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18 UNITED STATES DISTRICT COURT
19 SOUTHERN DISTRICT OF CALIFORNIA

16 BLACKWATER LODGE AND
17 TRAINING CENTER, INC., a Delaware
18 corporation dba BLACKWATER
19 WORLDWIDE,

20 Plaintiff,

21 v.

22 KELLY BROUGHTON, in his capacity
23 as Director of the Development Services
24 Department of the City of San Diego;
25 AFSANEH AHMADI, in her capacity as
26 Chief Building Official of the City of
27 San Diego; THE DEVELOPMENT
28 SERVICES DEPARTMENT OF THE
CITY OF SAN DIEGO; THE CITY OF
SAN DIEGO, a municipal entity; and
DOES 1-20, inclusive,

Defendants.

Case No. 08 CV 0926 H (Wmc)

**PLAINTIFFS' EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION; MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF**

Date: To be determined by Court
Time: To be determined by Court
Place: Courtroom of the Honorable
Marilyn L. Huff

[Declarations of Brian Bonfiglio and
John Nadolenco, and Appendix of
Authority Filed, and Proposed Orders
Lodged Concurrently Herewith]

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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Plaintiff Blackwater Lodge and Training Center, Inc. dba Blackwater
3 Worldwide (“Blackwater”) applies *ex parte* to this Court for issuance of a
4 Temporary Restraining Order and an Order to Show Cause re Preliminary
5 Injunction.

6 Blackwater seeks a Temporary Restraining Order enjoining Defendants
7 Kelly Broughton (in his capacity as Director of the Development Services
8 Department of the City of San Diego), Afsaneh Ahmadi (in her capacity as Chief
9 Building Official of the City of San Diego), the Development Services Department
10 of the City of San Diego and the City of San Diego, their officers, agents, servants,
11 employees and attorneys, and all those in active concert or participation with them
12 from (1) enforcing the May 19, 2008 letter from Defendant Broughton purportedly
13 refusing to issue a Certificate of Occupancy for the property located at 7685
14 Siempre Viva Road, Otay Mesa (the “Otay Mesa Facility”) and/or refusing to
15 allow Blackwater to occupy and utilize immediately its Otay Mesa Facility, and (2)
16 refusing to perform the ministerial task of sending Blackwater a Certificate of
17 Occupancy for the Otay Mesa Facility as required under San Diego Municipal
18 Code (“SDMC”) § 129.0114.

19 Blackwater also seeks issuance of an Order to Show Cause re Preliminary
20 Injunction requiring Defendants to show cause why a preliminary injunction
21 should not be issued enjoining Defendants, their officers, agents, servants,
22 employees and attorneys, and all those in active concert or participation with them
23 from (1) enforcing the May 19, 2008 letter from Defendant Broughton purportedly
24 refusing to issue a Certificate of Occupancy for the Otay Mesa Facility and/or
25 refusing to allow Blackwater to occupy and utilize immediately its Otay Mesa
26 Facility, and (2) refusing to perform the ministerial task of sending Blackwater its

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1 Certificate of Occupancy for the Otay Mesa Facility pursuant to SDMC §
2 129.0114.

3 This *Ex Parte* Application is made pursuant to Rule 65 of the Federal Rules
4 of Civil Procedure and Southern District Civil Rule 83.3(h) on the grounds that
5 unless Defendants are restrained as requested, Blackwater will be denied its
6 statutory rights, will be irreparably harmed, and denied its constitutional rights to
7 due process and equal protection, as well as its rights under the dormant
8 Commerce Clause of the United States Constitution.

9 The Application is based on the attached Memorandum of Points and
10 Authorities, the Declarations of Brian Bonfiglio and John Nadolenco filed
11 concurrently herewith, the concurrently lodged [Proposed] Temporary Restraining
12 Order, the concurrently lodged [Proposed] Order to Show Cause Re Preliminary
13 Injunction, and such other oral and documentary evidence and argument as may be
14 presented to the Court.

15 In accordance with Southern District Civil Rule 83.3(h), notice of this *Ex*
16 *Parte* Application was given to Defendants and Michael Aguirre (City Attorney of
17 the City of San Diego) by John Nadolenco (counsel for Blackwater) on May 23,
18 2008 by letter. A copy of that letter is attached as Exhibit A to the Declaration of
19 John Nadolenco filed concurrently.

20 **For the reasons explained below, Blackwater requests a ruling well**
21 **before Monday, June 2, 2008.**

22 DATED: May 26, 2008

MAYER BROWN LLP
JOHN NADOLENCO
CHRISTOPHER MURPHY

23
24
25 By: John Nadolenco
John Nadolenco
Attorneys for Plaintiff
BLACKWATER LODGE AND
26 TRAINING CENTER, INC., dba
27 BLACKWATER WORLDWIDE
28

1 in the Otay Mesa Development District in the City of San Diego (the “Otay Mesa
2 Facility”).

3 It is beyond serious dispute that Blackwater complied with all applicable
4 rules and obtained the necessary permits and permission to occupy the Otay Mesa
5 Facility and to utilize it to fulfill its Navy training contract. Numerous inspectors
6 from the City of San Diego visited the Otay Mesa Facility to inspect Blackwater’s
7 construction conducted pursuant to specific building permits. Declaration of Brian
8 Bonfiglio ¶¶ 11-12. The City ultimately approved Blackwater’s occupation of the
9 facility because, as Defendant Broughton reportedly admitted in a recent news
10 story, Blackwater “complied with our municipal code and the California Building
11 Code.” *Id.* ¶ 27. That statement was entirely consistent with what the final City
12 inspector sent to the facility was overheard saying, “Everything looks good. I can’t
13 not sign these plans.” *Id.* ¶ 19. Thus, all that is left is for the City to perform the
14 ministerial act of sending Blackwater its Certificate of Occupancy:

15 The Building Official shall inspect the structure and if the Building
16 Official finds no violations of the Land Development Code or other
17 regulations that are enforced by the City’s designated Code
Enforcement Official, the Building Official *shall* issue a certificate of
occupancy.

18 San Diego Municipal Code (“SDMC”) § 129.0114 (entitled “Issuance of a
19 Certificate of Occupancy”) (emphasis added).

20 Unfortunately for Blackwater, this is an election year and several local
21 politicians have attempted to trade Blackwater’s statutory and constitutional rights
22 for votes. After anti-war activists began clamoring that City leaders kick
23 Blackwater out of town, the City Attorney—who is running for reelection in a
24 hotly contested race on the June 3, 2008 ballot—answered their call. He issued an
25 opinion on May 16, 2008 claiming that permits were not properly issued to
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1 Blackwater (the “City Attorney Opinion”). Bonfiglio Decl. Ex. G. That Opinion
2 is based on demonstrably inaccurate factual assumptions and legal analysis.¹

3 Blackwater responded to the City Attorney’s memorandum the following
4 business day, May 19, 2008, addressing its response to the Mayor of the City of
5 San Diego (who is also involved in a hotly contested reelection race) and pointing
6 out the deficiencies in the City Attorney’s analysis. *Id.* ¶ 25, Ex. H. This all
7 culminated in a May 19, 2008 letter from Defendant Broughton to Mr. Bonfiglio of
8 Blackwater stating that “[t]he City will not issue a certificate of occupancy for the
9 [Otay Mesa Facility] pursuant to Section 129.0114 of the San Diego Municipal
10 Code.” *Id.* ¶ 26, Ex. I. Defendant Broughton relied upon the City Attorney’s
11 flawed analysis and suggested that Blackwater should pursue a “discretionary”
12 process before the Planning Commission and the City Council and be subject to
13 CEQA review.

14 The call for discretionary review violates the SDMC. The Code sets forth
15 various processes for obtaining City approval for different types of projects. All of
16 the permits and approvals Blackwater needed were “Process One” approvals.
17 “Process One” approvals are nondiscretionary and obligatory. That is, if an entity
18 meets the requirements outlined in the Code after inspection, the City *must* issue its
19 permits and Certificate of Occupancy.² Blackwater complied with the provisions
20 of San Diego’s Municipal Code and now asks this Court to enforce them.

21 Moreover, the discretionary review referenced by Defendant Broughton in
22 his letter is meaningless because it will, at a minimum, take months or years to
23 complete, effectively killing the project, as the activists demanded. This is a clear
24 deprivation of Blackwater’s rights—especially since Blackwater was not given fair
25

26 ¹ Given the extraordinary recent report by the California Attorney General regarding “The
27 Sunroad Building Project,” it appears that the San Diego City Attorney has a pattern of issuing
fatally flawed legal “opinions” to serve his political purposes.

28 ² See SDMC §§ 112.0501, Diagram 112-05A; 129.0107; 129.0212; 129.0409.

1 notice and opportunity to be heard before the City reversed course and arbitrarily
2 decided not to send Blackwater its Certificate of Occupancy. Blackwater has also
3 been subject to groundless disparate treatment since other similarly situated local
4 entities were *not* required to follow the procedures now being imposed on
5 Blackwater. The discriminatory manner in which the city is treating Blackwater
6 (an out-of-state business) and not its local competitors is an Equal Protection
7 violation and a *per se* dormant Commerce Clause violation.

8 Significantly, Blackwater is not required to show irreparable harm given that
9 constitutional rights are at stake. But even if it were, Blackwater can show it will
10 be *irreparably harmed* if it is unable to use the Otay Mesa Facility as a vocational
11 school (including a target range) on *June 2, 2008, when performance under*
12 *Blackwater's contract with the U.S. Navy is scheduled to begin.* Blackwater's
13 reputation would likely be severely damaged, its \$400 million contractual
14 relationship with the Navy jeopardized, and its ability to train the country's armed
15 forces severely compromised, which can have tragic consequences. As a result,
16 Blackwater is entitled to a temporary restraining order preventing Defendants from
17 interfering with its use of the Otay Mesa facility as a vocational facility (including
18 a target range) because the issuance of a Certificate of Occupancy is, under the
19 SDMC, a *purely ministerial matter*.

20 Furthermore, the balance of equities favors Blackwater. Although
21 Blackwater's constitutional rights will be violated and it will be irreparably harmed
22 if temporary relief is not granted, *Defendants will not suffer any damages or harm*
23 *if temporary relief is granted.*

24 Thus, Blackwater requests a temporary restraining order enjoining
25 Defendants from (1) enforcing the May 19, 2008 letter from Defendant Broughton
26 purportedly refusing to issue a Certificate of Occupancy for the Otay Mesa Facility
27 and/or refusing to allow Blackwater to occupy and utilize immediately the Otay
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1 Mesa Facility, and (2) refusing to perform the ministerial task of sending
2 Blackwater its Certificate of Occupancy for the Otay Mesa Facility pursuant to
3 SDMC § 129.0114. Moreover, Blackwater requests this relief *well in advance of*
4 *June 2* so that it can assure the United States Navy that Blackwater will satisfy its
5 contractual obligations by providing Navy training at the Otay Mesa facility.

6 **II. STATEMENT OF FACTS**

7 Blackwater professionals are U.S. military and law-enforcement veterans
8 dedicated to training military and law-enforcement personnel at home and
9 protecting dignitaries abroad. One of Blackwater's longest-standing and most
10 important contracts has been to provide anti-terrorism training for the men and
11 women of the United States Navy. The genesis of this relationship was the attack
12 on the USS Cole in 2000. There, while the USS Cole was stationary, a small
13 manned watercraft, laced with explosives, approached the Cole. The crew of the
14 small watercraft detonated explosives, killing 17 U.S. sailors, injuring 39, and
15 causing substantial damage to the Cole.

16 After concluding that its sailors would have likely responded better if they
17 been better trained in basic firearm usage and tactics (Bonfiglio Decl. ¶ 6), the
18 Navy contracted with Blackwater to train its sailors on the safe, effective use of
19 small personal weaponry and other apprehension techniques. For more than five
20 years, Blackwater now has had a contractual relationship with the United States
21 Navy that includes training sailors in certain skills necessary for their vocation in
22 the modern world. Blackwater's training programs for sailors will teach a variety
23 of skills, including marksmanship, assembly and disassembly of firearms, basic
24 arrest and apprehension techniques, and proper safety for the latest state-of-the-art
25 personal weaponry. This type of training is designed to improve our sailors'
26 ability to protect our country, our Navy ships, and themselves. *Id.* ¶ 5.

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28

1 Pursuant to this contractual relationship with the Navy, Blackwater is
2 required to begin training a class of San Diego-area sailors on June 2, 2008. *Id.* ¶
3 7. Blackwater located the facility in San Diego because the Navy contract required
4 close proximity to Naval Base San Diego, the principal homeport of the Pacific
5 Fleet, and the largest naval base in the western United States, which ports 35,000
6 sailors. Blackwater settled on a warehouse at 7685 Siempre Viva Road, in Otay
7 Mesa. Blackwater chose Otay Mesa because of the ready availability of large,
8 industrial buildings that can accommodate its needs, and because of the
9 neighborhood's lack of residential properties.³ *Id.* ¶ 8.

10 In developing the property, Blackwater initially decided to enter into a joint
11 venture with a partnership named Southwest Law Enforcement Training
12 Enterprises because of its capabilities. As was its right, in September 2007,
13 Southwest Law Enforcement applied for and was granted a Building Permit to
14 construct 44 feet of new partitions at the Otay Mesa facility.⁴ *Id.* ¶ 10. Next,
15 Blackwater's corporate affiliate Raven Development Group, LLC ("Raven"),
16 which specializes in the development of training facilities, assisted Blackwater
17 with its construction of and preparations for the Otay Mesa facility. For example,
18 in February 2008, Raven filed two applications for Building Permits for the Otay
19 Mesa facility. These permits were to support (1) installing two new air
20 conditioning units and six exhaust fans, and (2) adding an indoor firing range.
21 These permits were granted, additional air conditioning units and exhaust fans

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25 ³ A true and correct recent satellite image of a mile radius of the Otay Mesa Facility is attached
26 as Exhibit A to the Bonfiglio Declaration, and picture of the view of across the street from the
facility is attached as Exhibit X to the Bonfiglio Declaration.

27 ⁴ *See generally* SDMC § 112.0102(a)(3) (any person who can demonstrate a legal right, interest,
28 or entitlement to the use of a property may file an application).

1 were installed, and construction of the indoor firing range began. *Id.* ¶ 11. As was
2 its right, Blackwater continued through the process.⁵

3 The inspection process went very smoothly. On March 21, 2008, the City's
4 electrical inspector visited the facility and approved Blackwater's electrical
5 infrastructure. On March 25, 2008, the San Diego Fire Inspector visited the
6 facility and approved Blackwater's fire and safety permits. *Id.* ¶ 12. On April 29,
7 2008, the Chief Building Official of the City of San Diego (Defendant Ahmadi)
8 scoured Blackwater's plans for the Otay Mesa Facility and found no unresolved
9 issues. *Id.* ¶ 17-18. Final inspection of the Otay Mesa Facility was scheduled to
10 take place the next day, April 30, 2008. *Id.* ¶ 18.

11 On April 30, 2008, the Building Official acting through the City's Structural
12 Engineer conducted a thorough final inspection of the Otay Mesa Facility. *Id.* ¶
13 19. The Structural Engineer told Mr. Bonfiglio that he was under instructions not
14 to sign Blackwater's permits until calling headquarters. He called headquarters
15 and was overheard stating, "Everything looks good. I can't *not* sign these plans."
16 *Id.* He then signed Blackwater's permits and plans, completing the City's review
17 process. *Id.*, Ex. U. He informed Blackwater that the Development Services
18 Department would mail the actual paper "Certificate of Occupancy" in the next
19 few weeks. *Id.*

20 After the City's final inspection, the issuance of a Certificate of Occupancy
21 was purely ministerial, because, as a matter of law, "the Building Official *shall*
22 issue a certificate of occupancy." SDMC 129.0114 (emphasis added). It was
23 simply a matter of putting the document in the mail. It was *not* dependent on any
24 discretionary review process or CEQA review that could take months or years.

25
26
27 ⁵ See generally SDMC § 113.0103 ("Permit holder means an applicant who has been granted a
28 permit, or the applicant's successor, or the person using the property that is subject to the
permit.")

1 Blackwater's minor renovations, its use designation, and the property features are
2 not the kind subject to discretionary review.

3 But the attitude toward the project began to change in late April 2008.
4 Blackwater began seeing increasingly fervent e-mails from local activists stating
5 that they wanted no "mercenaries" in San Diego, that Blackwater wanted to locate
6 in Otay Mesa because it wanted to patrol the border, and that San Diegans should
7 kick the North Carolina company out of California once and for all. *Id.* ¶ 15. *See*
8 *also id.*, ¶ 34. On April 26, 2008, city councilman Scott Peters spoke at a rally and
9 sharply criticized Blackwater. This is an election year in San Diego, and Election
10 Day is June 3, 2008. Scott Peters is running for City Attorney in San Diego,
11 against incumbent Michael Aguirre. *Id.* ¶ 16.

12 Soon the political atmosphere in the city reached a feverish pitch—and
13 activists ratcheted up their tone considerably. An entity called the Courage
14 Campaign asserted, "Now it's up to the Mayor and the San Diego City Council to
15 stand up against these mercenaries setting up shop on in California." *Id.* ¶ 20 &
16 Ex. C. The activists circulated a provincial-sounding petition to San Diego city
17 officials. Those who signed stated their opposition "to the siting of any private
18 military/mercenary training camp in the State of California." *Id.* ¶ 34 & Ex. N.
19 California for Democracy encouraged its members to write Mayor Sanders "to take
20 a stand and kick Blackwater of San Diego County for good." *Id.*, Ex. O. The
21 activists have been audaciously blatant, stating, "we don't care if it's all legal . . .
22 WE DON'T WANT BLACKWATER." *Id.* ¶ 35 & Ex. Z.

23 Steve Francis, an election challenger for Mayor with substantial resources,
24 attacked the incumbent Mayor Jerry Sanders for his administration's issuance of
25 the Blackwater permits. He stated, the "Blackwater permit issue raises more
26 questions than it answers," and asked, "[w]hy was this matter not handled in an
27 open and transparent way with public hearings and public comment period?"
28

1 Indeed, a headline read, “Blackwater Explodes into San Diego Mayoral Race.” *Id.*
2 ¶ 21 & Exs. D-E.

3 On May 5, Mayor Sanders sent a memorandum to Chief Operating Officer
4 Jay Goldstone asking him to conduct an investigation into Blackwater’s permits,
5 and report back May 23. The Mayor also released this memorandum to the news
6 media. *Id.* ¶ 22 & Ex. F. Next, without invitation from the Mayor, on May 16,
7 2008, City Attorney Aguirre weighed in. He released a memorandum to the new
8 media stating that Blackwater should be required to go through the City’s
9 discretionary permitting procedure—even though Blackwater has not been able to
10 identify any other vocational institutions or target ranges that have been required to
11 follow the process now being imposed on Blackwater. *Id.* ¶ 23 & Ex. G. On the
12 same day, in response to the media’s questioning him about the City Attorney’s
13 memorandum, the Mayor announced he was issuing a “stop work” order for
14 Blackwater’s Otay Mesa Facility. *Id.* ¶ 24.

15 On May 19, 2008, Blackwater’s attorneys wrote to the Mayor of San
16 Diego—and copied the City Attorney—describing the numerous errors in the City
17 Attorney’s analysis. *Id.* ¶ 25 & Ex. H. On the same day, before the City had a
18 chance to review the letter from Blackwater’s attorneys, Defendant Broughton,
19 Director of the City of San Diego’s Development Services Department, wrote to
20 Blackwater (Mr. Bonfiglio) stating that the City of San Diego “will not issue a
21 certificate of occupancy” for the facility. The letter directed Blackwater not to use
22 the “portions of the building identified for use as a shooting range and
23 vocational/trade school...until a certificate of occupancy has been issued for this
24 change of use.” *Id.* ¶ 26 & Ex. I. Despite all the posturing by politicians running
25 for re-election, that evening, KPBS reported that Defendant Broughton—when
26 apparently asked why the required permits and approvals were originally granted
27 without problem—answered, “I don’t see that I would have had any other choice
28

1 but to approve [Blackwater's permits and occupancy of the site] because it
2 complied with our municipal code and the California Building Code." *Id.* ¶ 27 &
3 Ex. J.

4 **III. APPLICABLE STANDARD**

5 The purpose of a preliminary injunction is to prevent irreparable injury to
6 the plaintiff pending a final determination of the case. *Charles Schwab & Co., v.*
7 *Hibernia Bank*, 665 F.Supp. 800, 812 (N.D. Cal. 1987). Its function is to preserve
8 the status quo and prevent irreparable loss of rights prior to judgment. *Sierra On-*
9 *Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). The
10 basis for injunctive relief in the federal courts has always been irreparable injury
11 and the inadequacy of legal remedies. *Weinberger v. Romero-Barcelo*, 456 U.S.
12 305, 312 (1982); *Stanley v. University of So. Calif.*, 13 F.3d 1313, 1320 (9th Cir.
13 1994).

14 In the Ninth Circuit, temporary restraining orders are governed by the same
15 standard as preliminary injunctions. *Jackson v. Walker*, 2007 WL 3173021 at *1,
16 (E.D. Cal. October 29, 2007) (citing *New Motor Vehicle Bd. v. Orrin W. Fox Co.*,
17 434 U.S. 1345, 1347 n. 2 (1977)). Under what has been termed the "traditional
18 standard," *Am. Motorcyclist Ass'n v. Watt*, 714 F.2d 962, 965 (9th Cir. 1983), a
19 party must establish that: "(1) the moving party will suffer irreparable injury if the
20 relief is denied; (2) the moving party will probably prevail on the merits; (3) the
21 balance of potential harm favors the moving party; and (4) the public interest
22 favors granting relief." *Cassim v. Bowen*, 824 F.2d 791, 795 (9th Cir. 1987).
23 Under the "alternative standard," the plaintiff meets its burden by demonstrating
24 either (1) a combination of probable success and the possibility of irreparable
25 injury or (2) serious questions as to these matters and the balance of hardships tips
26 sharply in its favor. *Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d
27 832, 839-840 (9th Cir. 2001) (citing *Dr. Seuss Enters. v. Penguin Books, USA*,

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1 *Inc.*, 109 F.3d 1394, 1397, n.1 (9th Cir. 1997)). Where, as here, “the balance of
2 harm tips decidedly toward the plaintiff, then the plaintiff need not show as robust
3 a likelihood of success on the merits...” *State of Alaska ex rel. Yukon Flats School*
4 *Dist. v. Native Village of Venetie*, 856 F.2d 1384, 1389 (9th Cir. 1988).

5 Regardless of the standard the Court applies, Blackwater easily meets its
6 burden. Blackwater can demonstrate that it is likely to succeed on the merits.
7 Though Blackwater need not show irreparable harm because constitutional rights
8 are at stake, it nonetheless can do so. Furthermore, the balance of hardships tips
9 sharply in Blackwater’s favor—not in favor of the City, which will not be harmed
10 in any way if injunctive relief is granted. Finally, the public interest will best be
11 served by granting the relief Blackwater seeks and allowing it to train Navy sailors.

12 **IV. ARGUMENT**

13 **A. This Court has Subject Matter Jurisdiction**

14 In this action, Blackwater seeks to remedy the City of San Diego’s violation
15 of, *inter alia*, Blackwater’s federal constitutional rights, pursuant to 42 U.S.C. §
16 1983. Accordingly, this Court has subject matter jurisdiction over this action
17 under 28 U.S.C. §§ 1331 and 1343. This Court also has diversity jurisdiction over
18 this action under 28 U.S.C. § 1332 because complete diversity exists between
19 Blackwater and Defendants and the amount in controversy in this case easily
20 exceeds \$75,000, exclusive of interest and costs. Complaint ¶ 10; Bonfiglio Decl.,
21 ¶ 31 (Blackwater risks losing Navy contract worth \$400 million).

22 **B. Blackwater Is Likely To Succeed On The Merits Of Its Claims**

23 To establish the right to injunctive relief, a plaintiff must demonstrate a
24 reasonable probability—not an overwhelming likelihood—of success on the
25 merits. *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (9th Cir. 1991). Blackwater
26 clearly meets that burden here, if for no other reason than Defendant Broughton’s
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1 correct statement that Blackwater “complied with our municipal code and the
2 California Building Code.” Bonfiglio Decl. ¶ 27 & Ex. J.

3 1. The Injunctive and Declaratory Relief Claims

4 Blackwater’s claims for injunctive and declaratory relief depend upon the
5 basic assertion that Blackwater is entitled to the issuance of a Certificate of
6 Occupancy for the Otay Mesa Facility. Blackwater is likely to succeed on the
7 merits of these claims because, as explained in Section I, the issuance of the
8 Certificate Occupancy is a purely ministerial action the City “shall” take after, as
9 occurred here, the Building Official has inspected the structure and found no
10 violations. SDMC § 129.0114. Nothing in the SDMC permits, as happened here,
11 a delay in issuance or a refusal to issue a Certificate of Occupancy for purely
12 political or electoral considerations.⁶

13 As a matter of state law, “a city has a mandatory duty to issue a certificate of
14 occupancy *once it has found* that a construction project has complied with all
15 requirements.” *Inland Empire Health Plan v. Superior Court*, 108 Cal. App. 4th
16 588, 593 (2003) (italics in original). “[T]he discretion to issue a building permit at
17 all is much broader than the discretion which must be exercised in determining
18 whether to issue a certificate of occupancy. Once the building permit has *been*
19 *issued*, it cannot be de facto revoked by the simple expedient of never issuing the
20 certificate of occupancy.” *Thompson v. City of Lake Elsinore*, 18 Cal. App. 4th 49,
21 57-58 (1993) (italics in original).

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24 ⁶ This is especially the case here because Blackwater’s vested rights are implicated. Blackwater
25 spent considerable sums legitimately obtaining its building permits, preparing its plans and
26 performing the requisite construction—all within the governing Codes. “When an administrative
27 decision affects a right which has been legitimately acquired or is otherwise ‘vested,’ and when
28 that right is of a fundamental nature from the standpoint of its economic aspect . . . then a full
and independent *judicial* review of that decision is indicated because ‘(t)he abrogation of the
right is too important to the individual to relegate it to exclusive administrative extinction.’”
Strumsky v. San Diego County Employees Retirement Ass’n, 11 Cal.3d 28, 34 (1974) (citing and
quoting *Bixby v. Pierno*, 4 Cal. 3d 130, 144 (1971)).

1 Furthermore, City officials cannot seriously contend that Blackwater should
2 be required to undertake the discretionary review process suggested in the City
3 Attorney Opinion (Bonfiglio Decl. Ex. G) and referenced in Defendant
4 Broughton's May 19, 2008 letter (*id.*, Ex. I). The City Attorney's analysis
5 depends upon two assertions: (1) that a vocational training school is not permitted
6 in the Otay Mesa Development District without discretionary approval, and (2) that
7 a target range, because it involves firing of guns within City limits, cannot be
8 permitted without discretionary City Council approval. These claims are purely
9 pretextual and meritless. They are pandering by the City Attorney to interest
10 groups dead-set at "kick[ing] Blackwater out of San Diego County for good." See
11 Bonfiglio Decl., Exs. N, O.

12 Vocational/trade schools, such as Blackwater's training facility, are
13 permitted uses as of right in the Otay Mesa Development, pursuant to two *distinct*
14 provisions of the San Diego Municipal Code. SDMC § 1517.0301(a)(1)
15 specifically authorizes "[a]ll uses permitted in the IH-2-1 zone." (It further
16 exempts facilities permitted in the IH-2-1 zone from obtaining any special permits,
17 including an Otay Mesa Development Permit and states that such facilities' permits
18 are subject to "Process One" ministerial review.) Vocational schools are permitted
19 in the IH-2-1 zone, under SDMC § 131.0622, Table 131-06B. Thus, because
20 Blackwater's facility, a vocational school, would be permitted in the IH-2-1 zone
21 as a matter of right, it is similarly permissible, as a matter of right, in Otay Mesa.
22 It is therefore not surprising that other vocational institutions exist in Otay Mesa
23 and that they almost surely did not go through the city's discretionary review
24 process.

25 A vocational school *also* is permissible in Otay Mesa under SDMC
26 § 1517.0301(a)(8)(A). That section allows a trade school to operate that instructs
27 in subjects *related to a use permitted* in the Industrial Subdistrict. The Industrial
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1 Subdistrict allows for a wide variety of uses, including: (1) scientific research and
2 development activities; (2) manufacturing plants requiring advance technology and
3 skills; (3) facilities engaged in the production of experimental products; (4) general
4 industrial uses (defined as “Establishments engaged in the . . . manufacturing . . .
5 testing [or] servicing . . . of a wide range of products”); (4) storage warehouses;
6 and (5) facilities involved in the wholesale distribution of various goods (including
7 machinery, equipment, and supplies), pursuant to SDMC §§ 1517.0301(a)(2)(A),
8 (2)(B), (2)(D), (3), (6)(A), (6)(B), *et seq.* Thus, if the subjects taught at
9 Blackwater’s vocational facility relate to *any* of these permissible uses, it is also
10 permissible.

11 Blackwater’s facility will instruct in a variety of subjects, all of which are
12 related to permitted uses in the Otay Mesa Industrial Subdistrict. For example,
13 Blackwater’s facility will instruct on proper safety techniques for using the latest
14 state-of-the-art personal weaponry. Bonfiglio Decl. ¶ 5. Because facilities
15 engaged in researching and developing this weaponry are permitted in the
16 subdistrict, a vocational school instructing end users on how to properly employ
17 these devices would also be permissible. Blackwater’s facility will also instruct
18 students on how to assemble and disassemble firearms. *Id.* Because facilities
19 engaged in the manufacturing of firearms and firearm components are permitted in
20 the subdistrict, a vocational school instructing individuals on how to handle these
21 items would also be permissible.⁷

22 Blackwater does not require approval by the City Council to train sailors on
23 the proper use of firearms at the facility. SDMC § 53.10(d) clearly permits the
24 discharge of firearms, without discretionary council approval or CEQA review, if
25 the firearms are discharged at a facility instructing on the proper use of firearms
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27 ⁷ As paragraph 32 and exhibits L and M of the Bonfiglio declaration indicate, defense
28 contracting is clearly an established, permissible use in Otay Mesa.

1 and allowing individuals to engage in target practice. Such facilities are called
2 target ranges. By exempting from special approval processes the places where San
3 Diegans (and in this case, the men and women of the U.S. Navy) may practice gun
4 safety and gun accuracy, the San Diego Municipal Code is consistent with the
5 public policy of the State of California, which similarly exempts target ranges from
6 even the strictest of gun laws.⁸

7 Defendant Broughton was correct: Blackwater complied the SDMC and the
8 California Building Code. Bonfiglio Decl. ¶ 27 & Ex. J. Accordingly, Blackwater
9 is entitled to the relief it seeks. See *Wal-Mart Stores, Inc. v. County of Clark*, 125
10 F. Supp. 2d 420, 427 (D. Nev. 1999) (granting preliminary injunction against Clark
11 County, Nevada, finding that issuance of building permit was “a purely ministerial
12 act”). See also *Cnty. House, Inc. v. City of Boise*, 490 F.3d 1041, 1060 (9th Cir.
13 2007) (reversing denial of request to enjoin the city, city council members and the
14 mayor to reinstate certain policies at a homeless shelter); *In Am. Fed’n of State,
15 County and Mun. Employees v. City of Benton*, 513 F.3d 874, 883 (8th Cir. 2008)
16 (affirming order enjoining the city, city council members and mayor to continue
17 paying retiree health insurance premiums for certain city employees); *Hurwitt v.
18 City of Oakland*, 247 F. Supp. 995, 1007-09 (C.D. Cal. 1965) (enjoining mayor, the
19 city manager and the police chief from interfering with, or refusing to provide
20 police protection for, a Vietnam Day parade).

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24 ⁸ See, e.g., Cal. Pen. Code § 12026.2(a)(9) (exempting people traveling to target ranges from
25 California’s concealed weapon ban); Cal. Pen. Code § 12027(f) (exempting members of target
26 ranges, whether public or private, from other concealed weapons restrictions); Cal. Pen. Code §
27 12031(b)(5) (exempting individuals at target ranges from being charged with felony for carrying
28 a loaded weapon); Cal. Pen. Code § 12070(b)(9) (exempting target ranges that loan guns to
individuals from California gun-transfer laws); Cal. Pen. Code § 12073(b)(7) (exempting target
ranges from certain recordkeeping requirements); Cal. Pen. Code § 12280(k)(1)(C)(i) (exempting
target ranges from California assault weapons ban); Cal. Pen. Code § 12285(c)(3) (exempting
individuals at target ranges from certain assault weapon registration requirements); and Cal. Civ.
Code § 3482.1 (exempting compliant shooting ranges from nuisance liability).

1 2. The Procedural Due Process Claims

2 Despite Blackwater's compliance with the City's procedures and applicable
3 codes, the City has improperly and without good cause refused to issue a
4 Certificate of Occupancy for Blackwater's training facility at Otay Mesa without
5 allowing Blackwater a proper hearing on the merits. The City's actions have
6 robbed Blackwater of its Constitutional right to predeprivation notice and a
7 hearing. Essential principles of due process is that a deprivation of life, liberty, or
8 property "be preceded by notice and opportunity for hearing appropriate to the
9 nature of the case" *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542
10 (1985) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313
11 (1950)), and that such notice and opportunity be "at a meaningful time and in a
12 meaningful manner." *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004).

13 "In situations where the State feasibly can provide a predeprivation hearing
14 before taking property, it generally must do so regardless of the adequacy of a
15 postdeprivation tort remedy to compensate for the taking." *Zinerman v. Burch*,
16 494 U.S. 113, 132 (1990) (citing *Loudermill*, 470 U.S. at 542). Due process
17 generally requires "that an individual be given an opportunity for a hearing *before*
18 he is deprived of any significant property interest." *Sanchez v. City of Santa Ana*,
19 915 F.2d 424, 429 (9th Cir. 1990) (citing *Loudermill*, 470 U.S. at 542). "These
20 essential constitutional promises may not be eroded." *Hamdi*, 542 U.S. at 533.

21 It is true that in situations where a predeprivation hearing is unduly
22 burdensome in proportion to the liberty interest at stake, "or where the State is
23 truly unable to anticipate and prevent a random deprivation of a liberty interest,
24 postdeprivation remedies might satisfy due process." *Zinerman v. Burch*, 494 U.S.
25 at 132 (citations omitted). Indeed, "[t]wo well-established exceptions [to the
26 general rule of predeprivation hearing] exist: (1) where the property deprivation is
27 the result of random and unauthorized conduct by a state employee such that
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1 meaningful predeprivation process is not possible; or (2) where protection of the
2 public interest requires an immediate seizure of property without a hearing.”
3 *Sanchez*, 915 F.2d at 429 n.9. Neither of these exceptions apply here.

4 “The requirements of procedural due process apply only to the deprivation
5 of interests encompassed by the Fourteenth Amendment’s protection of *liberty* and
6 *property*.” *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972)
7 (emphasis added). “Property interests ... are not created by the Constitution.
8 Rather they are created and their dimensions are defined by existing rules or
9 understandings that stem from an independent source such as state law-rules or
10 understandings that secure certain benefits and that support claims of entitlement to
11 those benefits [*e.g.*, contracts].” *Id.* at 577.

12 The Ninth Circuit has held that state statutes providing for particular
13 procedures amount to “entitlements” protected by due process. *See Parks v.*
14 *Watson*, 716 F.2d 646, 656 (9th Cir. 1983) (citing *Mabey v. Reagan*, 537 F.2d
15 1036, 1042 (9th Cir. 1976)); *cf. Bills v. Henderson*, 631 F.2d 1287, 1298-99 (6th
16 Cir.1980) (holding “every deviation from state procedures cannot be viewed as a
17 federal constitutional violation” and citing *Mabey* as contrary authority). This
18 means that, where the applicable governmental agency is left little to no discretion
19 as to whether it grants a permit, the denial of that permit creates a protectable right.
20 In *Parks*, the Oregon statute at issue (Or. Rev. Stat. § 271.120 (1981)) specified
21 that in ruling on a particular petition, the agency “shall” determine three issues,
22 and, if those three matters were determined in favor of the petition, the governing
23 body “shall” grant the petition. In other words, “[o]nce the conditions are met the
24 city lacks discretionary powers.” *Parks*, 716 F.2d at 657. Thus, as the petitioner
25 met the conditions but was denied the petition, the court held that the petitioner
26 could bring a due process claim under 42 U.S.C. § 1983. *Id.* See also *Wal-Mart*
27 *Stores*, 125 F. Supp. 2d at 427.

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1 Here, Blackwater obtained all necessary Building Permits and approval for a
2 Certificate of Occupancy, which would allow it to operate its training program at
3 the Otay Mesa facility. The Building Official indicated that Blackwater was
4 approved for a Certificate of Occupancy by stamping Blackwater's building plans
5 with a Certificate of Occupancy stamp. Defendant Broughton has admitted as
6 much. Accordingly, Blackwater possesses a vested and protected property right in
7 the Certificate of Occupancy and the City's failure to issue such certificate is
8 actionable under 42 U.S.C. § 1983.

9 3. The Equal Protection and Commerce Clause Claims

10 An equal protection claim may be brought by a "class of one" where the
11 plaintiff does not allege membership in a group but alleges that he or she has been
12 intentionally treated differently from similarly situated persons and that such
13 treatment has no rational basis. *Village of Willowbrook v. Olech*, 528 U.S. 562,
14 564 (2000) (no rational basis for requiring larger easement to connect to municipal
15 water supply from one owner than from all other owners); *Forseth v. Village of*
16 *Sussex*, 199 F.3d 363, 370-371 (7th Cir. 2000) (no rational basis for requiring
17 conveyance of land to government official as a condition for development
18 approval); *SeaRiver Maritime Fin. Holdings, Inc. v. Mineta*, 309 F.3d 662, 679 (9th
19 Cir. 2002).

20 Here, the City has questioned whether Blackwater's facility is genuinely
21 vocational and whether vocational facilities are permissible in Otay Mesa. While
22 the San Diego Municipal Code does not define "vocational school," the dictionary
23 defines it as "a school offering instruction in one or more skilled or semiskilled
24 trades or occupations"⁹ And there are similar vocational facilities in Otay Mesa.
25 Besides a truck-driving school and a beauty college, Southwestern College
26 operates a Peace Officers Standards and Training (P.O.S.T.)-certified police
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28 ⁹ See <http://dictionary.reference.com/browse/vocational%20school> (last accessed May 18, 2008).

1 academy at 8100 Gigantic Street, less than a quarter mile from Blackwater's Otay
2 Mesa facility. Bonfiglio Decl. ¶ 9.

3 Furthermore, Blackwater has investigated other vocational institutions
4 (including privately run institutions) and those featuring target ranges in the area.
5 This investigation included talking to numerous City officials, asking them about
6 the permit and approval process required of such other institutions, as well as
7 physically viewing such institutions and reviewing available documentation about
8 their practices and approvals. During this investigation, Blackwater was not able
9 to identify a single other vocational institution or facility with a target range that
10 was required to go through the discretionary process that Defendant Broughton's
11 May 19, 2008 letter seeks to impose on Blackwater. *Id.* ¶¶ 30. Because of this
12 disparate treatment, and because of the evidence showing that such disparate
13 treatment was not based in law but instead was politically motivated, Blackwater is
14 likely to prevail on its equal-protection claims.

15 The same is true of Blackwater's claims under the dormant Commerce
16 Clause. "The Commerce Clause empowers Congress '[t]o regulate Commerce . . .
17 among the several States,' Art. I, §8, cl. 3, and although its terms do not expressly
18 restrain 'the several States' in any way, we have sensed a negative implication in
19 the provision since the early days, see, e.g., *Cooley v. Board of Wardens of Port of*
20 *Philadelphia ex rel. Soc. for Relief of Distressed Pilots*, 12 How. 299, 318–319
21 (1852); cf. *Gibbons v. Ogden*, 9 Wheat. 1, 209 (1824) (Marshall, C. J.) (dictum).
22 The modern law of what has come to be called the dormant Commerce Clause is
23 driven by concern about economic protectionism—that is, regulatory measures
24 designed to benefit in-state economic interests by burdening out-of-state
25 competitors." *Kentucky v. Davis*, -- S.Ct. --, 2008 WL 2078187 (U.S., May 19,
26 2008) (citation and internal quotes omitted). Moreover, when a law favors in-state
27 business over out-of-state competition, rigorous scrutiny is appropriate because the
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1 law is often the product of “simple economic protectionism.” *Wyoming v.*
2 *Oklahoma*, 502 U.S. 437, 454, (1992); *Philadelphia v. New Jersey*, 437 U.S. 617,
3 626-627 (1978).

4 Here, there this strong evidence that Defendants were answering the calls to
5 kick Blackwater, an out-of-state business, out of California. See Bonfiglio Decl.,
6 ¶¶ 15, 20, 34 & Ex. C (“stand up against these mercenaries setting up shop in
7 California”) and Ex. N (petition sent to San Diego officials stating signatories’
8 opposition “to the siting of any private military/mercenary training camp in the
9 State of California.”). Moreover, as discussed, Blackwater clearly is being treated
10 differently than other local vocational institutions and target ranges, and
11 Defendants have not articulated any proper basis for such discriminatory
12 treatment—let alone a reason that could withstand the strict scrutiny required for
13 situations like these. See *Kentucky v. Davis*, 2008 WL 2078187. Withholding
14 issuance of Blackwater’s Certificate of Occupancy when similar certificates have
15 been routinely issued for in-state companies does not pass strict scrutiny here
16 because it unduly burdens the interstate market and impermissibly causes a shift of
17 business from out-of-state firms like Blackwater to in-state firms. See *McNeilus*
18 *Truck and Manufacturing, Inc. v. State of Ohio*, 226 F.3d 429, 442-44 (6th Cir.
19 2000). As the exhibits attached to the Bonfiglio declaration show, Defendants are
20 engaging in the type of discrimination forbidden by the dormant Commerce Clause
21 – “regulatory measures designed to benefit in-state economic interests by
22 burdening out-of-state competitors.” See *Kentucky v. Davis*, 2008 WL 2078187.
23 Accordingly, Blackwater also is likely to prevail on its claim under the dormant
24 Commerce Clause.

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1 **C. Blackwater Suffers An Immediate Threat Of Irreparable Harm**

2 A temporary restraining order or preliminary injunction may be granted in
3 instances where the moving party demonstrates a significant threat of irreparable
4 injury. *Simula, Inc v. Autoliv, Inc.*, 175 F.3d 716, 725 (9th Cir. 1999).

5 As an initial matter, when a violation of constitutional rights is shown, most
6 courts do not require any further showing of irreparable injury. *Brewer v. West*
7 *Irondequoit Cent. School Dist.*, 212 F.3d 738, 744-45 (2nd Cir. 2000); see also
8 *Associated Gen. Contractors of Calif. v. Coalition for Economic Equity*, 950 F.2d
9 1401, 1410 (9th Cir. 1991); *Gebin v. Mineta*, 239 F.Supp.2d 967, 969 (C.D. Cal.
10 2002) (plaintiffs sufficiently alleged a constitutional deprivation to warrant a
11 finding of irreparable harm); *Dodge v. County of Orange*, 282 F.Supp.2d 41, 72
12 (S.D.N.Y. 2003) (“The alleged violation of a constitutional right suffices to show
13 irreparable harm.”); *American Civil Liberties Union of Kentucky v. McCreary*
14 *County, Kentucky*, 354 F.3d 438, 445 (6th Cir. 2003) (“the Supreme Court held
15 that when reviewing a motion for a preliminary injunction, if it is found that a
16 constitutional right is being threatened or impaired, a finding of irreparable injury
17 is mandated”) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, given the
18 violation of Blackwater’s constitutional rights, it need show little—if any—
19 threatened harm.

20 Nonetheless, Blackwater’s harm would be irreparable if it is unable to meet
21 the June 2, 2008 deadline for commencing training. It risks suffering significant
22 harm to its reputation—harm that could jeopardize its contractual undertaking with
23 the U.S. Navy and being unable to train the nation’s sailors as contemplated. See
24 *United Healthcare Ins. Co. v. AdvancePCS*, 316 F.3d 737, 741 (8th Cir. 2002)
25 (damage to reputation can constitute irreparable injury, especially if damages
26 would be uncertain or inadequate). This damage to its reputation could also result
27 in the loss of other contracts and likely would damage Blackwater in an amount
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1 that is difficult, if not impossible, to quantify. Bonfiglio Decl. ¶ 31. Thus,
2 Blackwater faces the threat of immediate and irreparable injury absent injunctive
3 relief.

4 **D. The Balance Of Hardships Tips Sharply In Blackwater’s Favor**

5 In assessing whether a temporary or preliminary injunction should issue, a
6 district court must identify the harm that a preliminary injunction might cause the
7 defendant and weigh it against plaintiff’s threatened injury. The relative size and
8 strength of each party are pertinent to this inquiry. *Sardi’s Restaurant Corp. v.*
9 *Sardie*, 755 F.2d 719, 726 (9th Cir. 1985). Here, the potential harm to Blackwater
10 if a temporary restraining order (or preliminary injunction) is denied is significant
11 for the reasons discussed above, whereas there is no harm or damage to the City if
12 a temporary restraining order (or preliminary injunction) is granted.¹⁰

13 The Court must also consider the public interest as a factor in balancing the
14 hardships when the public interest may be affected. *See Department of Parks &*
15 *Rec. for State of California v. Bazaar Del Mundo, Inc.*, 448 F.3d 1118, 1123 (9th
16 Cir. 2006). Here, the public interest will best be served by granting the relief
17 sought by Blackwater. The training facility that Blackwater is attempting to open
18 is important to U.S. national security because it is designed to train U.S. Navy
19 sailors in a variety of skills, including marksmanship. This type of training is
20 expected to improve our sailors’ ability to protect our county, our Navy ships, and
21 themselves—and avoid a tragedy like the one that happened to the USS Cole.

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26 ¹⁰ Even the City’s reference to CEQA (as an attempt to make this an “environmental” matter) is
27 misplaced. As the Bonfiglio Declaration makes clear (¶ 33 & Exs. P-T), the facility will use
28 “green” ammunition that is lead-free. The target range’s walls are made from the toughest steel
available and reinforced by recycled rubber to absorb noise and projectiles. *Id.* The facility also
has state-of-the art filtration systems. *Id.*

1 **V. CONCLUSION**

2 For the foregoing reasons, Blackwater respectfully requests that the Court
3 grant its *Ex Parte* Application for Temporary Restraining Order and for Order to
4 Show Cause Re Preliminary Injunction.

5 DATED: May 26, 2008

MAYER BROWN LLP
JOHN NADOLENCO
CHRISTOPHER MURPHY

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8

By: John Nadolenco

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John Nadolenco *gn*
Attorneys for Plaintiff
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TRAINING CENTER, INC., dba
BLACKWATER WORLDWIDE

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13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15
16 BLACKWATER LODGE AND TRAINING
CENTER, INC., a Delaware corporation dba
17 BLACKWATER WORLDWIDE,

18 Plaintiff,

19 v.

20 KELLY BROUGHTON, in his capacity as
Director of the Development Services
Department of the City of San Diego;
21 AFSANEH AHMADI, in her capacity as Chief
Building Official of the City of San Diego;
22 THE DEVELOPMENT SERVICES
DEPARTMENT OF THE CITY OF SAN
23 DIEGO; THE CITY OF SAN DIEGO, a
municipal entity; and DOES 1-20, inclusive,

24 Defendants.

Case No. 08 CV 0926 H WMc

PROOF OF SERVICE

Date: TBD

Time: TBD

Location: Courtroom of the Honorable
Marilyn L. Huff

[*Ex Parte* Application For Temporary
Restraining Order and Order To Show
Cause Re: Preliminary Injunction and
Memorandum Of Points and Authorities
In Support Thereof, Declarations of Brian
Bonfiglio and John Nadolenco, and
Appendix of Authority Filed, and
Proposed Orders Lodged Concurrently
Herewith]

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PROOF OF SERVICE
PERSONAL SERVICE

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I am employed by Time Machine Network, Inc., 701 "B" St. #244, San Diego, CA 92101. I am over the age of 18 years; and I am not a party to this action. On May 27, 2008, I served a copy of the within document(s):

- [PROPOSED] ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION
- [PROPOSED] TEMPORARY RESTRAINING ORDER;
- PLAINTIFFS' *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF
- DECLARATION OF BRIAN BONFIGLIO IN SUPPORT THEREOF
- DECLARATION OF JOHN NADOLENCO IN SUPPORT THEREOF
- APPENDIX OF SELECTED PROVISIONS OF THE SAN DIEGO MUNICIPAL CODE

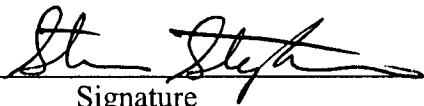
(BY PERSONAL SERVICE) I delivered such documents to the offices of the addressee(s) listed below:

SEE ATTACHED SERVICE LIST

Executed on May 27, 2008, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

STEVE STEPHENS
Print Name


Signature

1 Elizabeth Maland, San Diego City Clerk
2 202 "C" Street, 2nd Floor
3 San Diego, CA 92101

Ms. Afsaneh Ahmadi , P.E.
Building, Safety and Construction
Chief Building Official, Chief Deputy Director
1222 First Avenue, #MS 501
San Diego, CA 92101-4155

4
5 Mayor Jerry Sanders
6 City Administration Building
7 11th Floor, 202 C Street
8 San Diego, CA 92101

Mr. Kelly Broughton
Director
Development Services Department
1222 First Avenue, #MS 501
San Diego, CA 92101-4155

9 Mr. Michael J. Aguirre
10 Office of the City Attorney
11 Civic Center Plaza
12 1200 Third Avenue, #1620
13 San Diego, CA 92101

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