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August 4, 2011

The Honorable Chief Justice Tani Cantil-Sakauye  
and the Honorable Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

**Re: *Concerned Citizens for Responsible Government v. West Point Fire Protection District* (Supreme Court Case No. S195152; 196 Cal.App.4th 1427 (C061110))**

**OPPOSITION TO DEPUBLICATION REQUEST (C.R.C. 8.1125(b))**

Dear Chief Justice Cantil-Sakauye and Honorable Associate Justices:

Pursuant to Rule 8.1125(b) of the California Rules of Court, this letter is submitted in **opposition** to the Request for Depublication of *Concerned Citizens for Responsible Government v. West Point Fire Protection District* (2011) 196 Cal.App.4th 1427 (Supreme Court Case No. S195152, Third District Appellate Case No. C061110, hereafter "*West Point Fire*"). The depublication request was filed by the Mosquito and Vector Control Association of California.

I am one of the attorneys who drafted Proposition 218, an initiative constitutional amendment known as the "Right to Vote on Taxes Act" that passed in 1996 and added Articles XIII C and XIII D to the California Constitution. The *West Point Fire* case arises in connection with the validity under Proposition 218 of a "special assessment" for fire suppression services in the West Point Fire Protection District located in Calaveras County. In particular, at issue is compliance with the special benefit and proportionality requirements for special assessments under Proposition 218 (Cal. Const., art. XIII D, § 4).

The opinion in *West Point Fire* was certified for partial publication pursuant to Rule 8.1110 of the California Rules of Court. (*Concerned Citizens for Responsible Government v. West Point Fire Protection District* (2011) 196 Cal.App.4th 1427, 1434.) Thus, the Court of Appeal has already excluded from publication any part of the opinion

that does not meet the legal standard for publication. The published part of the Court of Appeal opinion in *West Point Fire* meets one or more of the standards for publication certification under Rule 8.1105(c) of the California Rules of Court in that it applies an existing rule of law to a set of facts significantly different from those stated in published opinions (Cal. Rules of Court, rule 8.1105(c)(2)) and/or it involves a legal issue of continuing public interest (Cal. Rules of Court, rule 8.1105(c)(6)).

The *West Point Fire* case involves a correct and proper application of this court's decision in *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431 [invalidating countywide open space "assessment" under Proposition 218] ("*Silicon Valley*") in the factual context of a fire suppression assessment for which there are *no* other published decisions. Court of Appeal opinions applying *Silicon Valley* in *other* significantly different factual contexts have previously met the standards for publication. These cases include: *Beutz v. County of Riverside* (2010) 184 Cal.App.4th 1516 [validity of parks/recreation assessment]; *Dahms v. Downtown Pomona Property & Business Improvement Dist.* (2009) 174 Cal.App.4th 708 [validity of business improvement assessment]; and *Town of Tiburon v. Bonander* (2009) 180 Cal.App.4th 1057 [validity of underground utility assessment].

Application of fire suppression assessments to the requirements of Proposition 218 is also a legal issue of continuing public interest inasmuch as the many local governments throughout California that provide fire suppression services, including local fire protection districts, need to know the legal parameters in which special assessments are an available funding mechanism for fire suppression services under Proposition 218. The *West Point Fire* case addresses those legal parameters. If depublished, additional and unnecessary litigation would result.

It is also a legal issue of continuing public interest to property owners, including parcels owned or used by *public agencies* which are subject to assessments under Proposition 218 (see Cal. Const., art. XIII D, § 4, subd. (a)), who need to know the legal parameters in which their parcels could be subject to liability for fire suppression assessments under the provisions of Proposition 218.

In *Silicon Valley*, this court referenced the following from the ballot argument in favor of Proposition 218: "Proposition 218 will significantly tighten the kind of benefit assessments that can be levied." (*Silicon Valley, supra*, 44 Cal.4th at p. 449, fn. 5, quoting Ballot Pamp., Gen. Elec. (Nov. 5, 1996) argument in favor of Prop. 218, p. 76.) In the specific context of fire suppression services, it should come as no surprise that the Court

August 4, 2011

Page 3

of Appeal correctly concluded that “fire suppression is a classic example of a service that confers general benefits on the community as a whole.” (*West Point Fire, supra*, 196 Cal.App.4th at p. 1438.) The Court of Appeal noted: “As the Legislative Analyst pointed out in the ballot materials that accompanied Proposition 218, “[t]ypical assessments that provide *general* benefits’ [are] ‘*fire, park, ambulance, and mosquito control assessments.*’” [Citations.] (*Ibid.*, italics added in opinion.) Under the more restrictive requirements of Proposition 218, “[o]nly *special* benefits are assessable.” (Cal. Const., art. XIII D, § 4, subd. (a), italics added.)

The invalidated assessment in *West Point Fire* was also inappropriately cost driven rather than special benefit driven, as is constitutionally required under Proposition 218. (*West Point Fire, supra*, 196 Cal.App.4th at p. 1440.) As this court has already made clear, this backward approach for calculating assessments is unlawful, both before and after Proposition 218. (*Silicon Valley, supra*, 44 Cal.4th at p. 457.)

The published part of the opinion in *West Point Fire* meets one or more of the standards for publication pursuant to Rule 8.1105(c) of the California Rules of Court and was correctly decided by the Court of Appeal in accordance with this court’s decision in the *Silicon Valley* case. Accordingly, the Request for Depublication should be **denied**.

Respectfully submitted,



Jack Cohen  
Attorney at Law

**Proof of Service**  
**State of California, County of Los Angeles**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is: Post Office Box 6273, Beverly Hills, CA 90212.

On August 4, 2011, I served the foregoing OPPOSITION TO DEPUBLICATION REQUEST (C.R.C. 8.1125(b)) by depositing true copies thereof in the United States mail in Beverly Hills (County of Los Angeles), California, enclosed in sealed envelopes with the postage thereon fully prepaid, and addressed as follows:

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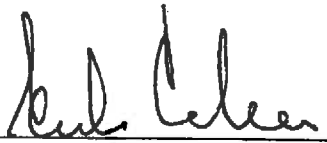
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*Court Rendering Published Opinion*

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 4, 2011, at Beverly Hills, California.

  
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Jack Cohen