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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SOLANO

WEST COAST HOME BUILDERS, INC.,
 Petitioner and Plaintiff,
 v.
 CITY OF BENICIA,
 Respondent and Defendant.

Case No. FCS048992

NOTICE TO ATTORNEY GENERAL

Environmental Law – CEQA (Public Resources Code § 21167.1)

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TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:

PLEASE TAKE NOTICE, under Public Resources Code section 21167.7 and Code of Civil Procedure section 388, that on June 2, 2017, West Coast Home Builders, Inc. filed a Verified Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate against the City of Benicia in Solano County Superior Court. The petition alleges that the City of Benicia violated the California Environmental Quality Act, Public Resources Code section 21000 *et seq.*, by certifying an Initial Study/Mitigated Negative Declaration in connection with its approval of the Benicia Industrial Park Transportation and Employment Center Plan. A copy of the petition is attached to this notice as Exhibit A.

DATED: June 6, 2017

Respectfully submitted,

HANSON BRIDGETT LLP

By: 

KRISTINA D. LAWSON
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VANEETA CHINTAMANENI
Attorneys for West Coast Home Builders, Inc.

EXHIBIT A

ENDORSED FILE
Clerk of the Superior Court

JUN 02 2017

G. ROBINS

By _____
DEPUTY CLERK

ASSIGNED TO
JUDGE Beeman
FOR ALL PURPOSES

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FAXED

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SOLANO

12 WEST COAST HOME BUILDERS, INC.,
13 Petitioner and Plaintiff,
14 v.
15 CITY OF BENICIA,
16 Respondent and Defendant.

Case No. FCS 048992
VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF (CCP §§ 526, 1109, & 1060) AND
PETITION FOR WRIT OF MANDATE
(PUBLIC RESOURCES CODE §§ 21167,
21168, 21168.5; CCP §§ 1085, 1094.5)
Environmental Law – CEQA (Public
Resources Code § 21167.1)

18 By this verified complaint and petition, Petitioner and Plaintiff West Coast Home
19 Builders, Inc. ("West Coast," "Plaintiff," or "Petitioner") alleges as follows:

20 INTRODUCTION

21 1. West Coast seeks a declaration by this Court that the City of Benicia
22 ("City") must fully comply with the requirements of the California Environmental Quality
23 Act ("CEQA"; Pub. Resources Code, §§ 21000 *et seq.*) in connection with its review and
24 approval of a Benicia Industrial Park Transportation and Employment Center Plan ("TEC
25 Plan"), and the City must complete a CEQA-compliant, public environmental review
26 process before attempting to adopt a TEC Plan.

27 2. West Coast owns the largest undeveloped tract of land in the City and is the
28

1 largest property owner within the TEC Plan area. West Coast's property (referred to in the
2 TEC Plan as the "Northern Gateway Property" and generally herein as the "West Coast
3 Property") was included within the boundaries of the TEC Plan area without any input
4 from West Coast whatsoever.

5 3. The TEC Plan purportedly implements two statewide and regional planning
6 initiatives. First, the TEC Plan purportedly seeks to achieve the goals of the Complete
7 Streets Act of 2008 (Assembly Bill 1358), which seeks to design transportation networks
8 that are functional, safe, and convenient for all modes of transit, including but not limited
9 to bicyclists, pedestrians, transit vehicles, truck drivers, and motorists. Second, the TEC
10 Plan purportedly seeks to implement Plan Bay Area, a regional plan adopted by the
11 Association of Bay Area Governments ("ABAG") that attempts to integrate transportation
12 and land use, as mandated by California Senate Bill 375.

13 4. The Benicia City Council approved the TEC Plan without soliciting any
14 contact or input from West Coast, the single largest property owner in the TEC Plan area,
15 and without preparing an Environmental Impact Report ("EIR"). Instead, the City prepared
16 and certified an Initial Study/Mitigated Negative Declaration ("TEC Plan IS/MND") that
17 was purportedly "tiered" off of an EIR for the Benicia General Plan ("General Plan") that is
18 almost twenty years old. The General Plan, approved in June 1999, was adopted years
19 before the passage of the Complete Streets Act and the adoption of Plan Bay Area that
20 the TEC Plan purports to implement. The General Plan did not envision or attempt to
21 facilitate the "Complete Streets" that constitute "the heart of the TEC Plan" and serve to
22 transition the Plan area into an accessible, multi-modal transportation environment, nor
23 did the General Plan address the TEC Plan's stated goal of transforming the TEC Plan
24 area into an "innovation park." (TEC Plan, pp. 1-3, 7-10.)

25 5. Further, the TEC Plan defers environmental review of critical issues, such
26 as freeway ramp improvements and road alignments that may encroach beyond existing
27 rights of way or into sensitive areas. Thus, the City has sought to defer analysis of site-
28 specific impacts in a General Plan EIR, and then, almost twenty years later, has prepared

1 an IS/MND that purports to tier off that EIR, without addressing the site-specific impacts
2 in either document.

3 6. CEQA does not authorize the use of a tiered EIR when the later project is
4 inconsistent with or outside of the scope of the plan for which the prior EIR was prepared.
5 (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307.) Further, tiering "is not a
6 device for deferring identification of significant environmental impacts that the adoption of
7 a [later] plan can be expected to cause." (*Stanislaus Natural Heritage Project v. County of*
8 *Stanislaus* (1996) 48 Cal.App.4th 182, 199.) In adopting the TEC Plan, the City abused
9 its discretion and failed to proceed in a manner required by law by (1) improperly relying
10 on the General Plan EIR (prepared in 1998) to evaluate the environmental impacts of a
11 project that is inconsistent with and outside the scope of the project for which the General
12 Plan EIR was prepared, and (2) improperly deferring analysis of known, specific impacts
13 of the TEC Plan to an unspecified subsequent environmental review process.

14 7. Further, the City abused its discretion by certifying the TEC Plan IS/MND,
15 because there is substantial evidence to support a fair argument in light of the whole
16 record that the TEC Plan will result in potentially significant impacts to the environment
17 that were not identified, analyzed, or mitigated in the General Plan EIR or the TEC Plan
18 IS/MND.

19 8. The City also abused its discretion and failed to proceed in a manner
20 required by law because (1) the project description in the TEC Plan is impermissibly
21 vague and inconsistent in describing the use, intensity, and density of future development
22 in the TEC Plan area, and (2) the City did not solicit information from or engage with
23 West Coast, and inadequately responded to West Coast's comments to the TEC Plan
24 IS/MND, in violation of CEQA public participation and information disclosure provisions.

25 9. The City also abused its discretion by failing to comply with provisions of its
26 agreement with the Solano Transportation Authority ("STA") related to public outreach
27 and environmental review of a TEC Plan project, by (1) repeatedly failing to provide West
28 Coast with notice of meetings and hearings related to the project, failing to consult with

1 West Coast in developing a TEC Plan, and failing to respond adequately to West Coast's
2 comments regarding the deficiencies in the TEC Plan, in violation of the agreement with
3 the STA; and (2) by failing to perform an appropriate environmental review of a TEC
4 Plan, as required under CEQA and by the agreement between the City and the STA.

5 10. Accordingly, West Coast seeks a peremptory writ of mandate pursuant to
6 Code of Civil Procedure section 1085 and/or section 1094.5 setting aside the certification
7 of the City's TEC Plan IS/MND and adoption of the TEC Plan, and ordering the City to
8 prepare an EIR that fully analyzes all significant impacts, reasonable alternatives, and
9 proposed mitigation measures before adopting a TEC Plan.

10 11. West Coast seeks a declaration by this Court that the City must fully comply
11 with the requirements of CEQA in its review of the TEC Plan, and that the City must
12 prepare a subsequent CEQA-compliant EIR before adopting a TEC Plan.

13 12. West Coast seeks injunctive relief by this Court enjoining the City from
14 implementing the TEC Plan, which plan was adopted in violation of CEQA.

15 JURISDICTION AND VENUE

16 13. The City of Benicia is located within Solano County, and venue is proper in
17 Solano County pursuant to Code of Civil Procedure section 394(a).

18 14. This Court has jurisdiction pursuant to CEQA, Public Resources Code
19 sections 21167, 21168, and 21168.5 and Code of Civil Procedure sections 1085 and
20 1094.5.

21 PARTIES

22 15. Petitioner and Plaintiff West Coast is a California corporation with its
23 principal place of business in Contra Costa County. West Coast owns over 500 acres of
24 undeveloped property within the TEC Plan area and conducts business in Solano
25 County.

26 16. The City of Benicia is a municipality founded in 1849 and the lead agency
27 under CEQA for the TEC Plan. On May 2, 2017, the Benicia City Council certified the
28 TEC Plan IS/MND and adopted the TEC Plan. On May 3, 2017, the City filed a Notice of

1 Determination for the TEC Plan with the County Clerk of Solano County and the State
2 Office of Planning and Research.

3 **STANDING**

4 17. Petitioner and Plaintiff West Coast has standing to bring this petition and
5 complaint because it is the owner of nearly all undeveloped real property located within
6 the TEC Plan area, including over 500 acres of vacant land between East 2nd Street and
7 Lake Herman Road referred to in the TEC Plan as the Northern Gateway Property.
8 Therefore, West Coast has a geographical nexus to the TEC Plan and will be affected by
9 the TEC Plan's environmental impacts, and the TEC Plan's overly burdensome
10 regulations and restrictions.

11 18. West Coast further has exhausted its administrative remedies, by
12 objections interposed in writing during the administrative proceedings leading to the
13 adoption of the TEC Plan, including without limitation written comments submitted to the
14 City's Community Development Department on West Coast's behalf by Kristina Lawson,
15 Esq., on April 19, 2017 and to the City on May 2, 2017.

16 19. West Coast has complied with Public Resources Code section 21167.5 by
17 previously serving by mail a Notice of Commencement of Action described in California
18 Public Resources Code section 21167 upon the City. The Notice and Proof of Service of
19 the Notice have been filed with this petition.

20 **FACTUAL AND PROCEDURAL BACKGROUND**

21 20. The West Coast Property covers approximately 528 contiguous acres of
22 vacant land within the TEC Plan area. West Coast and affiliated companies have owned
23 the Property since 1979. Specifically, Albert D. Seeno Construction Co. ("ADSCO")
24 purchased the West Coast Property on October 29, 1979. The Property was transferred
25 from ADSCO to an affiliated entity, North State Development Co. ("North State") on
26 December 28, 1995, and from North State to West Coast, also an affiliated entity, on
27 February 1, 1996.

28 21. The West Coast Property comprises nearly 50% of the TEC Plan area and

1 a vast majority of the undeveloped property within the TEC Plan area. The West Coast
2 Property is located in the northeastern portion of the City, west of Interstate 680. It is
3 bounded on the south and east by East 2nd Street. The western boundary generally
4 parallels the alignments of West Channel Road and Industrial Way. The northern
5 property line is bounded in part by the City of Benicia Water Treatment Plant and by Lake
6 Herman Road.

7 22. Since 1979, West Coast and others have presented the City with various
8 development proposals for the West Coast Property, and has studied the feasibility of
9 development of the property. Despite West Coast's long-time ownership of the West
10 Coast Property, and its extensive knowledge of its property and the surrounding area, the
11 City has repeatedly failed to solicit input from or meaningfully engage with West Coast or
12 affiliated companies about the impacts of proposed plans on the West Coast Property.

13 23. On December 16, 2011, the City submitted an application to ABAG
14 requesting that it recognize the Benicia Industrial Park (which includes the West Coast
15 Property) as a Priority Development Area for investment and job growth ("PDA
16 Application"). On January 17, 2012, the City Council adopted Resolution 12-2 supporting
17 the PDA Application. Though West Coast owned over 500 acres of property in the Priority
18 Development Area, the City never notified West Coast of its intent to pursue the PDA
19 Application, and West Coast did not discover this fact until after the City's approval of the
20 PDA application.

21 24. By letter dated February 16, 2012, West Coast submitted comments to
22 ABAG identifying erroneous and misleading information contained in the PDA Application
23 and requesting that ABAG disqualify the PDA Application from the selection process. In
24 its letter, West Coast identified internal discrepancies in the PDA Application between the
25 narrative and exhibits, including a discrepancy as to whether the area proposed for
26 designation as a Priority Development Area included the West Coast Property. In one
27 example, the narrative contained in the PDA Application described the area to be
28 comprised of as 925 acres, but a boundary calculation by a registered civil engineer

1 showed that the area depicted in the PDA Application was 1,447 acres. West Coast
2 strenuously objected to the preparation and imposition of specific or precise plans for its
3 property, or the creation of supporting environmental reports regarding the development
4 of its property, particularly without any input from the property owner.

5 25. At its meeting held on March 15, 2012, ABAG approved the PDA
6 Application and the designation of the general TEC Plan area as the "Benicia Industrial
7 Park Employment Center-Priority Development Area." ABAG's designation of the area as
8 a Priority Development Area allows the City access to potential grant funding to develop
9 a plan for an integrated transportation system, and for future transportation infrastructure
10 improvements within the TEC Plan area. In or around December 2014, the City prepared
11 a Summary of Stakeholder Interviews in connection with its anticipated development of
12 the TEC Plan. The City did not contact West Coast—the largest property owner in the
13 Plan area—to discuss, or seek West Coast's input on, the City's development of a vision
14 or plan for the West Coast Property.

15 26. On January 11, 2016, the City Council adopted a Complete Streets Policy
16 through Resolution No. 16-2, in accordance with the Complete Streets Act of 2008.
17 Beginning January 1, 2011, the Complete Streets Act required that cities and counties,
18 upon any substantive revision of the circulation element of a general plan, make
19 modifications to "plan for a balanced, multimodal transportation network that meets the
20 needs of all users of streets, roads, and highways for safe and convenient travel in a
21 manner that is suitable to the rural, suburban, or urban context of the general plan." As
22 indicated by recitals in Resolution No. 16-2, the Metropolitan Transportation Commission
23 ("MTC") requires jurisdictions who wish to access "OneBayArea" Grant Program
24 transportation funds during an upcoming five-year grant cycle to adopt a Complete
25 Streets Resolution incorporating nine required Complete Streets elements by January 31,
26 2016.

27 27. In August 2016, the City released the Benicia Industrial Park TEC Plan
28 Scenarios Report ("Scenarios Report") prepared for the City by Dyett & Bhatia and KDP

1 Bottomley Associates. The Scenarios Report describes three potential land use
2 scenarios for consideration and inclusion in the TEC Plan:

- 3 a. Scenario 1 contemplates minimal intensification and assumes no
4 significant future changes in land use in the TEC Plan area. The TEC
5 Plan states that the recommendations therein are intended to
6 improve upon existing conditions and introduce Complete Streets at
7 a basic level under this Scenario;
- 8 b. Scenario 2 assumes development of the West Coast Property, which
9 is described as 528 acres of undeveloped land, and indicates that
10 while the "mix and distribution of future land uses on the property has
11 not yet been determined and will be defined through a Specific Plan
12 at a future date, this Scenario assumes predominantly light industrial
13 development, potentially with some office or other commercial uses,
14 consistent with the Light Industrial and General Commercial
15 districts." Under Scenario 2, East 2nd Street "becomes the center
16 spine running through the Park, and recommendations promote
17 connection to and through this corridor"; and
- 18 c. Scenario 3 assumes some intensification of the existing industrial
19 park area in addition to development of the West Coast Property as
20 described under Scenario 2. The TEC Plan recommendations would
21 promote improved connectivity in the central/west area under
22 Scenario 3.

23 28. On September 7, 2016, the City held a community workshop, the stated
24 purpose of which was to inform the community about the findings of the Scenarios Report
25 and the planning process to date, and to provide a forum for community members to
26 provide input on alternatives for potential roadway, bike, pedestrian, and streetscape
27 improvements in the Benicia Industrial Park. A Community Workshop Report dated
28 September 22, 2016 and prepared by Dyett & Bhatia and KDP Bottomley Associates

1 reports that City staff "sent out a flyer and email blast to Benicia residents and other
2 interested parties." The City did not provide notice of the community workshop to West
3 Coast.

4 29. By letter to the City dated September 7, 2016, West Coast submitted
5 comments to the City regarding the Scenarios Report and objected to the City's
6 continued failure to provide notice or otherwise involve West Coast in the development of
7 a TEC Plan, which will critically impact the future development of the West Coast
8 Property.

9 30. In January 2017, the City released the public review draft of the TEC Plan
10 prepared by Dyett & Bhatia and KDP Bottomley Associates. The TEC Plan relies on one
11 of West Coast's previous development proposals, to estimate that the development of
12 280 acres for "Limited Industrial" uses (approximately 4.4 million square feet of new
13 building space) and 35 acres for "Commercial" uses (approximately 857,000 square feet
14 of building space) could be reasonably supported on the West Coast Property.

15 31. On March 17, 2017, the City issued a Notice of Intent to Adopt a Negative
16 Declaration or Mitigated Negative Declaration for the TEC Plan and released the TEC
17 Plan IS/MND. The Notice of Intent described the comment period to begin on Monday,
18 March 20, 2017, with written comments on the proposed negative declaration accepted
19 until 5 p.m. on Monday, April 19, 2017. The City's website listed the closing date for the
20 comment period as Wednesday, April 19, 2017. The City accepted comments through
21 April 19, 2017.

22 32. The TEC Plan IS/MND states that the TEC Plan area includes over 1,300
23 acres of land, with the West Coast Property encompassing over 500 acres. The project,
24 as described in the TEC Plan IS/MND, is "implementation of the TEC Plan and provides
25 for roadway modifications and enhancements, and other improvements to accommodate
26 circulation and all modes of access." The TEC Plan IS/MND states that "[t]hree plan
27 scenarios are being considered and it is expected that the final TEC Plan will assume
28 one of those scenarios or some combination thereof. For analysis purposes, it is

1 presumed that the most development intense scenario, Scenario 3, is realized." The TEC
2 Plan itself makes no specific reference to Scenario 3, and the improvements identified in
3 the TEC Plan do not mirror the improvements associated with Scenario 3 in the
4 Scenarios Report. For example, the TEC Plan does not include as part of the proposed
5 pavement maintenance the section of Park Road north of Industrial Way to south of
6 Stone Street, and it adds four roadway segments that are not included in the Scenarios
7 Report.

8 33. The TEC Plan IS/MND includes specific roadway improvements, freeway
9 ramp improvements, bicycle improvements, pedestrian improvements, signage and
10 wayfinding, demolition and tree removal, landscaping and lighting, and construction
11 activities as project components.

12 34. The TEC Plan IS/MND is purportedly "tiered" off of the General
13 Plan EIR that was certified in 1998. In support of this purported tiering of the
14 environmental impact analysis, the TEC Plan IS/MND states the following:

The General Plan EIR reviewed potentially significant environmental effects resulting from plan implementation and developed measures and policies to mitigate impacts. The General Plan EIR identified significant impacts related to community services, transportation and circulation, air quality, and hazardous materials. Implementation of mitigation measures identified in the General Plan EIR reduced impacts to less-than-significant levels.

This environmental document tiers off of the General Plan EIR (SCH NO.: 97122023), which was certified on April 1998, to examine site-specific impacts of the proposed project, as described below. A copy of the City of Benicia's General Plan and EIR are available at the Community Development Department, 250 East L Street, Benicia, CA 94510, during normal business hours and online <http://www.ci.benicia.ca.us/generalplan>.

24 35. The TEC Plan IS/MND states that all General Plan policies adopted as
25 mitigation in the General Plan EIR apply to the TEC Plan. With respect to certain TEC
26 Plan components, the TEC Plan IS/MND purports to provide a programmatic analysis or
27 otherwise require subsequent environmental review. For example, the TEC Plan IS/MND
28 states that "improvements that would substantially modify roadway alignment, encroach

1 beyond the right of way or into sensitive areas such as wetland, marsh or natural
2 communities would be subject to subsequent environmental review." With respect to
3 freeway ramp improvements proposed in the TEC Plan, the TEC Plan IS/MND states that
4 the locations for the freeway ramp improvements will be studied further to determine how
5 best to improve or reconstruct the ramps and that "[b]ecause there are no details
6 regarding the freeway ramp improvements at this time, this IS/MND recognizes that
7 future development of the freeway ramp improvements would be required to undergo
8 subsequent environmental review in accordance with CEQA regulations." Similarly, the
9 TEC Plan IS/MND opines that pedestrian facilities along East 2nd Street would be
10 constructed as part of a "Northern Gateway Mixed-Use Development Project" and may
11 occur outside of the existing limit of pavement for East 2nd Street. As a result, the TEC
12 Plan IS/MND includes a "programmatic analysis for this component of the TEC Plan.
13 Future construction of pedestrian facilities may be required to undergo subsequent
14 environmental review according to CEQA regulations."

15 36. The TEC Plan IS/MND concludes that although the TEC Plan could have a
16 significant effect on the environment in the areas of Air Quality, Biological Resources,
17 Cultural Resources, Hazards and Hazardous Materials and Hydrology/Water Quality, with
18 the implementation of mitigation measures, all impacts will be reduced to less than
19 significant levels.

20 37. On April 13, 2017, the City's Planning Commission conducted a public
21 hearing and passed Resolution No. 17-3, recommending that the City Council certify the
22 TEC Plan IS/MND and adopt the TEC Plan. Resolution No. 17-3 states in its recitals that
23 "interviews were conducted with key stakeholders at the project outset." However, the
24 City did not conduct interviews with any West Coast representatives and to date, has not
25 solicited input from West Coast, or taken into account comments submitted by West
26 Coast in connection with the development of the TEC Plan and associated environmental
27 documents.

28 38. By letter dated April 19, 2017, West Coast timely submitted detailed

1 comments to the City describing the legal inadequacy of the TEC Plan IS/MND. In its
2 letter, West Coast asserted that the TEC IS/MND cannot tier from the General Plan EIR
3 because the TEC Plan is not within the scope of the General Plan EIR and because the
4 General Plan EIR retains no informational value. West Coast also observed that
5 potentially significant effects of the TEC Plan were not identified and analyzed in the
6 General Plan EIR. More specifically, West Coast commented that the General Plan EIR
7 did not evaluate project-specific, potentially significant impacts in the areas of Aesthetics,
8 Air Quality/Greenhouse Gas Emissions, Noise, and Population and Housing. Additional
9 comments questioned whether the TEC Plan IS/MND adequately evaluated potentially
10 significant off-site impacts and cumulative impacts. West Coast's comments also urged
11 against deferring the analysis of impacts of transportation/traffic impacts, including
12 roadway and freeway ramp improvements, bike lanes, and pedestrian facilities. Pointing
13 out inconsistencies in the TEC Plan and TEC Plan IS/MND as to what exactly the TEC
14 Plan MND evaluated, West Coast's comment letter concluded the TEC Plan IS/MND
15 failed to provide an adequate project description, thereby precluding meaningful public
16 review and improperly segmenting the analysis of the environmental impact of the TEC
17 Plan.

18 39. By letter dated May 2, 2017, West Coast submitted a supplemental letter
19 reiterating its objections to the TEC Plan IS/MND and the proposed TEC Plan. West
20 Coast observed that while the City was aware that West Coast had unique knowledge of
21 the West Coast Property, the City had never solicited or engaged West Coast in
22 developing the TEC Plan or in considering the environmental implications of adopting the
23 TEC Plan. West Coast also objected to the City's cursory and inadequate responses to
24 the comments set forth in West Coast's April 19, 2017 letter.

25 40. On May 2, 2017, the Benicia City Council approved Resolution No. 17-64,
26 certifying the TEC Plan IS/MND and adopting the TEC Plan. Like Planning Commission
27 Resolution No. 17-3, Resolution No. 17-64's recitals state that "interviews were
28 conducted with key stakeholders at the project outset." However, as stated above, the

1 City did not conduct interviews with any West Coast representatives and to date, has not
2 solicited input from West Coast, or taken into account comments submitted by West
3 Coast in connection with the development of the TEC Plan and associated environmental
4 documents.

5 41. On May 3, 2017, the City filed a Notice of Determination for the City's
6 approval of the TEC Plan pursuant to Public Resources Code Section 21152.

7 **FIRST CAUSE OF ACTION**

8 **[Writ of Mandate – Violation of CEQA]**

9 **A. The City Improperly Tiered the TEC Plan MND Off of the 1998 General Plan**
10 **EIR.**

11 42. West Coast refers to and herein incorporates by reference Paragraphs 1
12 through 41, as if stated in full herein.

13 43. The TEC Plan IS/MND states that "[t]his document tiers off of the General
14 Plan EIR (SCH NO.: 97122023), which was certified on April 1998, to examine site-
15 specific impacts of the proposed project." Under CEQA,

16 "Tiering" refers to the coverage of general matters in broader
17 EIRs (such as on general plans or policy statements) with
18 subsequent narrower EIRs or ultimately site-specific EIRs
19 incorporating by reference the general discussions and
20 concentrating solely on the issues specific to the EIR
21 subsequently prepared. Tiering is appropriate when the
22 sequence of EIRs is:

23 (a) From a general plan, policy, or program EIR to a program,
24 plan, or policy EIR of lesser scope or to a site-specific EIR;

25 (b) From an EIR on a specific action at an early stage to a
26 subsequent EIR or a supplement to an EIR at a later stage.
27 Tiering in such cases is appropriate when it helps the Lead
28 Agency to focus on the issues which are ripe for decision and
exclude from consideration issues already decided or not yet
ripe.

(Cal. Code Regs., tit. 14, § 15385.)

44. CEQA contemplates the use of the tiering process to allow for the analysis
of general matters contained in a broader EIR to be incorporated into subsequent EIRs or
Negative Declarations for specific projects. (*Id.* § 15152(a).) However, tiering is only

1 appropriate if the "sequence of analysis is from an EIR prepared for a general plan,
2 policy, or program to an EIR or negative declaration for another plan, policy, or program
3 of lesser scope, or to a site-specific EIR or negative declaration." (*Id.*) "Tiering does not
4 excuse the lead agency from adequately analyzing reasonably foreseeable significant
5 environmental effects of the project and does not justify deferring such analysis to a later
6 tier EIR or negative declaration." (*Id.*) An EIR is required for a new project if "the initial
7 study or other analysis finds that the later project may cause significant effects on the
8 environment that were not adequately addressed in the prior EIR." (*Id.*) Moreover, the
9 use of a tiered EIR is not permitted by CEQA if the later project is inconsistent with or
10 outside of the scope of the plan for which the prior EIR was prepared. (*Sierra Club v.*
11 *County of Sonoma* (1992) 6 Cal.App.4th 1307.)

12 45. The City's proposed tiering process violates CEQA because the TEC Plan
13 is inconsistent with the scope of the 1999 General Plan EIR. For instance, the TEC Plan's
14 proposed roadway improvements and development are inconsistent with the General
15 Plan EIR, and the City must therefore treat the TEC Plan as a separate project outside
16 the scope of the General Plan EIR. (See General Plan at p. 52, Fig. 2-5; TEC Plan, Figs.
17 2-2 and 2-4.)

18 46. The proposed tiering also violates CEQA because the TEC Plan is outside
19 the scope of the General Plan. The TEC Plan seeks to implement Complete Streets in
20 the Benicia Industrial Park, pursuant to (1) Assembly Bill 1358, which requires relevant
21 plans to be identified in general plan updates or revisions to circulation elements, and
22 which was signed into law in 2008, and (2) ABAG's designation of the Benicia Industrial
23 Park as a Priority Development Area and the grant received by the City in 2013. The TEC
24 Plan calls for various circulation-based improvements, including but not limited to
25 widening of streets, installation of traffic signals, and bicycle and pedestrian
26 improvements. The General Plan, on the other hand, did not contemplate Complete
27 Streets that form the core of the TEC Plan, because the General Plan was certified
28 roughly a decade prior to adoption of Assembly Bill 1538.

1 47. Additionally, tiering off the General Plan EIR violates CEQA because the
2 General Plan is outdated. As stated above, the General Plan was certified roughly ten
3 years before Assembly Bill 1358 prescribed the incorporation of Complete Streets in
4 plans. The General Plan lacks informational value because it was certified roughly
5 eighteen years ago, prior to significant changes to the City's transportation and circulation
6 systems.

7 48. The City also abused its discretion, and failed to proceed as required by
8 law, by adopting the TEC Plan IS/MND using tiering, because the General Plan EIR did
9 not adequately examine potentially significant environmental impacts of the TEC Plan.
10 The TEC Plan IS/MND identifies potentially significant impacts to Air Quality, Biological
11 Resources, Cultural Resources, Hazards and Hazardous Materials, and Hydrology/Water
12 Quality. (TEC Plan IS/MND, p. 39.) The General Plan EIR identified potentially significant
13 impacts to Community Services, Transportation and Circulation, Air Quality, and
14 Hazardous Materials. (General Plan EIR, pp. 7-12.) Although the General Plan EIR did
15 describe certain of these impact areas generally, it did not adequately examine potentially
16 significant impacts that may be caused by the TEC Plan, including but not limited to
17 impacts to areas of Aesthetics, Air Quality/Greenhouse Gas Emissions,
18 Transportation/Traffic, Noise, and Population and Housing.

19 49. In addition, the City abused its discretion, and failed to proceed as required
20 by law, in failing to evaluate the environmental impacts of transportation improvements
21 included in the TEC Plan, including improvements to roads, freeway access, and bicycle
22 lanes. The City has unlawfully deferred analysis of site-specific impacts in its General
23 Plan EIR, and then in the TEC Plan IS/MND. (*See Stanislaus Natural Heritage Project v.*
24 *County of Stanislaus* (1996) 48 Cal.App.4th at 199.)

25 50. In addition, the City abused its discretion, and failed to proceed as required
26 by law, because it failed to comply with CEQA procedural requirements for tiering.
27 Although the City asserts the General Plan EIR was a program EIR, and the TEC Plan is
28 a policy document that implements the General Plan, the City has not followed

1 procedures for tiering pursuant to California Code Regulations, title 14, sections 15162,
2 15163, 15164, and 15168. Among other things, the City has failed to examine the TEC
3 Plan in light of the General Plan EIR to determine whether additional environmental
4 documents must be prepared pursuant to Section 15168(c), and the City has failed to
5 present evidence of such analysis to the public.

6 **B. The City Failed to Adequately Examine Potentially Significant Impacts of the**
7 **Project Despite a Fair Argument, Based on Substantial Evidence, That the**
8 **TEC Plan May Have Significant Impacts.**

8 51. West Coast refers to and herein incorporates by reference Paragraphs 1
9 through 50, as if stated in full herein.

10 52. Pursuant to CEQA, if an agency determines there is substantial evidence
11 that any aspect of the project, individually or cumulatively, may cause a significant effect
12 on the environment, the lead agency must (1) prepare an EIR, (2) use a previously
13 prepared EIR which adequately analyzes the relevant project, or (3) determine which
14 effects were adequately examined by an earlier EIR or negative declaration pursuant to
15 an appropriate CEQA process, and which effects must be analyzed in a subsequent EIR
16 or negative declaration. (Cal. Code Regs., tit. 14, § 15063(b)(1).) Substantial evidence
17 means there is enough relevant information and reasonable inferences from the
18 information presented to the agency that a fair argument can be made to support a
19 conclusion. (*Id.* § 15384.) An EIR is required whenever "substantial evidence in the
20 record supports a 'fair argument' that significant impacts or effects may occur." (*City of*
21 *Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392, 1421.)

22 53. A "mitigated negative declaration" is permissible only in certain limited
23 circumstances: (1) if the initial study shows there is no substantial evidence the project
24 may have a significant effect on the environment, or (2) the initial study identifies
25 potentially significant effects—as here—but (a) revisions can be made to the project
26 before public release of the negative declaration and initial study which avoid or mitigate
27 the potentially significant effects, and (b) there is no substantial evidence in light of the
28 whole record that the project may have a significant effect on the environment. (Pub.

1 Resources Code, § 21064.5; Cal. Code Regs., tit. 14, § 15070.) The City's certification of
2 the TEC Plan IS/MND was an impermissible abuse of discretion, because there was
3 substantial evidence to support a fair argument, based on the entire record, that the TEC
4 Plan may have significant environmental effects. (*See Laurel Heights Improvement Assn.*
5 *v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123.)

6 54. The City abused its discretion, and failed to proceed as required by law, by
7 failing to recognize substantial evidence that there are fair arguments the TEC Plan may
8 cause potentially significant impacts to the environment. The TEC Plan IS/MND identifies
9 numerous potentially significant impacts in the areas of Air Quality, Biological Resources,
10 Cultural Resources, Hazards and Hazardous materials, and Hydrology/Water Quality.
11 (TEC Plan MND, p. 39.) Despite this, and without substantial evidence to support its
12 conclusion, the City found that potentially significant impacts were mitigated by project
13 revisions and adopted the TEC Plan IS/MND.

14 55. West Coast presented substantial evidence that the TEC Plan will cause
15 potentially significant impacts, contrary to the often unsupported and conclusory findings
16 made by the City. In its April 19, 2017 letter to the City's Community Development
17 Department, West Coast presented a fair argument based on substantial evidence that
18 the TEC Plan may cause significant effects on the environment. These effects include,
19 but are not limited to, the following:

- 20 a. Aesthetic impacts: The TEC Plan's construction and expansion of
21 transit and circulation systems, as well as the installation of new
22 streetscape elements and signage, will impact scenic vistas,
23 resources, and the visual character and quality of the TEC Plan area.
- 24 b. Air quality/greenhouse gas emissions: The TEC Plan IS/MND lacked
25 any study of air quality or greenhouse gas emissions impacts, and
26 there is no evidence or modeling to support the City's conclusion the
27 TEC Plan will have a less than significant impact on air quality.
28 Moreover, the City did not make a good faith effort to describe,

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calculate, or estimate the amount of greenhouse gas emissions resulting from the TEC Plan, in violation of Cal. Code Regs., tit. 14, 15064.4.

c. Transportation/traffic: The TEC Plan IS/MND fails to evaluate the transportation and traffic impacts of the TEC Plan, despite the fact that the TEC Plan calls for numerous circulation-based improvements that will impact traffic, including the widening of streets, installation of traffic signals, and modifications to bicycle and pedestrian systems.

d. Noise: The TEC Plan IS/MND's conclusions regarding noise impacts are incorrect. The TEC Plan will result in temporary, periodic, and/or permanent increases in ambient noise, because the TEC Plan calls for alterations and expansions to transit pathways as well as changes in circulation infrastructure. Additionally, the City is not excused from conducting a noise analysis on the basis that such ambient noise increases are temporary or periodic, and compliance with the City's Municipal Code does not support a finding of less than significant impact.

e. Population and housing: Contrary to the TEC Plan IS/MND's conclusory and unsupported analysis that the proposed improvements will not substantially impact population growth and housing, employment growth as a result of the TEC Plan is reasonably foreseeable because the Plan seeks to attract new businesses while maintaining existing businesses. The conclusory analysis of population and housing impacts does not include facts or analysis in support of the City's findings and is therefore inadequate under CEQA.

f. Cumulative impacts: The TEC Plan IS/MND inadequately evaluated

1 cumulative impacts because the City's finding lacks supporting facts
2 or analysis.

3 56. In addition to the specific, potentially significant environmental effects
4 identified above, the TEC Plan IS/MND improperly limits the "impact area" to the TEC
5 Plan area, although transportation and circulation improvements called for by the TEC
6 Plan may have potentially significant impacts outside the boundaries of the TEC Plan
7 area.

8 57. In response to West Coast's arguments that the TEC Plan may cause
9 potentially significant impacts, the City responded, without further analysis, that "[t]he
10 environmental analysis performed for the TEC Plan does not identify potentially
11 significant impacts that were not analyzed in the General Plan EIR. There are no
12 changes in land use or zoning to the Industrial park area under the TEC Plan." (City's
13 Response to Comments on TEC Plan at ¶ 27.) .

14 58. Similarly, in response to West Coast's arguments that the TEC Plan
15 IS/MND did not adequately address cumulative impacts, the City responded, again
16 without further analysis, that "[t]he IS/MND tiers off of the General Plan EIR, which fully
17 considered the cumulative impacts, associated with buildout of the General Plan
18 throughout the planning area." (City's Response to Comments on TEC Plan at ¶ 28.)
19 Without further analysis, the City concluded that there were no cumulative impacts
20 associated with the TEC Plan that differed from cumulative impacts examined in the
21 General Plan EIR.

22 59. Further, in response to West Coast's arguments that the TEC Plan
23 IS/MND's project description is inadequate, the City responded, again without further
24 analysis, that the project description in the IS/MND is adequate and that "future
25 improvements" contemplated by the TEC Plan "would be required to undergo subsequent
26 environmental review." (City's Response to Comments on TEC Plan at ¶ 29.) The City
27 made no attempt to address discrepancies between the Scenarios Report, the TEC Plan
28 itself, and TEC Plan IS/MND identified in West Coast's comments.

1 60. Because substantial evidence in the record supports a fair argument that
2 the TEC Plan may have significant environmental impacts or effects, as described above,
3 the City abused its discretion in approving the TEC Plan without preparing an EIR.

4 **C. The City Failed to Comply With the Public Participation and Information**
5 **Disclosure Provisions of CEQA.**

6 61. West Coast refers to and herein incorporates by reference Paragraphs 1
7 through 60, as if stated in full herein.

8 62. CEQA mandates that agencies "solicit and respond to comments from the
9 public and from other agencies concerned with the project." (Cal. Code Regs., tit. 14, §
10 15002(j).) The policy purpose of environmental review under CEQA is to demonstrate to
11 the public that an agency has analyzed and considered the environmental implications of
12 its action. (*Id.* § 15003(d).)

13 63. The City has failed to solicit input from and respond to comments made by
14 West Coast, even though West Coast has contacted the City multiple times regarding the
15 TEC Plan and TEC Plan IS/MND. While West Coast owns roughly 500 acres of vacant
16 land within the TEC Plan area, has conducted extensive analyses of this property, and
17 could assist the City in identifying and analyzing potentially significant impacts in the TEC
18 Plan area, neither the City nor its environmental consultants contacted West Coast about
19 these issues prior to certification of the TEC Plan IS/MND and adoption of the TEC Plan.

20 64. The City further failed to satisfy CEQA's informational disclosure
21 requirements because it inadequately responded to West Coast's comments to the TEC
22 Plan IS/MND. As detailed above, West Coast sent ten pages of comments on the TEC
23 Plan IS/MND to the City's Community Development Department on April 19, 2017. The
24 City's responses mischaracterized and oversimplified West Coast's comments, and
25 ignored many of West Coast's arguments. West Coast sent a subsequent letter to the
26 City on May 2, 2017, reiterating its comments and objections to the TEC Plan and TEC
27 Plan IS/MND.

28 65. The City prejudicially abused its discretion and failed to act in a manner

1 required by law by failing to solicit information regarding the TEC Plan area from West
2 Coast, and insufficiently responding to West Coast's comments and objections to the
3 TEC Plan and TEC Plan IS/MND.

4 **D. The TEC Plan IS/MND's Project Description Is Inadequate and Unclear.**

5 66. West Coast refers to and herein incorporates by reference Paragraphs 1
6 through 65, as if stated in full herein.

7 67. CEQA requires initial studies, negative declarations, and notices of intent to
8 contain an accurate description of the project. (Cal. Code Regs., tit. 14, §§ 15063(d)(1),
9 15071(a), 15063(f)(1).) A "project" is the "whole of an action, which has the potential for
10 resulting in either a direct physical change in the environment, or a reasonably
11 foreseeable indirect physical change in the environment." (*Id.* § 15378(a).)

12 68. The TEC Plan IS/MND fails to comply with the requirements set forth in
13 Paragraph 67, above, because the project description is impermissibly vague with
14 regards to use, intensity, and density of future development in the TEC Plan area.

15 69. The TEC Plan IS/MND further fails to comply with project description
16 requirements because it is unclear which of the three scenarios examined in the 2016
17 Scenarios Report the TEC Plan IS/MND analyzes. Although the TEC Plan IS/MND states
18 that "[f]or analysis purposes, it is presumed that the most development intense scenario,
19 Scenario 3, is realized," the TEC Plan itself makes no mention of Scenario 3. (TEC Plan
20 IS/MND, p. 7.) Additionally, the TEC Plan calls for roadway improvements not identified in
21 the Scenarios Report, including but not limited to the following: (1) Goodyear Road north
22 of Lake Herman Road to 6800 Goodyear Road; (2) East 2nd Street north of Rose Drive
23 to 800 feet north of Wanger Street; (3) East Channel Road; and (4) Reservoir Road north
24 of East 2nd Street to south of Lake Herman Road. The TEC Plan IS/MND also identifies
25 two areas for potential freeway improvements not contained in the Scenarios Report.
26 Therefore, the project description in the TEC Plan IS/MND does not provide the public
27 with information about what, specifically, implementation of the TEC Plan will entail, and
28 the project description is therefore inadequate to facilitate meaningful public participation

1 in the environmental review process.

2 70. Accordingly, the City abused its discretion and failed to proceed in a
3 manner required by law by failing to provide an adequate project description of the TEC
4 Plan in the TEC Plan IS/MND.

5 **SECOND CAUSE OF ACTION**

6 **[Writ of Mandate – Failure to Comply with STA Agreement]**

7 71. West Coast refers to and herein incorporates by reference Paragraphs 1
8 through 70, as if stated in full herein.

9 72. On January 7, 2014, the City adopted Resolution 14-03 approving an
10 agreement with the STA related to the development of a PDA Plan for the Benicia
11 Industrial Park ("STA Agreement"). The STA Agreement between the City and STA
12 requires the City to comply with the public outreach requirements associated with the
13 federal fund source for a TEC Plan project, and with MTC Resolution 4035. In addition,
14 the STA Agreement requires the City to "[p]erform all appropriate environmental review,
15 and ensure that the required procedures are complied with for analysis, public notice,
16 hearings, findings and filings."

17 73. The City abused its discretion by failing to comply with the public outreach
18 requirements associated with the federal fund source for the TEC Plan project and MTC
19 Resolution 4035 by repeatedly failing to provide West Coast, the largest property owner
20 in the TEC Plan area, with notice of meetings and hearings related to the project, failing
21 to consult with West Coast in developing a TEC Plan, and failing to respond adequately
22 to West Coast's comments regarding the deficiencies in the TEC Plan, in violation of the
23 STA Agreement.

24 74. The City further abused its discretion by failing to perform an appropriate
25 environmental review, as required under CEQA, in violation of the STA Agreement.

26 **THIRD CAUSE OF ACTION**

27 **[Declaratory Relief]**

28 75. West Coast refers to and herein incorporates by reference Paragraphs 1

1 through 74, as if stated in full herein.

2 76. An actual controversy exists between West Coast and the City in that West
3 Coast contends that the City did not prepare and certify the TEC Plan IS/MND in
4 compliance with CEQA, and that an EIR is required to evaluate potentially significant
5 environmental impacts of the TEC Plan, whereas the City contends it met its legal
6 obligations pursuant to CEQA.

7 77. West Coast desires a declaration from this Court pursuant to California
8 Code of Civil Procedure section 1060 *et seq.* that the City must comply with all
9 requirements of CEQA, Public Resources Code section 21000 *et seq.*, and related
10 regulations, and must conduct a subsequent EIR for the TEC Plan in compliance with all
11 requirements of CEQA before adopting the TEC Plan.

12 78. Such a declaration is necessary and appropriate at this time in order for
13 West Coast to ascertain its rights, and the City's obligations, duties, and legal
14 responsibilities, with respect to its CEQA obligations for the TEC Plan.

15 **FOURTH CAUSE OF ACTION**

16 **[Injunctive Relief]**

17 79. West Coast refers to and herein incorporates by reference Paragraphs 1
18 through 78, as if stated in full herein.

19 80. West Coast owns a significant amount of undeveloped land in the area
20 covered by the TEC Plan, including roughly 500 acres of vacant land. West Coast's
21 property within the TEC Plan area will be adversely affected due to the environmental
22 impacts of the TEC Plan as a direct result of the City's acts, omissions, and failures to
23 comply with CEQA as alleged herein, including but not limited to the City's failure to
24 adequately examine potentially significant impacts of the TEC Plan.

25 81. Such conduct by the City is wrongful and violates California law as
26 previously alleged herein.

27 82. Unless and until enjoined from violating CEQA and implementing the
28 approved TEC Plan, the City will continue its wrongful and harmful conduct and will

1 cause West Coast irreparable injury.

2 83. Monetary compensation alone would not provide adequate relief, and West
3 Coast has no adequate remedy at law for the damages to be sustained if the City
4 continues its wrongful act of implementing the TEC Plan.

5 PRAYER FOR RELIEF

6 WHEREFORE, West Coast prays for relief as follows:

7 A. For a stay order pursuant to Code of Civil Procedure section 1094.5(g)
8 restraining the City, and its agents, employees, officers, and representatives from taking
9 any action, or authorizing any action, to implement the TEC Plan pending a decision by
10 this Court on the merits.

11 B. For a peremptory writ of mandate directing the City to set aside and vacate
12 its certification of the TEC Plan IS/MND and approval of the TEC Plan.

13 C. For a peremptory writ of mandate directing the City to comply with CEQA,
14 to take any other action as required by Public Resources Code section 21168.9, and to
15 prepare an EIR conforming to the requirements of CEQA before consideration of
16 approving the TEC Plan.

17 D. For a peremptory writ of mandate directing the City to comply with the
18 public outreach and environmental review requirements of the STA Agreement.

19 E. For a declaratory judgment that the City must comply with all requirements
20 of CEQA, Public Resources Code section 21000 *et seq.*, and its implementing
21 regulations, including but not limited to the requirement to prepare a CEQA-compliant
22 EIR before approving the TEC Plan.

23 F. For the issuance of preliminary and permanent injunctions in favor of West
24 Coast restraining the City, and its agents, employees, officers, and representatives from
25 taking any action, or authorizing any action, to implement the TEC Plan pending full
26 compliance with CEQA.

27 G. For judgment in favor of West Coast and against the City, enjoining the City
28 and its agents, employees, officers, and representatives, preliminarily and permanently,

1 from implementing any TEC Plan that is legally insufficient and inadequate pursuant to
2 CEQA.

3 H. For attorneys' fees, reasonable expert witness fees, and costs of suit
4 herein, pursuant to Code of Civil Procedure section 1021.5 and/or any other applicable
5 provision of law.

6 I. For such other and future relief as the Court deems just and proper.
7

8 DATED: June 2, 2017

Respectfully submitted,

HANSON BRIDGETT LLP

10
11 By: 

12 KRISTINA D. LAWSON
13 CHRISTOPHER D. JENSEN
14 VANEETA CHINTAMANENI
15 Attorneys for West Coast Home Builders, Inc.
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VERIFICATION

I am the Authorized Agent of the Petitioner, West Coast Home Builders, Inc., and am authorized to execute this verification on Petitioner's behalf. I have read the foregoing Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate and am familiar with its contents. The facts recited in the petition are true to my knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: June 2, 2017

WEST COAST HOME BUILDERS, INC.

By: 
Louis Parsons
Authorized Agent of West Coast Home Builders, Inc.

1 **PROOF OF SERVICE**

2 *West Coast Home Builders, Inc. v. City of Benicia*
3 Solano County Superior Court; Case No. FCS048992

4 **STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

5 At the time of service, I was over 18 years of age and not a party to this action. I
6 am employed in the County of San Francisco, State of California. My business address
is 425 Market Street, 26th Floor, San Francisco, CA 94105.

7 On June 6, 2017, I served true copies of the following document(s) described as

8 **NOTICE TO ATTORNEY GENERAL**
9 **California Environmental Quality Act [CEQA]**

10 on the interested parties in this action as follows:

11 Office of the Attorney General
12 1300 "I" Street
13 Sacramento, CA 95814-2919
Phone: (916) 445-9555

14 Lisa Wolfe, City Clerk
15 City of Benicia, City Hall
250 East L Street
16 Benicia, CA 94510

17 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
18 persons at the addresses listed in the Service List and placed the envelope for collection
19 and mailing, following our ordinary business practices. I am readily familiar with Hanson
20 Bridgett LLP's practice for collecting and processing correspondence for mailing. On the
same day that correspondence is placed for collection and mailing, it is deposited in the
ordinary course of business with the United States Postal Service, in a sealed envelope
with postage fully prepaid.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 Executed on June 6, 2017, at San Francisco, California.

24 
25 Susan Christensen