even discuss the impacts identified by the California Department of  
23 Transportation at other interchanges, such as I-80 and SR 160, which will be backed up during arena  
24 events, according to CalTrans.

25 48. “During the pre-event peak hour, the addition of project trips to existing traffic volumes  
26 would substantially increase vehicle queues on the SB I-5 off-ramp at J Street. Queued vehicles would  
27 extend into the freeway mainline.” DEIR p. 4.10-75.  
28



1           49.     Ultimately these J Street impacts are identified as significant. But the EIR evades  
2 describing whether or not Caltrans will require physical improvements to the interchange, whether as a  
3 reasonably foreseeable aspect of the project or as mitigation.

4           50.     *“The TMP describes several potential traffic management strategies that could be imple-*  
5 *mented at the J Street/3rd Street/I-5 off-ramps intersection. Since these strategies have not been fully*  
6 *analyzed by the City, a preferred strategy is not presented in this chapter.”* DEIR p. 4.10-75.

7           51.     Thus the EIR evades description of the one of the most serious environmental impacts of  
8 the project—the reconstruction of down freeway interchanges. Such construction will impact the main  
9 entryway to downtown Sacramento, for those who must work and live there in addition to those driving  
10 to watch professional athletes.

11          52.     The EIR fails to even consider mitigation through improvements to the other interchanges  
12 impacted by the increased congestion resulting from the Project, such as I-80 and SR 160.

13          53.     If required later by Caltrans, a new I-5 interchange would drastically impact the small  
14 businesses of Old Sacramento and the downtown core. Because the EIR fails to describe the potential of  
15 interchange improvements on I-80, their impact on surrounding neighborhoods and uses is evaded.

16          54.     CEQA prohibits deferring parts of a project or delaying the analysis of mitigation.  
17 *Vineyard Area Citizens for Resp. Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 441  
18 (“CEQA’s informational purpose ‘is not satisfied by simply stating information will be provided in the  
19 future.’”)

20          55.     The DEIR attempts to cover this defect with an unsubstantiated statement that somebody  
21 spoke with somebody at Caltrans and got the impression that adding ramp capacity would not be  
22 feasible due to *“certain geometric design standards not being met.”* This comes nowhere close to the  
23 CEQA mandated level of description required.

24          56.     The DEIR must fully describe the reasonably foreseeable modifications to the I-5/J Street  
25 interchange resulting from the project.

26          57.     Nor is there any explanation for why improvements at other interchanges are not feasible.  
27 Instead, they are simply ignored. Mitigation of impacts to I-80 and SR 160 are lacking because the  
28 impacts are ignored.

1 **The Steinberg bill**

2 58. The entire Arena EIR is predicated on its own custom-tailored, special-interest legislation.

3 59. Adopted in the opaque waning hours of the 2013 legislative year, shepherded by state  
4 senate Pro Tem Darrell Steinberg, California Public Resources Code §21168.6.6 (the Steinberg bill) was  
5 pushed through specifically to exempt a downtown Sacramento NBA arena—this Project.

6 60. The Steinberg bill curtails public comment on the EIR, reduced analysis of important  
7 impacts such as traffic, and crams judicial review into a schedule of 270 days, including appeals, from  
8 the date of the certification of the EIR administrative record.

9 61. During hasty committee hearing on the Steinberg bill, the Judicial Council of California  
10 testified in opposition that the bill was judicially unworkable, that its deadlines were so unworkable that  
11 a fair process was impossible.

12 62. The Judicial Council opposed the Steinberg bill as interfering with the functions of the  
13 judicial process in order to provide an advantage for a single project—the Arena. The priority schedule  
14 to which judicial review would be subject would work to the prejudice of other cases, the Judicial  
15 Council argued.

16 63. The Judicial Council, in its letter opposing the bill stated also: “Furthermore, the provision  
17 in the bill that significantly limits the forms of relief that the court may use in any action challenging the  
18 downtown arena project interferes with the inherent authority of a judicial officer and raises a serious  
19 separation of powers questions.” That comment was directed to PRC §21168.6.6(h)(1)(A)(i)(ii), which  
20 limits injunction to only where the Court finds health and safety or archeological threats.

21 64. In recently proposed rules attempting to implement the Steinberg bill, the Judicial Council  
22 noted: “Some of those provisions, such as the content of the administrative record, are already addressed  
23 by the rules of court applying to all CEQA cases. Others, such as the statute of limitations and time for  
24 service, make it all but impossible to meet the 270-day time frame envisioned by the Legislature.”

25 65. Comments from several courts, including Sacramento Superior Court, cited unworkable  
26 provisions of the regulations drafted by the Judicial Council as mandated by the Steinberg bill.

1 **FIRST CAUSE OF ACTION**

2 **VIOLATIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

3 66. Petitioners incorporate all previous allegations as if fully set forth, and for a first cause of  
4 action, allege as follows:

5 67. The City of Sacramento (“Respondent”) abused its discretion and failed to act in the  
6 manner required by law or was arbitrary and capricious in that it failed to properly describe, analyze,  
7 mitigate and find alternatives for significant and potentially significant impacts to the environment in an  
8 Environmental Impact Report (EIR), in violation of the California Environmental Quality Act (CEQA).

9 68. Failures of the Respondent to provide proper CEQA review include:

10 a. Failure to describe the remodeled “Sleep Train” arena alternative. Ignoring multiple public  
11 comments, the EIR failed to evaluate the most common-sense alternative—remodeling of the current  
12 Sleep Train arena. Instead, the EIR claims that its evaluation of a new arena built at the same site  
13 encompasses the same analysis. It does not. New construction opens multiple new environmental  
14 impacts, in particular flood zone restrictions for new construction not applicable to the existing facility.  
15 By failing to describe remodeling of the current, perfectly-fine-working facility, the EIR purposely  
16 deprived the public and decision-makers of the most useful alternative evaluation.

17 b. Lack of substantial evidence to support insignificance of throw-away “Sleep Train”  
18 impacts. The EIR’s finding that impacts of the “Sleep Train” arena abandonment are insignificant lacks  
19 substantial evidence. The EIR fails to describe the reasonably foreseeable condition and use of the  
20 current arena site if it is abandoned. Ongoing deterioration is ignored; costs of maintenance are not  
21 explained, immediate influences on growth are not presented. These are potentially significant  
22 environmental impacts and should be properly described, analyzed and mitigated if necessary.

23 c. Failure to describe and analyze post-game crowd control and riots. The Project calls  
24 “speculative” the potentially significant Project impacts of post-game crowds downtown, including  
25 conditions where post-game crowds riot into streets, damaging nearby properties, requiring teargas and  
26 street clearance, and causing damage to nearby businesses and residences. These are potentially  
27 significant impacts as indicated by the experiences of other cities where they have occurred.  
28

1 d. Failure to describe cumulative impacts of LED billboards. The Project fails to comply with  
2 CEQA by failing to discuss and analyze the Project’s cumulative impacts upon the aesthetics of  
3 Sacramento resulting from the construction of at least six giant LED billboards at every major entrance  
4 to the City, especially as results from potentially doubling the number allowed currently.

5 e. Failure to provide mandatory description of “mixed use” development. The EIR includes  
6 specially designed zoning and land use which will allow the City’s chosen private developers to short  
7 cut existing rules to develop “approximately 1.5 million square feet of surrounding mixed-use  
8 development.” However, beyond a lump sum division of the 1.5 million square feet into office, retail,  
9 residential and hotel rooms, there is no “mixed use” description sufficient to analyze impacts.

10 f. Unenforceable noise mitigation. The Arena will generate noise above the City’s noise  
11 ordinance 8.68.070. The EIR recognizes this as a significant impact. But the EIR concludes, and the City  
12 found, that this impact would be reduced to less than significant by a noise study which would  
13 recommend unknown requirements for future development in the Special Planning District. This would  
14 obviously not reduce the impact for existing residences—most of them low-income with rattling  
15 windows. Nor is that mitigation enforceable as required under CEQA.

16 g. Failure to describe Old Sacramento impacts. The EIR ignores potentially significant  
17 impacts to Old Sacramento, including parking and mitigation of the parking impacts there, significantly  
18 reduced freeway access, and cumulative noise impacts.

19 h. Parking impacts from future meters. The Project is to be paid by an expansion of City  
20 parking meters, but the EIR fails to describe the meter program—where they will go—or impacts.

21 i. Failure to qualify as a “Downtown Arena.” To qualify as a “Downtown Arena” under the  
22 Steinberg bill, the Project was required to obtain “LEED certification” of its environmental merits in  
23 design, operation and other factors. The Project has not obtained LEED certification as required under  
24 §21168.6.6. Therefore it does not qualify for the CEQA exemptions provided under the Steinberg bill.

25 j. Failure to provide proper VMT baseline. One of the requirements to qualify as a  
26 “Downtown Arena” under the Steinberg bill is a specified reduction of “vehicle miles traveled” or  
27 “VMT.” The Project EIR did so without presenting the “baseline” conditions from which its figures  
28 were derived.

1 SECOND CAUSE OF ACTION

2 VIOLATIONS OF THE CALIFORNIA CONSTITUTION, ART. VI, §§ 1 AND 10

3 69. Petitioners incorporate all previous allegations as if fully set forth, and for a second cause  
4 of action, allege as follows:

5 70. The California Constitution separates the powers of government, giving to the courts  
6 express authority to review the legislative actions of politicians and public officials.

7 71. Adopted in the opaque waning hours of the 2013 legislative year, shepherded by state Sen.  
8 Darrell Steinberg, California Public Resources Code §21168.6.6 was pushed through specifically to  
9 provide privileged judicial review CEQA challenge to a downtown Sacramento NBA arena.

10 72. PRC §21168.6.6 is unconstitutional on its face and as applied here.

11 73. The criteria for qualifying as a “Downtown Arena” under §21168.6.6 are inherently  
12 conflicting. One of the three criteria under §21168.6.6 requires LEED certification before qualifying  
13 under §21168.6.6. Yet LEED certification, a third-party process, subject to third-party contest, can only  
14 be obtained, if at all, long after the approval of the EIR.

15 74. Thus, although the Arena EIR was found to qualify under §21168.6.6 and approved by its  
16 special provisions, those findings clearly could not be made and the Project clearly did not qualify as a  
17 “Downtown Arena” under §21168.6.6.

18 75. PRC §21168.6.6 deprives Sacramento citizens of due process because it restricts public  
19 comment and input prior to the qualification of the Project as a “Downtown Arena” and the Steinberg  
20 bill’s reduced public comment and participation. There is no means to cure this defect after the fact and  
21 the Arena EIR and its circulation and certification must be voided and vacated until it complies with  
22 CEQA’s standards and procedures as they are applied to all other projects.

23 76. PRC §21168.6.6 would usurp the inherent powers of the judiciary by materially impairing  
24 the orderly administrative of justice. The timetable imposed by the Steinberg bill would require other  
25 cases to be sidelined, it would impose an injustice upon petitioners by the curtailed review.

26 77. The provision of PRC §21168.6.6 limiting the injunctive powers of the courts is an  
27 unconstitutional limitation of the jurisdiction of the courts. Without the constitutionally provided  
28 remedies of injunction, CEQA review becomes a farce.



1 THIRD CAUSE OF ACTION

2 DECLARATORY RELIEF

3 78. Petitioners incorporate all previous allegations as if fully set forth, and for a third cause of  
4 action, allege as follows:

5 79. Petitioners and Respondent have a justiciable and actual controversy regarding the legal  
6 rights and duties of the parties.

7 80. Petitioner objects that the Project approval is void and invalid because the EIR required  
8 was adopted under special-interest legislation, Senate Bill 743, which is intrinsically unconstitutional  
9 under the California Constitution Art. VI, §§ 1 and 10.

10 81. A dispute therefore has arisen between the parties over whether the Project should receive  
11 the special CEQA exemptions provided under SB 743.

12 82. The burden is upon the City to make the necessary showings under PRC §21168.6.6 to  
13 qualify for its exceptions and procedures. The Project, as approved by the City, does not meet the  
14 qualifications set out in SB 743.

15 83. The EIR as adopted states that it has not finalized the requirements for “LEED  
16 certification,” as required under PRC §21168.6.6.

17 84. The Project cannot qualify as a “downtown arena” under PRC §21168.6.6 because as  
18 adopted the Project cannot show that it has qualified for LEED certification within one year of the first  
19 NBA season.

20 85. The criteria set out under PRC §21168.6.6 to qualify as a “downtown arena” are  
21 speculative, especially the condition that the Project qualify for LEED certification within one year of  
22 the first season. That criteria is also vague as to when that time will actually be in the future.

23 86. Petitioner therefore seeks a declaration pursuant to CCP §860 that Respondent’s approval  
24 of the Project is invalid.

25 87. Petitioner seeks a declaration interpreting the application of Art. VI, §§ 1 and 10 to Public  
26 Resources Code §21168.6.6.

1 PRAYER

2 WHEREFORE, Petitioners prays:

3 1. That the Court issue a Peremptory Writ of Mandamus to set aside and void any approvals,  
4 entitlements, findings or resolutions related to the Project and to comply with all provisions of the  
5 California Environmental Quality Act, and to order compliance with CEQA and all other applicable  
6 laws prior to further consideration of any related approvals;

7 2. That the Court declare PRC §21168.6.6 unconstitutional on its face and as applied.

8 3. That the Court order that on return the entire Project EIR be re-circulated as required under  
9 CEQA and not PRC §21168.6.6;

10 4. For costs of the suit and attorney's fees; and

11 5. For other and further relief as the court finds proper.

12  
13 DATE: May 20, 2014

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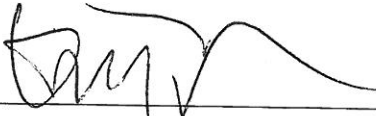
KELLY T. SMITH  
Attorney for Petitioners

15 ADRIANA GIANTURCO SALTONSTALL, WILLIAM REANY,  
16 JEANIE KELTNER, DELPHINE CATHCART, BOB BLYMYER,  
17 HELEN MAGGIE O'MARA, J. BOLTON PHILLIPS, KEVIN  
18 COYLE, KAREN REDMAN, RONALD H. EMSLIE,  
CHRISTINE HANSEN and SARAH E. FOSTER

19 VERIFICATION

20 I am the attorney for petitioners in the above-entitled action. Pursuant to California Code of Civil  
21 Procedure §446, I have read the foregoing Petition and am familiar with its contents. I am informed and  
22 believe that the matters contained within it are true and on that ground allege that the matters stated are  
23 true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true  
24 and correct. I make this declaration and verification in Sacramento, Sacramento County, California.

25  
26 DATE: May 20, 2014

27   
\_\_\_\_\_

KELLY T. SMITH  
Attorney for Petitioners