

This page contains links to the Exhibits called out in the body of the Complaint that follows.

Click on the Description/Link to go to the Exhibit. The Exhibits are large PDF files.

Exhibit	Description/Link
A	Notice of Commencement of Action
B	Agenda for the Planning Commission's meeting August 23, 2012
C	Report to the Planning Commission no. PC-12-057 pages 1-23 Report to the Planning Commission no. PC-12-057 pages 24-37 Report to the Planning Commission no. PC-12-057 pages 38-68
D	SDMC Section 113.0103
E	SDMC Chapter 12, Article 7, Division 1
F	Minutes for the Planning Commission's meeting August 23, 2012
G	City's Project Issues report pages 1 to 13 City's Project Issues report pages 14-23
H	Letter dated May 31, 2003 from JIB to North Park Planning Committee
I	Photographs of the site with structure almost completely demolished between May 3 and July 3, 2013
J	Legal Services Request Form
K	Approval of changes to the Construction Permits
L	SDMC Chapter 15, Article 12, Divisions 1 through 4
M	Official Zoning Map for the Project site
N	SDMC Chapter 13, Article 1, Division 5
O	SDMC Chapter 12, Article 6, Division 4
P	E-mail to North Park community member on August 1, 2013, from mayoral chief of staff Lee Burdick
Q	Cycle Issues report dated August 13, 2013
R	Stop Use Order

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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO--CENTRAL DIVISION
11

12 NORTH PARK PRESERVATION COALITION;)
and DOES 1 through 10,)

13 Plaintiffs and Petitioners,)

14 vs.)

15 CITY OF SAN DIEGO; and DOES 11 through)
16 100,)

17 Defendants and Respondents;)

18 JACK IN THE BOX INC.; JOHN O. THOMAS;)
and DOES 101 through 1,000,)

19 Defendants and Real Parties in)
20 Interest.)

CASE NO. 37-2013-00062168-CU-TT-CTL

** E-FILE **

**VERIFIED FIRST AMENDED
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE
SAN DIEGO MUNICIPAL CODE, THE
CALIFORNIA ENVIRONMENTAL
QUALITY ACT, AND OTHER LAWS
[filed by right per CODE OF CIV. PROC. §
472; *Barton v. Khan*, 157 Cal. App. 4th 1216
(2007)]**

Action Filed: August 12, 2013
Department: C-71 (Prager)

21
22 Plaintiff and Petitioner NORTH PARK PRESERVATION COALITION ("COALITION")
23 alleges as follows:

24 **Introductory Statement**

25 1. This lawsuit challenges recent demolition and new construction activities at the Jack in
26 the Box restaurant located at 2959 Upas Street in the North Park community of the City of San Diego
27 ("Project") because the activities are being done without valid development and construction permits,
28 because the activities include actions that have never been subjected to environmental review under the

1 California Environmental Quality Act (“CEQA”), because the activities constitute a public nuisance,
2 and because the activities violate a lawful Stop Use Order, among other things.

3 **Parties**

4 2. COALITION is a not-for-profit association formed to ensure that their neighborhood is
5 developed responsibly, equitably, and lawfully, which includes ensuring that businesses in their
6 neighborhood operate truthfully and lawfully. COALITION’s members are residents of the North Park
7 community and live in close proximity to where the Project is located. Furthermore, COALITION’s
8 members’ harm and suffering from the illegal activities challenged in this lawsuit is different and worse
9 than the harm and suffering experienced by the general public because of, among other things, the
10 members’ close proximity to the illegal activities. At least one of the members would have filed this
11 lawsuit in his or her own name but for the expense of maintaining this lawsuit himself or herself.

12 3. Defendant and Respondent CITY OF SAN DIEGO (“CITY”) is a public agency under
13 Section 21063 of the Public Resources Code. CITY is authorized and required by law to determine the
14 adequacy of and certify environmental documents prepared pursuant to CEQA. CITY is the local
15 agency responsible for issuing development and construction permits for the Project and for enforcing
16 violations of the San Diego Municipal Code (“SDMC”).

17 4. Defendants and Real Parties in Interest JACK IN THE BOX INC. and JOHN O.
18 THOMAS (collectively, “JIB”) are the owners, applicants, and/or developers of the Project or have
19 some other cognizable interest in it.

20 5. The true names and capacities of the parties identified as DOES 1 through 100 and 101
21 through 1,000 are unknown to COALITION, who will seek the Court’s permission to amend this
22 pleading in order to allege the true names and capacities as soon as they are ascertained. COALITION
23 is informed and believes and on that basis alleges that each of the fictitiously named parties 11 through
24 1,000 has jurisdiction by law over one or more aspects of the Project or has some other cognizable
25 interest in the Project.

26 6. COALITION is informed and believes and on that basis alleges that, at all times stated
27 in this pleading, each Defendant/Respondent/Real Party in Interest was the agent, servant, or employee
28 of each other Defendant/Respondent/Real Party in Interest and was, in doing the things alleged in this

1 pleading, acting within the scope of said agency, servitude, or employment and with the full knowledge
2 or subsequent ratification of his principals, masters, and employers. Alternatively, in doing the things
3 alleged in this pleading, each Defendant/Respondent/Real Party in Interest was acting alone and solely
4 to further his own interests.

5 **Jurisdiction, Venue, and Exhaustion of Remedies**

6 7. The Court has jurisdiction over this lawsuit pursuant to, among other provisions of law,
7 Civil Code Sections 3479, 3480, and 3493; Code of Civil Procedure Sections 1060 *et seq.* and 1084 *et*
8 *seq.*; and/or Public Resources Code Sections 21168 and 21168.5.

9 8. Venue in this Court is proper because the obligations, liabilities, and violations of law
10 alleged in this pleading occurred in the City of San Diego in the State of California.

11 9. There has been no public hearing or other opportunity to exhaust administrative remedies
12 for the wrongdoing alleged in this pleading. The wrongdoing being challenged in this lawsuit took
13 place after the last public hearing and other opportunities (if any) to exhaust remedies.

14 10. Petitioner has caused a Notice of Commencement of Action to be served on
15 Defendants/Respondents, as required by Public Resources Code Section 21167.5. The Notice of
16 Commencement of Action is attached to this pleading as Exhibit "A."

17 11. COALITION will have caused a copy of this pleading to be served on the Attorney
18 General not more than 10 days after the commencement of this proceeding, as required by Public
19 Resources Code Section 21167.7 and Code of Civil Procedure Section 388.

20 **Procedural Background**

21 12. On or about August 23, 2012:

22 A. The San Diego Planning Commission considered the following subject matter
23 as Item 8 on its agenda for that day ("Item 8"): "A request for a Planned Development Permit to
24 demolish an existing restaurant and construct a new, approximately 2,178-square-foot restaurant with
25 deviations including: operation of a drive-through window, hours of operation, elimination of a
26 pedestrian path of travel, reduced parking, off-setting planes, and landscape. The 0.29-acre site is
27 located at 2959 Upas Street in the CN -1-2 Zone and the FAA Part 77 Notification Area, within the
28 Greater North Park Community Plan and Council District 3. Negative Declaration. Report

1 No.–PC-12-057.” A true and correct copy of the agenda for the Planning Commission’s meeting at
2 which Item 8 was considered is attached to this pleading as Exhibit “B.”

3 B. The Planning Commission’s consideration of Item 8 was based in part on Report
4 to the Planning Commission no. PC-12-057. A true and correct copy of the Report is attached to this
5 pleading as Exhibit “C.”

6 C. The Report (identified in the preceding paragraph) states in part on page 2: “The
7 project proposes the demolition of the existing 1,944-square-foot, drive-through restaurant, and the
8 construction of a new, approximately 2,178-square-foot restaurant with deviations. . . .” The Report
9 states in part on page 3: “Pursuant to the Land Development Code [contained in the SDMC], in order
10 to maintain previously conforming rights to the drive-through and hours of operation, the existing
11 structure may not be demolished.”

12 D. At the time the Planning Commission considered Item 8, the structure that was
13 proposed to be demolished as part of Item 8 constituted a “previously conforming” premises or structure
14 and the use of the property on which the premises or structure was located constituted a “previously
15 conforming” use within the meaning of SDMC Section 113.0103, a true and correct copy of which is
16 attached to this pleading as Exhibit “D.”

17 E. At the time the Planning Commission considered Item 8 (and at all times since
18 then), SDMC Section 127.0104 provided as follows (with italics in the original): “(a) Maintenance,
19 repair, or alteration of a *previously conforming structure*, where the new construction would not expand
20 beyond the existing *structural envelope*, is subject to the review procedures required for conforming
21 *structures* except as described in Section 127.0104(b). [¶] (b) Maintenance, repair, or alteration of a
22 *previously conforming structure* containing *previously conforming density* or a *previously conforming*
23 *use*, where the cost of the new construction would be greater than 50 percent of the *market value* of the
24 existing *structure*, and the new construction would not expand beyond the existing *structural envelope*,
25 requires a Neighborhood Development Permit.” A true and correct copy of SDMC Chapter 12, Article
26 7, Division 1 is attached to this pleading as Exhibit “E.”

27 F. At the time the Planning Commission considered Item 8 (and at all times since
28 then), SDMC Section 127.0106 provided in part as follows (with italics in the original): “(a) Proposed

1 expansion or enlargement of a *previously conforming structural envelope* is subject to the procedural
2 requirements for conforming *structures* if the existing *density* and use comply with all applicable
3 development regulations of the Land Development Code and if the new construction will comply with
4 all applicable development regulations. [¶] (b) Proposed expansion or enlargement of a *previously*
5 *conforming structural envelope*, where the existing *previously conforming structure* does not comply
6 with applicable zoning regulations as to *density* or use, requires a Neighborhood Development Permit.
7 [¶] (c) Proposed expansion or enlargement of a *previously conforming structural envelope* where the
8 expansion would comply with regulations, but which proposes a reduction less than or equal to 20
9 percent from a required *setback*, requires a Neighborhood Development Permit. * * *

10 G. The Planning Commission voted not to approve the Planned Development Permit
11 and not to certify the Negative Declaration that were contemplated by Item 8. A true and correct copy
12 of the minutes for the Planning Commission’s meeting at which Item 8 was considered is attached to
13 this pleading as Exhibit “F.”

14 13. Having failed to obtain an approved Planned Development Permit and a certified
15 Negative Declaration from the San Diego Planning Commission, on or about November 13, 2012, JIB
16 caused to be submitted to Defendants/Respondents at least one application for one or more
17 “construction permits” within the meaning of SDMC Section 113.0103 to allow the Project
18 (“Construction Permits”). A true and correct copy of CITY’s Project Issues report is attached to this
19 pleading as Exhibit “G.” The report states (in part) on page 7: “The project does not propose an
20 expansion of the existing building footprint but, is proposing to increase the height of the existing
21 building to 21 feet as shown in the plans.”

22 14. In a letter dated May 31, 2003, from JIB construction manager Mike Hogenboom to
23 North Park Planning Committee chair Vicki Granowitz, Mr. Hogenboom stated: “We are not
24 demolishing any of the exterior walls.” A true and correct copy of the letter is attached to this pleading
25 as Exhibit “H.”

26 15. The statement made by Mr. Hogenboom in his letter to Ms. Granowitz (Exhibit “H”
27 hereto) about “not demolishing any of the exterior walls” was false. All exterior walls of the structure
28 at the site of the Project were demolished. Two true and correct photographs of the site of the Project

1 with the structure almost completely demolished--taken between May 3 and July 3, 2013--are attached
2 to this pleading as Exhibit "I."

3 16. On or about July 3, 2013, Defendants'/Respondents' interim Development Services
4 Department director Tom Tomlinson submitted a Legal Services Request Form to
5 Defendants'/Respondents' city attorney's office and, referring to the statement by Mr. Hogenboom in
6 his letter to Ms. Granowitz (Exhibit "H" hereto), stated: "The applicant is currently out of compliance
7 with the issued permit due to the partial demolition of two walls that were not identified on the
8 approved plans." Mr. Tomlinson later stated: "The applicant has shown a flagrant disregard for the
9 welfare of the community and the integrity of the permitting process." A true and correct copy of the
10 Legal Services Request Form is attached to this pleading as Exhibit "J." Mr. Tomlinson believed or
11 had sufficient reason to believe the substance of the statements he made and was not being coerced do
12 make the statements by any supervisor.

13 17. On or about July 29, 2013, JIB obtained approval of changes to the Construction Permits
14 for the Project. A true and correct copy of the approval is attached to this pleading as Exhibit "K."

15 18. The Project is:

16 A. Located within the CITY's Mid-City Communities Planning District and subject
17 to SDMC Table 1512-03I. A true and correct copy of SDMC Chapter 15, Article 12, Divisions 1
18 through 4 is attached to this pleading as Exhibit "L."

19 B. Located within the CN-1-2 zone on the Official Zoning Map of
20 Defendants/Respondents. A true and correct copy of the Official Zoning Map for the Project site is
21 attached to this pleading as Exhibit "M," and a true and correct copy of SDMC Chapter 13, Article 1,
22 Division 5 is attached to this pleading as Exhibit "N."

23 19. SDMC Table 131-05B recognizes "Eating & Drinking Establishments" as permitted uses
24 in the CN-1-2 zone subject to the Table's footnote 4. With regard to "Eating & Drinking
25 Establishments," Table 131-05B states as follows: "Drive-in and drive-through restaurants, live
26 entertainment, and the sale of intoxicating beverages other than beer and wine are not permitted in the
27 CN zones." Report to the Planning Commission no. PC-12-057 (Exhibit "C" hereto) states as follows
28

1 on page 4: “Although the existing CN-1-2 zone does not allow drive-throughs. . . .” At no time since
2 the Report was written has the CN-1-2 zone been modified with respect to restaurants.

3 20. COALITION does not have sufficient information at this time to allege one way or the
4 other whether the new construction contemplated by the Project does “not expand beyond the existing
5 *structural envelope*” within the meaning of SDMC Section 127.0104(b); whether the Project involves
6 an “expansion or enlargement of a *previously conforming structural envelope*” within the meaning of
7 SDMC Section 127.0106(b); or whether the Project involves a “*previously conforming structure*” at all.
8 Consequently, COALITION alleges as follows in the alternative:

9 A. If the new construction contemplated by the Project does “not expand beyond
10 the existing *structural envelope*” and the Project does involve a “*previously conforming structure*”
11 within the meaning of SDMC Section 127.0104(b), the Project requires a Neighborhood Development
12 Permit because “the cost of the new construction would be greater than 50 percent of the *market value*
13 of the existing *structure*.”

14 B. If the new construction contemplated by the Project involves an “expansion or
15 enlargement of a *previously conforming structural envelope*” and the Project does involve a “*previously*
16 *conforming structure*” within the meaning of SDMC Section 127.0106(b), the Project requires a
17 Neighborhood Development Permit because “the existing *previously conforming structure* does not
18 comply with applicable zoning regulations as to *density* or use.”

19 C. Even if the Project does not involve a “*previously conforming structure*,” the
20 Project nevertheless requires a Neighborhood Development Permit because it involves “Reconstruction
21 of a *structure* with *previously conforming* nonresidential uses” and the costs of the reconstruction
22 “would exceed 50 percent of the *market value*” within the meaning of SDMC Section 126.0402(a)(2).
23 A true and correct copy of SDMC Chapter 12, Article 6, Division 4 is attached to this pleading as
24 Exhibit “O.”

25 21. The Project is currently being implemented. Among other aspects of the Project:

26 A. Immediately prior to the commencement of the construction taking place
27 pursuant to the Construction Permits, the Project’s “*structural envelope*” within the meaning of SDMC
28 Section 113.0103 was a “*previously conforming structural envelope*” within the meaning of SDMC

1 Section 127.0106(b). The Project as currently under construction pursuant to the Construction Permits
2 will have a restaurant building that is taller than it was immediately prior to the construction's
3 commencement, and therefore the Project includes an "expansion or enlargement of a *previously*
4 *conforming structural envelope*" within the meaning of Section 127.0106(b).

5 B. The Project includes an "Eating & Drinking Establishments" within the meaning
6 of SDMC Table 131-05B and a "Restaurant" within the meaning of SDMC Table 1512-03I.

7 C. Within the meaning of SDMC Section 127.0104(b):

8 i. The Project includes "maintenance, repair, or alteration of a previously
9 conforming structure containing previously conforming density or a previously conforming use."

10 ii. The cost of the new construction contemplated by Project is "greater than
11 50 percent of the market value of the existing structure."

12 D. The land on which the Project is located and the structures thereon constitute a
13 "premises" within the meaning of SDMC Section 113.0103.

14 E. The costs of the new "*structure*" currently being built at the site of the Project
15 "exceed 50 percent of the *market value*" of the "*structure*" prior to commencement of the construction
16 within the meaning of SDMC Section 126.0402(a)(2). The "*market value*" of the "*structure*" prior to
17 commencement of construction was less than \$100,000.00, and the costs of the new "*structure*"
18 currently being built at the site are at least \$100,000.00.

19 F. The use contemplated by the Project constitutes a "*previously conforming*
20 nonresidential use" within the meaning of SDMC Section 126.0402(a)(2).

21 22. At no time did Defendants/Respondents:

22 A. Hold a public hearing or other public meeting to consider any application for any
23 of the Construction Permits.

24 B. Mail, post, or publish any public notice in accordance with any requirement of
25 the SDMC to notify the public that any application for any of the Construction Permits had been
26 submitted to Defendants/Respondents.

27

28

1 C. Mail, post, or publish any public notice in accordance with any requirement of
2 the SDMC to notify the public that a public hearing or other public meeting was going to be held on any
3 application for any of the Construction Permits.

4 23. In an e-mail to North Park community member Vicky Heithaus on August 1, 2013,
5 Defendants'/Respondents' mayoral chief of staff Lee Burdick stated: "The more we look into the
6 processing of this application, the more frustrating it is for us and, I am sure, for you and your
7 neighbors. The Mayor directed the issuance of a stop-work order on this project precisely because the
8 City Attorney had opined that the process used to issue the permits was inconsistent with the City's
9 Land Development Code. . . ." A true and correct copy of the e-mail is attached to this pleading as
10 Exhibit "P."

11 24. In a Cycle Issues report dated August 13, 2013, CITY stated (in part) as follows: "It
12 appears that the project proposes over \$50,000 worth of improvements and is subject to public
13 improvements, per SDMC 142.0610 and 142.0611(c). (New Issue)." A true and correct of the report
14 is attached to this pleading as Exhibit "Q." The information contained in the report was not available
15 to COALITION until some point within the applicable limitations period (if any) for this lawsuit.

16 25. COALITION did not know or have reason to know about the facts constituting any cause
17 of action asserted in this lawsuit until a point within the applicable limitations period (if any) for this
18 lawsuit. COALITION's lack of knowledge and lack of reason to know were caused by CITY's and
19 JIB's conscious efforts to purposefully mislead COALITION and its members about the extend of the
20 illegal activities that are the subject of this lawsuit. By way of example and not limitation:

21 A. JIB and CITY intend JIB's May 31, 2013 letter to Vicki Granowitz (Exhibit "H"
22 hereto) to be disseminated among COALITION's members and relied upon by them so that they would
23 think that any discretionary or ministerial permits or other approvals given by CITY in connection with
24 the Project would not involve any exterior demolition when in fact CITY and JIB all along secretly
25 intended for the Project to involve exterior demolition. To its detriment, COALITION in fact relied on
26 JIB's letter in not filing this lawsuit within the applicable limitations period (if any).

27 B. Additionally and alternatively: At some point within the applicable limitations
28 period (if any), CITY and JIB learned that the Project required work the nature, cost, and/or value of

1 which would cause JIB to lose any and all previously conforming rights it might have had under the
2 SDMC to operate a drive-through at the Project site. CITY and JIB were not previously aware of this
3 information, or if they were aware of it they consciously concealed the information from COALITION.

4 **FIRST CAUSE OF ACTION:**

5 **Maintenance, Use, or Construction of Premises without Neighborhood Development Permit**
6 (Against All Defendants/Respondents/Real Parties in Interest)

7 26. Paragraphs 1 through 25 are fully incorporated into this paragraph.

8 27. At all times relevant to the wrongdoing alleged in this pleading, SDMC Section
9 126.0405 has provided as follows: “It is unlawful for any person to maintain, use, or develop any
10 premises without a Neighborhood Development Permit if such a permit is required for that use or
11 development or to maintain, use or develop any premises contrary to the requirements or conditions of
12 an existing Neighborhood Development Permit. Violation of any provision of this division shall be
13 subject to the enforcement provisions contained in Chapter 12, Article 1. Violations of this division
14 shall be treated as strict liability offenses regardless of intent.”

15 28. No Neighborhood Development Permit has been issued for any aspect of the Project.
16 The Project’s maintenance, use, and construction are therefore illegal.

17 29. Due to the nature of the Project and the prohibition against drive-through “Eating &
18 Drinking Establishments” within the meaning of SDMC Table 131-05B, the Project requires a
19 Neighborhood Development Permit in order to be constructed and operated lawfully.

20 **SECOND CAUSE OF ACTION:**

21 **Discretionary Action Potentially Affecting Environment without Environmental Review**
22 (Against All Defendants/Respondents/Real Parties in Interest)

23 30. Paragraphs 1 through 28 are fully incorporated into this paragraph.

24 31. The Project involves a discretionary approval.

25 32. The Project has the potential to adversely affect the environment, including but not
26 limited to impacts on traffic, parking, noise, aesthetics, and inconsistencies with zoning regulations.

27 33. The Project has not been subjected to any environmental review under CEQA. The
28 Project’s approval is therefore illegal.

THIRD CAUSE OF ACTION:

Public Nuisance

(Against All Defendants/Respondents/Real Parties in Interest except CITY)

1 34. Paragraphs 1 through 33 are fully incorporated into this paragraph.

2 35. The Project constitutes a public nuisance for the following reasons:

3 A. The Project involves activities that are illegal under one or more zoning and
4 planning provisions of the SDMC, including but not limited to the operation of a drive-through
5 component of the restaurant (“Previously Conforming Activities”), but were lawful at some point prior
6 to commencement of the Project.

7 B. JIB lost any and all legal rights it may have had to conduct the Previously
8 Conforming Activities based on, among other things, the nature, cost, and/or value of the work it
9 performed on the Project. By way of example and not limitation, the nature, cost, and/or value of the
10 work performed on the Project exceeded the monetary thresholds for maintaining previously
11 conforming rights under the SDMC and violated CITY’s no-exterior-demolition requirement for
12 improvements to a structure associated with a previously conforming use.

13 C. In another lawsuit concerning medical marijuana, CITY alleged as follows (or
14 with words having a substantially similar import): “Plaintiff is informed and believes that Defendants
15 are blatantly and willfully in violation of the [municipal code] and will continue to maintain the
16 unlawful code violations in the future unless the Court enjoins and prohibits such conduct. Absent the
17 relief requested by Plaintiff, the City is unable to enforce its zoning laws and therefore unable to ensure
18 the compatibility between land uses for its residents. [¶] The land use scheme and regulations under the
19 Municipal Code become meaningless and the public is left unprotected from the direct and indirect
20 negative effects associated with un-permitted and incompatible uses in their neighborhoods. Absent
21 injunctive relief, the City will be irreparably harmed and the ongoing violations will continue to harm
22 the public health, safety, and welfare.” These allegations evidence CITY’s understanding of the role
23 that the SDMC plays in regulating uses that are authorized and uses that are proscribed by the SDMC.

24 D. JIB’s use of the drive-through component of the restaurant is unreasonable, and
25 COALITION’s members and the North Park neighborhood are suffering substantial harm over and
26 above what the general public is experiencing as a result of the use. By way of example and not
27 limitation:

1 i. At times the line of vehicles in the drive-through queue is so long that it
2 blocks pedestrian access on public sidewalks and exposes pedestrians to the risk of being hit by a
3 vehicle.

4 ii. At times the line of vehicles in the drive-through queue is so long that
5 they stick out into and block public streets and thereby prevent nearby residents and others from safely
6 traveling on those streets (whether by vehicle, bicycle, or foot).

7 iii. At times the line of vehicles in the drive-through queue is so long that
8 they create “islands” of air pollution that is harmful to pedestrians and nearby residents.

9 36. Additionally and alternatively, the Project constitutes a public nuisance for the following
10 reasons (including those alleged above):

11 A. While serving as CITY’s mayor, Robert E. Filner issued a Stop Use Order to JIB
12 and direct that JIB immediately stop using the Project’s drive-through component. A true and correct
13 copy of the Stop Use Order is attached to this pleading as Exhibit “R.”

14 B. The authority of CITY’s mayor is established by the SDMC and constitutes part
15 of CITY’s zoning, land-use, and police powers.

16 C. The Stop Use Order has not been lawfully withdrawn or rescinded and therefore
17 remains in full force and effect.

18 D. JIB continues to use the drive-through component of the Project, in violation of
19 the Stop Use Order.

20
21 **PRAYER**

22 FOR ALL THESE REASONS, COALITION respectfully prays for the following relief against
23 all Defendants/Respondents and Real Parties in Interest (and any and all other parties who may oppose
24 COALITION in this proceeding) jointly and severally and as appropriate based on the Court’s
25 determination at the time when the Court considers whether to grant such relief:

26 A. *On the First Cause of Action:*

27 1. A judgment determining or declaring that Defendants/Respondents and Real
28 Parties in Interest failed to comply fully with SDMC with respect to the Project and that any demolition,
construction, and/or operational activity in furtherance thereof is illegal in at least some respect.

1 2. A judgment determining or declaring that Defendants/Respondents and Real
2 Parties in Interest must comply fully with SDMC before any demolition, construction, and/or
3 operational activity contemplated by the Project may be undertaken.

4 3. Injunctive relief prohibiting Defendants/Respondents and Real Parties in Interest
5 (and any and all persons acting at the request of, in concert with, or for the benefit of one or more of
6 them) from taking any action on any aspect of, in furtherance of, or otherwise based on any demolition,
7 construction, and/or operational activity contemplated by the Project unless and until
8 Defendants/Respondents and Real Parties in Interest have complied with all applicable provisions of
9 SDMC, as determined by the Court.

10 4. A writ of mandate ordering Defendants/Respondents and Real Parties in Interest
11 to comply fully with SDMC before any demolition, construction, and/or operational activity
12 contemplated by the Project may commence or continue.

13 5. Any and all other relief that may be authorized by SDMC but is not explicitly or
14 specifically requested elsewhere in this Prayer.

15 B. *On the Second Cause of Action:*

16 1. A judgment determining or declaring that Defendants/Respondents and Real
17 Parties in Interest failed to comply fully with CEQA with respect to the Project and that any demolition,
18 construction, and/or operational activity in furtherance thereof is illegal in at least some respect.

19 2. A judgment determining or declaring that Defendants/Respondents and Real
20 Parties in Interest must comply fully with CEQA before any demolition, construction, and/or operational
21 activity contemplated by the Project may be undertaken.

22 3. Injunctive relief prohibiting Defendants/Respondents and Real Parties in Interest
23 (and any and all persons acting at the request of, in concert with, or for the benefit of one or more of
24 them) from taking any action on any aspect of, in furtherance of, or otherwise based on any demolition,
25 construction, and/or operational activity contemplated by the Project unless and until
26 Defendants/Respondents and Real Parties in Interest have complied with all applicable provisions of
27 CEQA, as determined by the Court; and prohibiting Defendants/Respondents and Real Parties in
28

1 Interest from failing to perform environmental review of the demolition, construction, and/or
2 operational activity contemplated by the Project.

3 4. A writ of mandate ordering Defendants/Respondents and Real Parties in Interest
4 to comply fully with CEQA before any demolition, construction, and/or operational activity
5 contemplated by the Project may commence or continue.

6 5. Any and all other relief that may be authorized by CEQA but is not explicitly or
7 specifically requested elsewhere in this Prayer.

8 C. *On the Third Cause of Action:*

9 1. A judgment determining or declaring that at least some port of the activities that
10 are the subject of this lawsuit constitute a public nuisance.

11 2. A judgment determining or declaring that Real Parties in Interest must
12 immediately take all steps necessary to abate the public nuisance.

13 3. Injunctive relief prohibiting Real Parties in Interest (and any and all persons
14 acting at the request of, in concert with, or for the benefit of one or more of them) from continuing the
15 public nuisance or otherwise allowing it to continue unabated.

16 4. Any and all other relief that may be authorized by law with regard to a public
17 nuisance but is not explicitly or specifically requested elsewhere in this Prayer.

18 D. An order providing for the Court's continuing jurisdiction over this proceeding in order
19 to ensure that Defendants/Respondents and Real Parties in Interest comply with all applicable laws.

20 E. All attorney fees and other legal expenses incurred by COALITION in connection with
21 this proceeding.

22 F. Any further relief that this Court may deem appropriate.

23 Date: October 30, 2013.

Respectfully submitted,

24 BRIGGS LAW CORPORATION

25 By: Cory J. Briggs
26 Cory J. Briggs

27 Attorneys for Plaintiff and Petitioner North Park
28 Preservation Coalition