

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
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FOR COURT USE ONLY

ELECTRONICALLY FILED
 Superior Court of California,
 County of San Diego

04/20/2023 at 10:50:58 AM
 Clerk of the Superior Court
 By Jimmy Siharath, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
 STREET ADDRESS: 330 W Broadway
 MAILING ADDRESS:
 CITY AND ZIP CODE: San Diego 92101
 BRANCH NAME: Central Division - Hall of Justice

CASE NAME:
 Protect Our Schools, et al. v. City of San Diego, et al.

<p>CIVIL CASE COVER SHEET</p> <p><input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)</p> <p><input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)</p>	<p>Complex Case Designation</p> <p><input type="checkbox"/> Counter <input type="checkbox"/> Joinder</p> <p>Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)</p>	<p>CASE NUMBER: 37-2023-00016581-CU-WM-CTL</p> <p>JUDGE: DEPT.: Judge Carolyn Caietti</p>
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Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

<p>Auto Tort</p> <p><input type="checkbox"/> Auto (22)</p> <p><input type="checkbox"/> Uninsured motorist (46)</p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <p><input type="checkbox"/> Asbestos (04)</p> <p><input type="checkbox"/> Product liability (24)</p> <p><input type="checkbox"/> Medical malpractice (45)</p> <p><input type="checkbox"/> Other PI/PD/WD (23)</p> <p>Non-PI/PD/WD (Other) Tort</p> <p><input type="checkbox"/> Business tort/unfair business practice (07)</p> <p><input type="checkbox"/> Civil rights (08)</p> <p><input type="checkbox"/> Defamation (13)</p> <p><input type="checkbox"/> Fraud (16)</p> <p><input type="checkbox"/> Intellectual property (19)</p> <p><input type="checkbox"/> Professional negligence (25)</p> <p><input type="checkbox"/> Other non-PI/PD/WD tort (35)</p> <p>Employment</p> <p><input type="checkbox"/> Wrongful termination (36)</p> <p><input type="checkbox"/> Other employment (15)</p>	<p>Contract</p> <p><input type="checkbox"/> Breach of contract/warranty (06)</p> <p><input type="checkbox"/> Rule 3.740 collections (09)</p> <p><input type="checkbox"/> Other collections (09)</p> <p><input type="checkbox"/> Insurance coverage (18)</p> <p><input type="checkbox"/> Other contract (37)</p> <p>Real Property</p> <p><input type="checkbox"/> Eminent domain/Inverse condemnation (14)</p> <p><input type="checkbox"/> Wrongful eviction (33)</p> <p><input type="checkbox"/> Other real property (26)</p> <p>Unlawful Detainer</p> <p><input type="checkbox"/> Commercial (31)</p> <p><input type="checkbox"/> Residential (32)</p> <p><input type="checkbox"/> Drugs (38)</p> <p>Judicial Review</p> <p><input type="checkbox"/> Asset forfeiture (05)</p> <p><input type="checkbox"/> Petition re: arbitration award (11)</p> <p><input checked="" type="checkbox"/> Writ of mandate (02)</p> <p><input type="checkbox"/> Other judicial review (39)</p>	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <p><input type="checkbox"/> Antitrust/Trade regulation (03)</p> <p><input type="checkbox"/> Construction defect (10)</p> <p><input type="checkbox"/> Mass tort (40)</p> <p><input type="checkbox"/> Securities litigation (28)</p> <p><input type="checkbox"/> Environmental/Toxic tort (30)</p> <p><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p>Enforcement of Judgment</p> <p><input type="checkbox"/> Enforcement of judgment (20)</p> <p>Miscellaneous Civil Complaint</p> <p><input type="checkbox"/> RICO (27)</p> <p><input type="checkbox"/> Other complaint (not specified above) (42)</p> <p>Miscellaneous Civil Petition</p> <p><input type="checkbox"/> Partnership and corporate governance (21)</p> <p><input type="checkbox"/> Other petition (not specified above) (43)</p>
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): One
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 20, 2023
 Salvatore Padula

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice–Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case–Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ–Administrative Mandamus
Writ–Mandamus on Limited Court Case Matter
Writ–Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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7 Protect Our Schools and Matthew A. Buckley

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

11
12 PROTECT OUR SCHOOLS, an
unincorporated association; and
13 MATTHEW A. BUCKLEY, an individual,

14 Petitioners,

15 v.

16 CITY OF SAN DIEGO; SAN DIEGO
DEVELOPMENT SERVICES
17 DEPARTMENT; and DOES 1 through 5,
inclusive,

18 Respondents.

19
20 SAN DIEGO ROCK CHURCH, a California
Non-Profit Corporation; T-MOBILE USA,
21 INC., a Delaware Corporation; and Does 6-
10, inclusive.

22 Real Parties in Interest.

Case No. 37-2023-00016581-CU-WM-CTL
**VERIFIED PETITION FOR WRIT OF
MANDATE**
(CODE CIV. PROC. § 1085 [§ 1094.5])

23
24 Petitioners Protect Our Schools and Matthew A. Buckley (“Petitioners”) allege as
25 follows:

26 **INTRODUCTION**

27 1. This action challenges the decision of Respondents’ the City of San Diego and
28 the San Diego Development Services Department (collectively the “City”) to grant Real

1 immediate vicinity of the Rock premises located at 2277 Rosecrans Street, San Diego, CA
2 92106, as well as other persons directly affected by the antenna installation.

3 5. Petitioner Matthew A. Buckley is a member of Protect Our Schools and the
4 father of three minor children ages 7, 11, and 13, enrolled as students at the Rock Academy.

5 6. Respondent City of San Diego is a public agency with the legal authority to
6 regulate the installation of wireless communication facilities through the City of San
7 Diego's Wireless Communication Facilities Policy No. 600-43 and San Diego Municipal
8 Code, Chapter 14, Article 1, Division 4.

9 7. Respondent San Diego Development Services Department is the City of San
10 Diego agency with the specific responsibility for review and approval of building permits.

11 8. Real Party in Interest the San Diego Rock Church is a California Non-Profit
12 Corporation that operates the Rock Academy and Early Education Center, schools located
13 at 2277 Rosecrans Street, San Diego, CA 92106.

14 9. Real Party in Interest T-Mobile USA, Inc. is a Delaware Corporation that
15 provides, among other things, wireless communications services throughout the United
16 States.

17 10. The true names and capacities of the respondents and real parties in interest
18 identified as Does 1-5 and 6-10, respectively, are unknown to Petitioners, who will seek the
19 Court's permission to amend this Petition in order to allege the true names and capacities
20 as soon as they are ascertained. Petitioners are informed and believe and on that basis allege
21 that the fictitiously named respondents have jurisdiction by law over one or more aspects
22 of the permitting process that is the subject of this proceeding; and that each of the
23 fictitiously named real parties in interest possesses a cognizable interest in the project at
24 issue in this proceeding.

25 **JURISDICTION AND VENUE**

26 11. Pursuant to California Code of Civil Procedure section 1085 (alternatively
27 section 1094.5), this Court has jurisdiction to issue a writ of mandate to set aside the City's
28 approval of Real Parties' Process 1 application.

1 12. Venue is proper in this Court because the causes of action alleged in this
2 Petition arose in the County of San Diego and because the City is situated in the County of
3 San Diego.

4 13. The City owes a clear, present, and ministerial duty to set aside Real Parties'
5 Process 1 permit and require Real Parties to resubmit their application for evaluation under
6 Process 2 as specified by the Municipal Code. Petitioners have a clear, present, and
7 beneficial right to the City's compliance with the Municipal Code permitting process.

8 14. This Petition has been filed within 90 days of Petitioners' discovery of the
9 City's mistaken acceptance and approval of Real Parties' permit application. Petitioners
10 could not, by exercise of reasonable diligence have discovered the facts giving rise to this
11 action before they received notice of Real Parties' plans to install the antennas on January
12 23, 2023.

13 15. Petitioners have performed any and all conditions precedent to filing the
14 instant action and has exhausted any and all available administrative remedies to the extent
15 required by law.

16 16. Petitioners have no plain, speedy or adequate remedy in the course of
17 ordinary law unless this Court grants the requested writ of mandate to require the City to
18 set aside the City's approval of Real Parties' Process 1 application. In the absence of such
19 remedies, the City's approval will remain in effect in violation of law.

20 **STATEMENT OF FACTS**

21 **I. The San Diego Permitting Process Framework**

22 17. The City of San Diego has established a permitting review framework
23 whereby applications are assessed through one of five distinct processes depending on the
24 type, complexity, and location of the proposed project. Process 1 is a ministerial level of
25 review. Under Process 1, review and approval are dependent solely on whether a proposed
26 project complies with the San Diego Municipal Code. If the project complies with code
27 requirements, the City is required by law to issue the permit. Process 1 does not provide for
28 any public notice or hearing. (Municipal Code § 112.0502).

1 18. Processes 2-5 provide for increasing levels of public notice, hearing, and
2 review so that the affected community and interested parties may voice their opinions and
3 concerns regarding the proposed project. Unlike the Process 1 ministerial review, the City's
4 review and approval under Processes 2-5 is discretionary, and proposed projects may be
5 denied based on community input. Processes 2-5 also provide a mechanism for appeal of
6 permit approval.

7 19. The requisite level of review for proposed projects is established by the
8 Municipal Code. Of particular relevance to this action is Municipal Code section
9 141.0420(b)(2)(C), which specifies that a Neighborhood Use Permit pursuant to Process 2 is
10 required for any wireless communication facility "with antennas located at least¹ 100 feet
11 from the property line of a premises with a dwelling unit, child care center, or school with
12 children enrolled in any grade kindergarten through grade 8 where located... in a
13 residential zone on a premises that does not contain a residential development."

14 20. Under Process 2 review a Neighborhood Use Permit may be approved "only
15 if the decision maker makes a factual finding that "[t]he proposed development will not be
16 detrimental to the public health, safety, and welfare." (Municipal Code § 126.0205(b)).
17 Similarly, under Process 2 Neighborhood Use review, the City is allowed to impose
18 conditions upon the permit approval that are "necessary and desirable to protect the public
19 health, safety, and welfare." In contrast, under Process 1 Limited Use review no findings
20 on public health, safety, or welfare, are required and no conditions may be imposed to
21 protect public health. (Municipal Code § 112.0502).

22 **II. The Rock Academy**

23 21. The Rock operates two schools on its property – a K-12 school and an Early
24 Education Center (pre-school). The Rock Academy and the Early Education Center are
25 located at 2277 Rosecrans Street in the Liberty Station area of Point Loma. Across the street
26 and next door to the Rock are six High Tech Schools. There are almost 500 students at The

27 _____
28 ¹ Applications to install wireless facilities less than 100 feet from a residential-zoned school are required to go through Process 3 Conditional Use Permit review. (Municipal Code § 141.0420(c)(1)(A)(i)).

1 Rock Academy, and many more at the High-Tech School locations in the immediate
2 vicinity.

3 22. The Rock Academy and the Early Education Center are located in the CR-1-1
4 zone, which is a commercial mixed use zone. High Tech Elementary School enrolls students
5 grades K-5 and is located at 2150 Cushing Road, in a residential zone at least 100 feet from
6 the Rock Academy. Consequently, Municipal Code section 141.0420(b)(2)(C) requires at
7 least a Process 2 Neighborhood Development Permit for any wireless facility installation
8 on the Rock premises and, given the presence of two schools in the very building upon
9 which the antennas are installed, it is possible that Process 3 or higher is required.

10 **III. The Application**

11 23. Real Parties applied to the City for a permit to install nine wireless antennas
12 on three sides of the Rock's building. Instead of applying for a Process 2 Neighborhood
13 Development Permit as required by Municipal Code section 141.0420(b)(2)(C), Real Parties
14 applied for a Process 1 Limited Use Permit. As discussed above, Process 1 review is
15 ministerial and does not involve notice, hearing, or appeal. The City mistakenly failed to
16 recognize that the proposed antennas installation required a Process 2 Neighborhood
17 Development Permit and approved Real Parties' Process 1 application for a Limited Use
18 Permit.

19 24. Neither the City nor the Real Parties provided Petitioners or the community
20 any notice of the proposed wireless installation until well after the permit was approved.
21 The first notice Petitioners received was on January 23, 2023, when the Rock informed
22 parents of students at their facility of the impending activation of the antennas.

23 25. The City's failure to assess the application under the appropriate Process 2
24 review standard damaged Petitioners and the community in multiple ways. First and
25 foremost, Process 2 Neighborhood Use Permits can only be approved if there is a factual
26 finding that the proposed project would not injure public health, safety, or welfare and it is
27 clear that Real Parties' proposed installation cannot meet this requirement.

28 ///

1 26. The Radio Frequency Emissions Compliance Report submitted by T-Mobile
2 as part of its Process 1 application reveal that the maximum emissions value from the
3 proposed antennas is 1,436.66% of the FCC's general public limit and 287.33% of the FCC
4 occupational limit. The antennas generating these massive emissions are not located just
5 anywhere, but on a building containing two schools and in the immediate vicinity of six
6 other schools! It is inconceivable that a Process 2 review could result in a finding that the
7 project would not harm public health and safety when it admittedly would expose more
8 than a thousand children to emissions many times the FCC maximum on a daily and
9 constant basis. However, because Real Parties applied under Process 1, the City was not
10 required to make any public health and safety finding.

11 27. Further, the City's review and approval of the application under Process 1
12 denied Petitioners and the community any notice of the pending application or opportunity
13 for a hearing at which they could voice their concerns about the project's obvious health
14 risks. Process 2 provides the right to interested persons and members of the community to
15 appeal permit approvals and such appeals are conducted via a public hearing before the
16 City Planning Commission. (Municipal Code § 112.0504). There is no notice, appeal or
17 hearing for Process 1 decisions. Consequently, the City's evaluation and approval of Real
18 Parties' application under Process 1 unlawfully denied Petitioners of their right to challenge
19 the permit approval and to receive a public hearing on said challenge.

20 28. Because of the proximity of High Tech Elementary to the wireless facility, the
21 project and application should have been assessed and processed at least pursuant to
22 Process 2. That they were not means that the permit for their construction was unlawfully
23 issued. The permit should be voided and, should they so desire, The Rock and T-Mobile
24 should resubmit their applications pursuant to Process 2.

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1 FIRST CAUSE OF ACTION

2 **Petition for Writ of Mandate Under Code of Civil Procedure §§ 1085 & 1094.5**

3 **(Against all Respondents and Real Parties in Interest)**

4 29. Petitioners incorporate by reference all preceding paragraphs as though set
5 forth in full.

6 30. San Diego Municipal Code section 141.0420(b)(2)(C) requires a Process 2
7 Neighborhood Use Permit to install wireless communications antennas in commercial-
8 zoned mixed use premises located at least 100 feet from a school located in a residential
9 zone that enrolls any students grades K-8.

10 31. The Rock Academy premises are located within a commercial zone and are
11 mixed use. The Rock Academy premises are at least 100 feet from High Tech Elementary, a
12 school enrolling students grades K-5 that is located on land zoned residential.

13 32. Any installation of wireless antennas on the Rock Academy Premises
14 consequently requires a Process 2 Neighborhood Use Permit.

15 33. Real Parties improperly applied to the City for a Process 1 Limited Use Permit
16 to install wireless antennas on the roof of the Rock Academy.

17 34. The City violated Municipal Code section 141.0420(b)(2)(C) by approving
18 Real Parties' Process 1 permit application instead of rejecting it and requiring Real Parties
19 resubmit the application under Process 2.

20 35. Section 1085 of the Code of Civil Procedure states, in subdivision (a): "A writ
21 of mandate may be issued by any court to any inferior tribunal, corporation, board, or
22 person, to compel the performance of an act which the law specially enjoins, as a duty
23 resulting from an office, trust, or station, or to compel the admission of a party to the use
24 and enjoyment of a right or office to which the party is entitled, and from which the party
25 is unlawfully precluded by that inferior tribunal, corporation, board, or person."

26 36. As a direct result of the City's failure to comply with section 141.0420(b)(2)(C),
27 Real Parties' application was approved without the requisite findings that the project
28 would not be detrimental to public health, safety, and welfare and Petitioners were denied

1 its statutory right to challenge the City's decision to allow Real Parties to expose Petitioners'
2 children to high levels of radiation via an appeal to the Planning Commission and public
3 hearing.

4 37. A clear, present, and ministerial duty now exists, and at all relevant times
5 existed, to compel the City to require applications for permits to install nine wireless
6 antennas on the Rock Academy premises be submitted and evaluated under at least Process
7 2. Petitioners now possess, and at all relevant times possessed, a clear, present, and
8 beneficial right to the City's performance of that duty and there is no plain, speedy, and
9 adequate remedy available to Petitioners in the ordinary course of law to enforce its right.

10 38. Because the City's approval of Real Parties' permit application was issued in
11 violation of the Municipal Code, the approval must be set aside. Additionally, Petitioners
12 are entitled to recover attorney fees and litigation costs from the City and Real Parties.

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PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for judgment as follows:

39. For a writ of mandate pursuant to Sections 1085 and/or 1094.5 of the Code of Civil Procedure directing the City to:

- a. Set aside the approval of the application for limited use permit for the installation of wireless antennas on the Rock Academy premises (approval no. 683756, approval number 25184460); and
- b. Evaluate all future applications for permits to install wireless antennas on the Rock Academy premises under at *least* the Process 2 Neighborhood Use Permit review standard;

40. For costs of the suit and for attorneys' fees as authorized by Code of Civil Procedure section 1021.5 and other provisions of law; and

41. For such other and future relief as the court deems just and proper.

Dated: April 20, 2023

CGS3 LLP

By: 

Gregory S. Markow
Sean M. Gaffney
Salvatore Padula
Attorneys for Petitioners
PROTECT OUR SCHOOLS &
MATTHEW A. BUCKLEY

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VERIFICATION

I, Matthew A. Buckley, certify and declare:

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE and know its contents. I am a member of Protect Our Schools, an unincorporated association and party in this action. I make this verification in such capacity, and in my individual capacity, and am authorized to do so. I have personal knowledge of the matters stated in the foregoing document and, on that basis, allege that the matters stated therein are true. As to any matters stated on the basis of information and belief, I believe them to be true.

Executed on April 19, 2023, in the City of San Diego, County of San Diego, State of California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DocuSigned by:
Matthew Buckley
FB55AD727A2D486...
MATTHEW A. BUCKLEY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS:	330 W Broadway
MAILING ADDRESS:	330 W Broadway
CITY AND ZIP CODE:	San Diego, CA 92101-3827
DIVISION:	Central
TELEPHONE NUMBER:	(619) 450-7070
PLAINTIFF(S) / PETITIONER(S):	Protect Our Schools et.al.
DEFENDANT(S) / RESPONDENT(S):	SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT et.al.
PROTECT OUR SCHOOLS VS CITY OF SAN DIEGO [IMAGED]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE (CIVIL)	CASE NUMBER: 37-2023-00016581-CU-WM-CTL

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: Carolyn Caietti

Department: C-70

COMPLAINT/PETITION FILED: 04/20/2023

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
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Due to the COVID-19 pandemic, all Case Management Conferences (CMCs) are being conducted virtually unless there is a court order stating otherwise. Prior to the hearing date, visit the “virtual hearings” page for the most current instructions on how to appear for the applicable case-type/department on the court’s website at www.sdcourt.ca.gov.

A Case Management Statement (JC Form #CM-110) must be completed by counsel for all parties and by all self-represented litigants and timely filed with the court at least 15 days prior to the initial CMC. (San Diego Superior Court (SDSC) Local Rules, rule 2.1.9; Cal. Rules of Court, rule 3.725).

All counsel of record and self-represented litigants must appear at the CMC, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of Alternative Dispute Resolution (ADR) options.

It is the duty of each plaintiff (and cross-complainant) to serve a copy of this Notice of Case Assignment and Case Management Conference (SDSC Form #CIV-721) with the complaint (and cross-complaint), the Alternative Dispute Resolution (ADR) Information Form (SDSC Form # CIV-730), a Stipulation to Use Alternative Dispute Resolution (ADR) (SDSC Form # CIV-359), and other documents on all parties to the action as set out in SDSC Local Rules, rule 2.1.5.

TIME FOR SERVICE AND RESPONSE: The following rules apply to civil cases except for collections cases under California Rules of Court, rule 3.740(a), unlawful detainer actions, proceedings under the Family Code, and other proceedings for which different service requirements are prescribed by law (Cal. Rules of Court, rule 3.110; SDSC Local Rules, rule 2.1.5):

- **Service:** The complaint must be served on all named defendants, and proof of service filed with the court within 60 days after filing the complaint. An amended complaint adding a defendant must be served on the added defendant and proof of service filed within 30 days after filing of the amended complaint. A cross-complaint against a party who has appeared in the action must be accompanied by proof of service on that party at the time it is filed. If it adds a new party, the cross-complaint must be served on all parties and proof of service on the new party must be filed within 30 days of the filing of the cross-complaint.
- **Defendant’s appearance:** Unless a special appearance is made, each defendant served must generally appear (as defined in Code of Civ. Proc. § 1014) within 30 days of service of the complaint/cross-complaint.
- **Extensions:** The parties may stipulate without leave of court to one 15-day extension beyond the 30-day time period prescribed for the response after service of the initial complaint (SDSC Local Rules, rule 2.1.6). If a party fails to serve and file pleadings as required under this rule, and has not obtained an order extending time to serve its pleadings, the court may issue an order to show cause why sanctions shall not be imposed.

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Official Court Reporters are not normally available in civil matters, but may be requested in certain situations no later than 10 days before the hearing date. See SDSC Local Rules, rule 1.2.3 and Policy Regarding Normal Availability and Unavailability of Official Court Reporters (SDSC Form #ADM-317) for further information.

ALTERNATIVE DISPUTE RESOLUTION (ADR): The court discourages any unnecessary delay in civil actions; therefore, continuances are discouraged and timely resolution of all actions, including submitting to any form of ADR is encouraged. The court encourages and expects the parties to consider using ADR options prior to the CMC. The use of ADR will be discussed at the CMC. Prior to the CMC, parties stipulating to the ADR process may file the Stipulation to Use Alternative Dispute Resolution (SDSC Form #CIV-359).

NOTICE OF E-FILING REQUIREMENTS AND IMAGED DOCUMENTS

Effective April 15, 2021, e-filing is required for attorneys in represented cases in all limited and unlimited civil cases, pursuant to the San Diego Superior Court General Order: In Re Procedures Regarding Electronically Imaged Court Records, Electronic Filing and Access to Electronic Court Records in Civil and Probate Cases. Additionally, you are encouraged to review CIV-409 for a listing of documents that are not eligible for e-filing. E-filing is also encouraged, but not mandated, for self-represented litigants, unless otherwise ordered by the court. All e-filers are required to comply with the e-filing requirements set forth in Electronic Filing Requirements (Civil) (SDSC Form #CIV-409) and Cal. Rules of Court, rules 2.250-2.261.

All Civil cases are assigned to departments that are part of the court's "Imaging Program." This means that original documents filed with the court will be imaged, held for 30 days, and then destroyed, with the exception of those original documents the court is statutorily required to maintain. The electronic copy of the filed document(s) will be the official court record, pursuant to Government Code § 68150. Thus, original documents should not be attached to pleadings filed with the San Diego Superior Court, unless it is a document for which the law requires an original be filed. Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant, or petitioner to serve a copy of this Notice of Case Assignment and Case Management Conference (Civil) (SDSC Form #CIV-721) with the complaint, cross-complaint, or petition on all parties to the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words "IMAGED FILE" in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.

The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and may be found on the court's website at www.sdcourt.ca.gov.



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2023-00016581-CU-WM-CTL CASE TITLE: Protect Our Schools vs CITY OF SAN DIEGO [IMAGED]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), **and**
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	FOR COURT USE ONLY
PLAINTIFF(S): Protect Our Schools et.al.	
DEFENDANT(S): SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT et.al.	
SHORT TITLE: PROTECT OUR SCHOOLS VS CITY OF SAN DIEGO [IMAGED]	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2023-00016581-CU-WM-CTL

Judge: Carolyn Caietti

Department: C-70

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|---|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 04/21/2023

JUDGE OF THE SUPERIOR COURT