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U.S. DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

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

13 UNITED STATES DISTRICT COURT  
14 SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

20 v.

21 KELLY BROUGHTON, in his capacity  
22 as Director of the Development Services  
23 Department of the City of San Diego;  
24 AFSANEH AHMADI, in her capacity as  
25 Chief Building Official of the City of  
26 San Diego; THE DEVELOPMENT  
27 SERVICES DEPARTMENT OF THE  
28 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

**DECLARATION OF JOHN  
NADOLENCO IN SUPPORT OF  
PLAINTIFF'S EX PARTE  
APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER AND ORDER TO SHOW  
CAUSE RE: PRELIMINARY  
INJUNCTION**

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, Declaration of Brian  
Bonfiglio, and Appendix of Authority  
Filed, and Proposed Orders Lodged  
Concurrently Herewith]

OK

1 I, John Nadolenco, declare as follows:

2 1. I am an attorney licensed to practice law in the United States, the State  
3 of California and before this Court. I am a partner of the law firm Mayer Brown  
4 LLP, counsel of record for Plaintiff Blackwater Lodge And Training Center, Inc.  
5 dba Blackwater Worldwide (“Blackwater”).

6 2. Attached hereto as Exhibit A is a true and correct copy of a May 23,  
7 2008 letter that I sent to the Defendants in the above-captioned matter, notifying  
8 them of Blackwater’s *ex parte* application.

9 3. While I have not heard from any of the Defendants, I expect that they  
10 will oppose Blackwater’s *ex parte* application, as noted in my May 23 letter.

11 I declare that the foregoing is true and correct under the penalty of perjury  
12 under the laws of the United States. Executed on May 23, 2008 in Los Angeles,  
13 California.

14 

15 \_\_\_\_\_  
16 John Nadolenco



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VIA HAND DELIVERY

May 23, 2008

Mayor Jerry Sanders  
City Administration Building  
11<sup>th</sup> Floor, 2002 C Street  
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

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

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

Dear Messrs. Sanders, Broughton and Aguirre, and Ms. Ahmadi:

As you know, our firm represents Blackwater Lodge and Training Center, Inc. dba Blackwater Worldwide ("Blackwater") in connection with the training site in Otay Mesa for U.S. Navy sailors. Despite repeated formal and informal requests to reconsider the flawed analysis in the City Attorney's May 16, 2008 Memorandum recommending the issuance of a "Stop Work Order," or, in the alternative, the revocation of the Certificate of Occupancy for the Otay Mesa facility, the City has not changed its position as set forth in its May 19, 2008 letter. Nor has the City issued Blackwater a Certificate of Occupancy, despite having formally approved occupation of the facility. If Blackwater is unable to start training the U.S. Navy's sailors on June 2—and assure the Navy that it will be able to do so well before then—Blackwater will be irreparably harmed, its constitutional rights will have been violated, its reputation severely damaged, its contractual relationship with the Navy jeopardized, and its ability to train the country's armed forces severely compromised, which can have tragic consequences.

EX. A

2

May 23, 2008

Page 2

Despite our requests, the City's position has not changed. Thus, today Blackwater will file the attached Complaint in the United States District Court for the Southern District of California. The Complaint will seek injunctive and declaratory relief and assert that Defendants Kelly Broughton (in his capacity as Director of the Department of Development Services of the City of San Diego), the Department of Development Services, Afsaneh Ahmadi (in her capacity as is the Chief Building Official for the City of San Diego) and the City of San Diego violated federal and state constitutional provisions ensuring procedural due process and the equal protection of the laws, as well as the dormant Commerce Clause of the United States Constitution. We certainly hope the Complaint causes the City to change its position before next Tuesday, May 27, 2008.

Anticipating that the City will not change its position, however, this letter also shall constitute notice that Blackwater intends to file on Tuesday, May 27, 2008, an *ex parte* application seeking a temporary restraining order and order to show cause re preliminary injunction requiring Defendants to perform the ministerial act of issuing the Certificate of Occupancy or, at the very least, allowing Blackwater to occupy and operate the Otay Mesa facility pending a hearing on a motion for preliminary injunction. We trust you will oppose our requested relief and will inform the Court of that position unless we hear otherwise.

Sincerely,

A handwritten signature in black ink, appearing to read "John Nadolenco". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John Nadolenco

Enclosure

EX. A

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