

1 BRIGGS LAW CORPORATION [FILE: 1593.38]
2 Cory J. Briggs (State Bar no. 176284)
3 Anthony N. Kim (State Bar no. 283353)
4 Kelly E. Mourning (State Bar no. 299721)
5 99 East "C" Street, Suite 111
6 Upland, CA 91786
7 Telephone: 909-949-7115

8 Attorneys for Plaintiff and Petitioner San Diegans
9 for Open Government

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN DIEGO--HALL OF JUSTICE

13 SAN DIEGANS FOR OPEN GOVERNMENT,

14 Plaintiff and Petitioner,

15 vs.

16 CITY OF SAN DIEGO and DOES 1 through 100,

17 Defendants and Respondents;

18 SYMPHONY ASSET POOL XVI, LLC, a
19 Delaware limited liability company, and DOES
20 101 through 1,000,

21 Defendants and Real Parties in Interest.

CASE NO. 37-2015-00015780-CU-TT-CTL

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF UNDER THE SAN DIEGO CITY
CHARTER, PROPOSITION G, THE
CALIFORNIA COASTAL ACT, THE
CALIFORNIA ENVIRONMENTAL
QUALITY ACT, AND OTHER LAWS**

22 Plaintiff and Petitioner SAN DIEGANS FOR OPEN GOVERNMENT is informed and believes
23 and on that basis alleges as follows in this Verified Petition for Writ of Mandate and Complaint for
24 Declaratory and Injunctive Relief:

Parties

25 1. Plaintiff and Petitioner SAN DIEGANS FOR OPEN GOVERNMENT ("Petitioner")
26 is a non-profit organization formed and operating under the laws of the State of California. At least one
27 of Petitioner's members resides in and pays taxes within the geographical jurisdiction of Defendant and
28 Respondent CITY OF SAN DIEGO and has an interest in, among other things, ensuring open,

1 between the original lessee, Belmont Park Associates, and Symphony. The 1987 Lease had certain
2 rights associated with it. Respondents exceeded the scope of the rights contained in the 1987 Lease by
3 and through the approval of the Lease Agreement.

4 7. The site of the subject Lease Agreement consists of approximately 7.241 acres of land,
5 including 22,583 square feet Plunge building with the historic Plunge Swimming Pool and 111,556
6 square feet of commercial space, to house retail shops, restaurants, game rooms, "miscellaneous
7 attraction," and water features. The property that is the subject of the Lease Agreement is entirely
8 situated on City-owned land in Mission Beach Park, which is subject to Proposition G.

9 8. The Resolution makes clear that approval of the Lease Agreement was contingent upon
10 Symphony's representation that it would invest in future development, expansion, and improvement
11 of the property (collectively, the "Projects"), which would increase percentage rents to Respondents.

12 9. The Request for Council Action states that the Projects are categorically exempt from
13 CEQA pursuant to CEQA Guidelines, Section 15301.

14 10. The Projects will result in the future development, expansion, and improvement of 7.241
15 acres of land, including 22,583 square feet Plunge building with the historic Plunge Swimming Pool
16 and 111,556 square feet of commercial space along the California Coastline, and also, the expansion
17 and improvement of commercial activities including shops, restaurants, game rooms, "miscellaneous
18 attraction," and water features.

19 11. Petitioner opposes the Lease Agreement and the Projects it authorizes, and challenges
20 certain actions taken by Respondent. In particular, Petitioner seeks to invalidate the Lease Agreement
21 on the grounds that Respondent has violated the California Coastal Act, CEQA, the San Diego City
22 Charter, and Proposition G.

23 **Notice Requirements and Time Limitations**

24 12. This proceeding is being commenced not more than 35 days after the notice authorized
25 by Public Resources Code Section 21152(b).

26 13. Petitioner has caused a Notice of Commencement of Action to be served on Respondent,
27 as required by Public Resources Code Section 21167.5. A true and correct copy of the Notice of
28 Commencement of Action is attached to this pleading as Exhibit "A."

1 14. Petitioner will have caused a copy of this pleading to be served on the Attorney General
2 not more than ten days after the commencement of this proceeding, as required by Public Resources
3 Code Section 21167.7 and Code of Civil Procedure Section 388.

4 **Jurisdiction and Exhaustion of Administrative Remedies**

5 15. Petitioner seeks review by and relief from this Court under Public Resources Code
6 Section 21168 or 21168.5, as applicable, and Code of Civil Procedure Sections 526a, 1060 *et seq.*, and
7 1084 *et seq.*; and principles of common-law taxpayer standing, among other provisions of law.

8 16. Petitioner exhausted administrative remedies to the extent required by law; by way of
9 example and without limitation, Petitioner submitted written comments during the administrative
10 proceedings relating to this Lease Agreement.

11 17. Respondent's conduct in approving the Lease Agreement and the Projects without
12 complying with the California Coastal Act, CEQA, the San Diego City Charter, and Proposition G
13 constitutes a prejudicial abuse of discretion because, as alleged in this pleading, Respondent failed to
14 proceed in a manner required by law.

15 18. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law,
16 because its members and other members of the public will suffer irreparable harm as a result of
17 Respondent's violations of Proposition G, the California Coastal Act, CEQA, and the San Diego City
18 Charter. Respondent's approval of the Lease Agreement also rests on Respondent's failure to satisfy
19 a clear, present, ministerial duty to act in accordance with those laws. Even when Respondent is
20 permitted or required by law to exercise its discretion in approving leases and projects under those laws,
21 it remains under a clear, present, ministerial duty to exercise discretion within the limits of and in a
22 manner consistent with those laws. Respondent has had and continues to have the capacity and ability
23 to approve the Lease Agreement and Projects within the time limits of and in a manner consistent with
24 those laws, but Respondent has failed and refused to do so and has exercised its discretion beyond the
25 limits of and in a manner that is not consistent with those laws.

26 19. Petitioner has a beneficial right and interest in Respondent's fulfillment of all their legal
27 duties, as alleged in this pleading.

1 facility will not have a negative impact upon Mission Beach in terms of noise, traffic, parking or
2 intensity of development and use.”

3 g. The Mission Beach Precise Plan further states: “That upon completion of the
4 term of the city lease,¹ future development of Mission Beach Park be restricted to public and recreation
5 uses and shall not include commercial uses except within the Plunge building.”

6 h. The Lease Agreement violates Proposition G because it authorizes uses and
7 improvements in excess of those protected by the vested rights conferred under the 1987 Lease and
8 those codified in the Mission Beach Precise Plan.²

9 i. By way of example and not limitation, the Lease Agreement contains two term-
10 modifying provisions that, if triggered, will effectively extend the term of the 1987 Lease – the only one
11 that has been granted vested rights under Proposition G – beyond that which was contemplated when
12 the vested-rights determination was made. Symphony, the lessee, has no vested rights to extend the
13 term past March 31, 2037, or in the worst-case scenario past June 30, 2038.³ The various provisions
14 extending the term under the Proposed Lease violate Proposition G.

15 j. The Lease Agreement authorizes substantial improvement obligations, which are
16 outside the scope of what was contemplated in the 1987 Lease’s Development Plan and the
17 corresponding vested-rights determination, and thus violates Proposition G. By way of example and
18 not limitation, the Lease Agreement authorizes a long list of “improvements” that were not included
19 in the Development Plan, such as catering facilities, amusement rides, a variety of games of skill and
20 _____

21 ¹ The reference to “the city lease” refers to the 1987 Lease, which the Lease Agreement allegedly
22 “restates.” The Mission Beach Precise Plan states that the 1987 Lease expires “on March 31, 2037.”
MBPP, p. 48.

23 ² With the Precise Plan being a component of the City’s general plan, the Lease Agreement also violates
24 the Planning and Zoning Law’s requirement that no action be taken if it is inconsistent with the general
plan.

25 ³ Despite requesting public records that, had there been proper compliance with the request on the part
26 of the City, would have provided insight, it is not clear whether the term under the 1987 Lease ends on
27 March 31, 2037, or on June 30, 2038. Under the 1987 Lease, the term ends on March 31, 2037, if the
28 lessee received its final discretionary approvals on March 5, 1987, which Respondent purports has
occurred. However, the Lease Agreement states that the current term ends on June 30, 2038, suggesting
that not all discretionary approvals were obtained by March 5, 1987. If that is true, and if those
approvals were not obtained by the time Proposition G took effect, then the lessee under the 1987 Lease
would have no vested rights. Petitioner reserves the right to amend the petition to assert a lack of
vested rights if the record shows that all discretionary permits were not issued by that time.

1 other such experiences, and amusements like miniature golf, laser tag, zip-lining, and climbing walls.
2 The uses contemplated under the Lease Agreement are not incidental or related because they are neither
3 subordinate to the authorized uses under Proposition G, nor are the contemplated uses minor in nature.

4 k. As a result of Respondent's violation of Proposition G, Petitioner has been
5 harmed insofar as Petitioner, its members, other members of the public, are and will be deprived of the
6 benefit of public access to Mission Beach Park for recreational uses

7 23. The Lease Agreement is illegal because it violates CEQA:

8 a. CEQA applies to every discretionary project proposed to be carried out or
9 approved by a public agency, unless the project is exempt from CEQA. Generally speaking, the public
10 agency must review the potentially significant environmental impacts of every discretionary project
11 subject to CEQA that the agency proposes to carry out or approve. Such review involves determining
12 whether the proposal is exempt, should be the subject of a negative declaration, or should be the subject
13 of an environmental impact report.

14 b. The approval of the Lease Agreement implicitly approved multiple projects
15 (collectively "Projects") that, as approved by Respondents, are "discretionary projects" within the
16 meaning of CEQA.

17 c. The Projects have the potential to cause significant direct, indirect, or cumulative
18 adverse impacts (if not all such impacts) on the environment, including, among other things, air-quality
19 impacts, noise impacts, and significant greenhouse gas emissions.

20 d. The potential of the Projects to cause significant direct, indirect, or cumulative
21 adverse impacts on the environment makes CEQA applicable to the Projects and gives rise to
22 Respondents' legal obligation to subject it to environmental review.

23 e. Respondents' refusal to apply CEQA to the Projects and subject it to
24 environmental review constitutes a violation of CEQA.

25 f. As a result of Respondents' violation of CEQA, Petitioner has been harmed
26 insofar as Petitioner, its members, other members of the public, and the responsible decision-makers
27 were not fully informed about the potential adverse environmental impacts of the Project, and insofar
28

1 as Petitioner, its members, and other members of the public did not have an opportunity to participate
2 meaningfully in the analysis of such impacts prior to approval of the Project.

3 24. The Lease Agreement violates the California Coastal Act:

4 a. The California Coastal Act, codified in Public Resources Code section 30600(a)
5 states: "Except as provided in subdivision (e), and in addition to obtaining any other permit required
6 by law from any local government or from any state, regional, or local agency, any person, as defined
7 in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a
8 facility subject to Section 25500, shall obtain a coastal development permit."

9 b. Public Resources Code section 30106 states: "Development" means, on land, in
10 or under water, the placement or erection of any solid material or structure; discharge or disposal of any
11 dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging,
12 mining, or extraction of any materials; change in the density or intensity of use of land, including, but
13 not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of
14 the Government Code), and any other division of land. . ."

15 c. The Lease Agreement includes Belmont Park, which is located in the coastal
16 zone, where development is regulated by the California Coastal Act and the San Diego Municipal Code.
17 A coastal development permit is required for any activity or use that meets the definition of
18 "development" under the Act.

19 d. The Lease Agreement obligates Respondent, upon the lessee's request, to grant
20 a license for certain "accessory uses" for up to two years. The beach concessions contemplated by the
21 Lease Agreement require a coastal development permit because they involve the placement of solid
22 material and/or structures on the beach immediately to the west of the Belmont Park site (excluding the
23 sea wall and boardwalk), and would limit the public's access to that portion of the beach.

24 e. The potential of the Lease Agreement and its proposed projects to cause
25 significant direct, indirect, or cumulative adverse impacts on the coastal area makes the California
26 Coastal Act applicable and gives rise to Respondents' legal obligation to subject it to review.

27 f. Respondent's refusal to require proper permitting violates the California Coastal
28 Act.

1 g. As a result of Respondent's violation of the California Coastal Act, Petitioner
2 has been harmed insofar as Petitioner, its members, other members of the public, and the responsible
3 decision-makers were not fully informed about the potential adverse environmental impacts of the
4 Project, and insofar as Petitioner, its members, and other members of the public did not have an
5 opportunity to participate meaningfully in the analysis of such impacts prior to approval of the Project.

6 25. The Lease Agreement is void because its approval violated the San Diego City Charter:

7 a. San Diego City Charter Article XIV, Section 99 states, in pertinent part (with
8 Petitioner's emphasis): "No contract, agreement or obligation extending for a *period of more than five*
9 *years* may be authorized except by *ordinance* adopted by a two-thirds' majority vote of the members
10 elected to the Council after *holding a public hearing which has been duly noticed in the official City*
11 *newspaper at least ten days in advance.*"

12 b. The Lease Agreement's Initial Term extends well beyond five years. The Initial
13 Revised Term, and Additional Revised Term, if exercised, will extend the Lease Agreement as far out
14 as the end of 2067. The duration of the obligation created by Respondent's approval of the Proposed
15 Lease triggered Section 99's public-hearing and ordinance requirements.

16 c. There was no notice provided in the City's official newspaper, the *Daily*
17 *Transcript*.

18 d. The City Council approved the Resolution authorizing the Lease Agreement;
19 however, there was no ordinance considered or approved, which is a requirement for all contracts,
20 agreement or obligations extending for a period of more than five years. The approval of the Lease
21 Agreement did not comply with Section 99 is illegal and the Lease Agreement void.

22 Prayer

23 FOR ALL THESE REASONS, Petitioner respectfully prays for the following relief against
24 Respondents and Real Parties in Interest (and any and all other parties who may oppose Petitioner in
25 this proceeding):

26 A. A judgment determining or declaring that Respondents failed to comply with CEQA as
27 it relates to the Project and that this Project must be subjected to environmental review before final
28 approval of the Project may be granted;

1 B. A judgment determining or declaring that Respondents failed to comply with CEQA as
2 it relates to the Project and that its approval (including all associated entitlements) was illegal in at least
3 some respect, rendering the approval null and void;

4 C. A judgment determining or declaring that Respondents failed to comply with the San
5 Diego City Charter in approving the Lease Agreement between Respondents and Symphony Asset Pool
6 XVI, LLC;

7 D. A judgment determining or declaring that Respondents failed to comply with the San
8 Diego City Charter in approving the 40-year lease agreement between Respondents and Symphony
9 Asset Pool XVI, LLC and that its approval was illegal in at least some respect, rendering the approval
10 null and void.

11 E. Injunctive Relief prohibiting Respondents and Real Parties in Interest (and any and all
12 persons acting at the request of, in concert with, or for the benefit of one or more of them) from taking
13 any action on any aspect of, in furtherance of, or otherwise based on the Project unless and until
14 Respondents comply with all applicable provisions of Proposition G, the California Coastal Act, CEQA,
15 the San Diego City Charter, and all other applicable laws, as determined by the Court.

16 F. Any and all other relief that may be authorized by the California Coastal Act, CEQA,
17 the San Diego City Charter, or both, but is not explicitly or specifically requested elsewhere in this
18 Prayer; and

19 G. All legal fees and other expenses incurred by Petitioner in connection with this
20 proceeding, including but not limited to reasonable attorney fees as authorized by the Code of Civil
21 Procedure.

22 H. Any and all further relief that this Court may deem appropriate.

23
24 Date: May 11, 2015.

Respectfully submitted,

BRIGGS LAW CORPORATION

25
26
27 By:


Kelly E. Mourning

28 Attorneys for Plaintiff and Petitioner San Diegans for
Open Government

4.1. 1943. 1. 20.

EXHIBIT "A"

BRIGGS LAW CORPORATION

San Diego Office:
814 Morena Boulevard, Suite 107
San Diego, CA 92110

Telephone: 619-497-0021
Facsimile: 619-515-6410

Please respond to: Inland Empire Office

Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

BLC File(s): 1593.38

6 May 2015

City of San Diego
Office of the City Clerk
202 "C" St., Second Floor
San Diego, CA 92101
Fax no.: (619) 533-4045

Via Email to cityclerk@sandiego.gov

Via Facsimile to (619) 533-~~4543~~
4045

Re: Notice of Commencement of Action

Dear City Clerk:

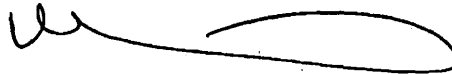
I represent San Diegans for Open Government ("SanDOG"), and I am sending this Notice of Commencement of Action on my client's behalf.

Please be advised that an action is to be commenced by my client in San Diego Superior Court against your agency. The action will challenge your agency's approval of the lease agreement with Symphony Asset Pool XVI, LLC for the lease and operation of Belmont Park (and all associated entitlements and certifications), on April 6, 2015, on the grounds that the approval violated Proposition G, the California Coastal Act (PUB. RES. CODE § 30000 *et seq.*), the California Environmental Quality Act (PUB. RES. CODE § 21000 *et seq.*), and the San Diego City Charter. The action may also challenge your agency's approval of the project based on one or more violations of other laws.

If you have any questions, please feel free to contact me.

Sincerely,

BRIGGS LAW CORPORATION



Kelly E. Mourning



BRIGGS LAW CORPORATION

San Diego Office:
814 Morena Boulevard, Suite 107
San Diego, CA 92110

Telephone: 619-497-0021
Facsimile: 619-515-6410

Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

FACSIMILE COVER SHEET

Recipient: San Diego City Clerk
Recipient's fax number: 619-533-~~4545~~ 4045
Date: 5/6/2015 BLC File: 1593.38

Total Pages (including cover sheet): 2
Sender: Janna Ferraro

Sender's fax number: 619-515-6410 909-949-7121

Message: Please see attached.
Also sent via email.

Original Document to Follow? Yes No

CONFIDENTIALITY

The document accompanying this facsimile transmission contains information that may be either confidential, legally privileged, or both. The information is intended only for the use of the recipient(s) named on this cover sheet. If not done by or at the direction of the recipient(s), disclosure, copying, distribution, or reliance on any of the contents of this transmission is strictly prohibited. If you have received this facsimile transmission in error, please notify us immediately by telephone so that we can arrange for its return at no cost to you.

Be Good to the Earth: Reduce, Reuse, Recycle



TRANSMISSION VERIFICATION REPORT

TIME : 05/06/2015 10:50
NAME :
FAX :
TEL :
SER.# : 000M3J198110

DATE, TIME : 05/06 10:48
FAX NO./NAME : 16195334045
DURATION : 00:01:29
PAGE(S) : 02
RESULT : OK
MODE : STANDARD

BRIGGS LAW CORPORATION

*San Diego Office:
814 Morena Boulevard, Suite 107
San Diego, CA 92110*

*Telephone: 619-497-0021
Facsimile: 619-515-6410*

*Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786*

*Telephone: 909-949-7115
Facsimile: 909-949-7121*

FACSIMILE COVER SHEET

Recipient: San Diego City Clerk
Recipient's fax number: 619-533-~~4545~~ 4045
Date: 5/6/2015 BLC File: 1593.38
Total Pages (including cover sheet): 2
Sender: Janna Ferraro
Sender's fax number: 619-515-6410 909-949-7121
Message: Please see attached.
Also sent via email.

STATE OF CALIFORNIA, COUNTY OF San Diego

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief Under the San Diego City Charter, etc. _____ and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

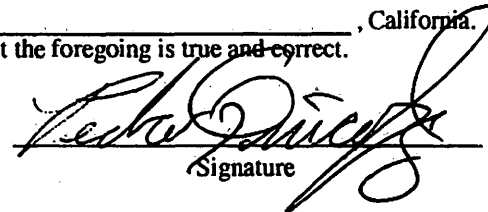
I am an Officer a partner _____ a _____ of San Diegans for Open Government

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on May 11, 20 15, at San Diego, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Pedro Quiroz, Jr.
Type or Print Name


Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF _____

I am employed in the county of _____, State of California. I am over the age of 18 and not a party to the within action; my business address is, _____

On _____, 20 _____, I served the foregoing document described as _____

_____ on _____ in this action by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
 by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL
 * I deposited such envelope in the mail at _____, California. The envelope was mailed with postage thereon fully prepaid.
 As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, 20 _____, at _____, California.
 **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, 20 _____, at _____, California.
 (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I
 (Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

* (By MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)
**FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER