

# THE SILVERSTEIN LAW FIRM

A Professional Corporation

## ORIGINAL

215 NORTH MARENGO AVENUE, 3RD FLOOR  
PASADENA, CALIFORNIA 91101-1504

PHONE: (626) 449-4200 FAX: (626) 449-4205

DAN@ROBERTSILVERSTEINLAW.COM  
WWW.ROBERTSILVERSTEINLAW.COM

June 24, 2016

C.F. 16-0033-S2

### VIA HAND DELIVERY

Hon. Herb Wesson, President  
Los Angeles City Council  
City of Los Angeles  
200 N. Spring Street, Room 375  
Los Angeles, CA 90012

2016 JUN 24 AM 9:20  
CITY CLERK'S OFFICE  
CITY CLERK  
DEPUTY

Re: New Objections re Target Hollywood Project  
CPC-2015-74-GPA-SP-CUB-SPP-SPR; ENV-2008-1421-EIR

Hon. City Council Members:

### I. INTRODUCTION.

This firm and the undersigned represent the La Mirada Avenue Neighborhood Association of Hollywood ("La Mirada"). We submit further objections to the City's proposed actions regarding the Target Hollywood Project ("Project").

### II. INCORPORATION BY REFERENCE OF ALL PROJECT OBJECTIONS.

La Mirada hereby adopts all project objections filed to all versions of the Project from its inception, including all appeals of the Project before the City Council today. Additionally, La Mirada adopts by reference the full content and supporting exhibits attached to its prior Project objection letters, including but not limited to, those dated November 3, 2015, November 10, 2015, and May 4, 2016.

### III. RESCINDING THE TARGET PROJECT APPROVALS IS REQUIRED.

The City proposes to rescind the Project approvals pursuant to La Mirada's cure and correct demand (**Exhibit 1**[Cure and correct letter without attachments].) regarding its violations of the Brown Act in connection with the City Council's prior approvals. (**Exhibit 2** [City's agreement to cure and correct without attachments].)

### IV. AN ADDENDUM MAY NOT BE USED TO APPROVE THE MODIFIED TARGET PROJECT.

In its briefing before the Court of Appeal, Target erroneously contended that the California Environmental Quality Act ("CEQA") allows a significantly changed land use and

zoning scheme be proposed for a project half built under a completely different scheme without recirculation of the EIR:

“The City retains full discretion over what environmental document to use for the [Specific Plan] amendment and whether to approve the amendment. However two facts and two conclusions are worth noting. First, with regard to environmental review, **the amendment Target has requested has been designed to fit within the certified and court-approved EIR.** Second, the Project, as opposed to a stand-alone Target store, **was the City’s idea** and has been unanimously approved by the City Council three times. These facts lead to two conclusions: First, **approval in a form that will stand up in court is virtually certain.** Second, **the amendment will render the challenges to the exceptions moot** because the amendments will allow for plan compliance without needing exceptions.” (Target Petition for Relief From Statutory Stay, pp. 13-14.)

It is undisputed that the original EIR Target mischaracterized as “certified and court-approved” does not contain a single word about the amendment of the Station Area Neighborhood Plan (“SNAP”) specific plan as being part of the Project before the City. Instead, the Project as originally applied for by Target was based upon the ill-conceived proposal of the City and Target to be allowed to openly violate the SNAP by requesting and obtaining 8 exceptions (variances) from the SNAP requirements. The trial court invalidated the Project approvals based upon the inability of the City to demonstrate legally sufficient findings for many of the exceptions.

The environmental document that contains disclosure of the new land use and zoning scheme based upon an amendment of the SNAP zoning law is the addendum prepared after the EIR was certified, after the Project was originally approved, after the Project approvals were set aside (**Exhibit 3** [Judgment, writ].), after the City issued stop construction work orders to halt further illegal construction (**Exhibit 4** [LA Times article regarding stop work].), after Target sought an emergency order from the Court of Appeal to allow it to continue building its illegal building (**Exhibit 5** [Target Petition].), and after the Court of Appeal summarily denied Target’s request to continue construction (**Exhibit 6** [Court order].) The reviewing agencies and the public was never given any opportunity to evaluate and comment upon the potential negative land use, growth inducing, cumulative, and other impacts of the new land use and zoning scheme of the City and Target. Additionally, decision makers were deprived of public input regarding the new land use and zoning scheme. Through the use of the addendum, instead of a subsequent or supplemental EIR to permit critical input regarding these major changes to the circumstances under which the Project was to be undertaken, the City and Target deprived the public its critical role in the review of the changed Project.

This amounts to a deliberate derailment of CEQA’s mandatory public participation requirements. When a Draft EIR’s analysis of one or more issues is missing or so cursory as to render public comment meaningless, a recirculated environmental review document is



1  
Planning and Land Use Management Committee  
June 24, 2016  
Page 3

mandatory because the complete absence of discussion of one or more required issues is a failure to proceed in accordance with law.

Accordingly, use of the addendum simply is improper, but the City and Target continue today to avoid accountability to the public for their collusive and unlawful conduct that led to a half-finished monstrosity marring the SNAP community.

In reality, the new Project is just that – a new project that required an accurate Project description, disclosure of the land use and zoning scheme under which the Project would be undertaken, and opportunity for public review. But no new environmental clearance document was prepared and circulated. That is a fatal flaw.

V. CONCLUSION.

The Project as proposed must be rejected with direction to staff to conduct proper environmental review of the new/revised project.

Very truly yours,



DANIEL WRIGHT

FOR

THE SILVERSTEIN LAW FIRM

cc: City Clerk (with all exhibits attached for the record)  
Councilmembers (without supporting exhibits)  
Client

# Exhibit 1

# THE SILVERSTEIN LAW FIRM

*A Professional Corporation*

215 NORTH MARENGO AVENUE, 3RD FLOOR  
PASADENA, CALIFORNIA 91101-1504

PHONE: (626) 449-4200 FAX: (626) 449-4205

DAN@ROBERTSILVERSTEINLAW.COM  
WWW.ROBERTSILVERSTEINLAW.COM

May 27, 2016

**VIA FACSIMILE (213) 978-8090**  
**EMAIL, AND U.S. MAIL**

Terri Kaufmann-Macias, Esq.  
Los Angeles City Attorney's Office  
Room 700, City Hall East  
200 North Main Street  
Los Angeles, CA 90012

**VIA FACSIMILE (213) 978-1029**  
**EMAIL, AND U.S. MAIL**

Ms. June Lagmay  
City Clerk  
City of Los Angeles  
200 North Spring Street  
Los Angeles, CA 90012

Re: Demand to Cure and Correct Brown Act Violation  
May 4, 2016 City Council: Item 21  
Target at Sunset and Western Project

Dear Ms. Kaufmann-Macias and Ms. Lagmay:

This firm and the undersigned represent interested community organizations and individuals in the Hollywood community.

By this letter, we demand that the City cure and correct Brown Act violations regarding Item 21 (Target at Sunset and Western Project) that occurred at the May 4, 2016 meeting of the Los Angeles City Council.

**The Brown Act and the City's Agenda Descriptions.**

Government Code Sections 54954.2(a)(1) & (2) state in pertinent part:

"At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session...[¶] No action or discussion shall be undertaken on any item not appearing on the posted agenda..." Govt. Code § 54954.2(a)(1) & (2) (emphasis added).

Terri Kaufmann-Macias, Esq.  
Los Angeles City Attorney's Office  
Ms. June Lagmay, City Clerk  
City of Los Angeles  
May 27, 2016  
Page 2

The agenda for the May 4, 2016 City Council meeting set forth the following item:

"ITEM NO. (21)

16-0033  
CD 13

ADDENDUM TO THE CERTIFIED ENVIRONMENTAL  
IMPACT REPORT MITIGATION MONITORING AND  
REPORTING PROGRAM COMMUNICATIONS FROM  
THE MAYOR AND THE LOS ANGELES CITY  
PLANNING COMMISSION, RESOLUTION and  
ORDINANCE FIRST CONSIDERATION relative to appeals  
regarding a General Plan Amendment to the Hollywood  
Community Plan and the Mobility Element of the City's  
General Plan for properties located at 5500, 5510, 5516,  
5520, 5526, 5542, 5544, West Sunset Boulevard, 1417, 1431,  
1433, 1437, 1439, 1441 North Western Avenue, 1414 St.  
Andrews Place, 5505, 5525 West De Longpre Avenue.

**TIME LIMIT FILE - MAY 13, 2016**

**(LAST DAY FOR COUNCIL ACTION – MAY 13, 2016**

**(Planning and Land Use Management Committee report  
to be submitted in Council. If public hearing is not held in  
Committee, an opportunity for public comment will be  
provided.)**

**(Click on the above hyperlink or go to  
<http://www.lacouncilfile.com> for background  
documents.)" (Exhibit 1, bold in original.)**

On May 4, 2016, the City Council approved agenda Item No. 21 even though the  
agenda description was fatally at variance from the Committee Report actually adopted.

Terri Kaufmann-Macias, Esq.  
Los Angeles City Attorney's Office  
Ms. June Lagmay, City Clerk  
City of Los Angeles  
May 27, 2016  
Page 3

### **Factual Summary**

At its regular meeting on November 12, 2015, the City Planning Commission ("CPC") took an action to recommend that the City Council approve the following discretionary land use entitlements for the Target at Sunset and Western Project: 1) a General Plan Amendment to the Hollywood Community Plan and the Mobility Element of the City's General Plan; 2) a Specific Plan Amendment to the Vermont/Western Transit Oriented District Specific Plan/ Station Neighborhood Area Plan (SNAP) for the creation of a new Subarea F; 3) a Specific Plan Amendment to the SNAP to change the Subarea Designation of the subject property from Subarea C to Subarea F; 4) a Conditional Use Permit to allow for the sale of a full line of alcoholic beverages for off-site consumption; 5) a Specific Plan Project Permit Compliance approval; 6) a Site Plan Review for a project which results in an increase of 50,000 sq. ft. or more of non-residential floor area and an increase of over 1,000 average daily trips; 7) an Addendum to the Certified Environmental Impact Report; and 8) adoption of the modified findings.

Attached at **Exhibit 2** is a copy of the November 12, 2015 CPC agenda, with the Target at Sunset and Western Project listed as agenda Item No. 4. Attached at **Exhibit 3** are the first two pages of the December 15, 2015 CPC Determination Letter for the Project, describing the multiple entitlements required for implementation of the Project.

Three Hollywood community groups separately appealed the CPC's approvals to the City Council. Applicant Target Corporation also appealed two of the CPC's Conditions of Approval ("COA") – COA #47, requiring that the Project provide an employee childcare facility within a mile of the subject site, and COA #143, challenging the City's litigation indemnification provision.

On January 15, 2016, the Office of the City Clerk sent notification (**Exhibit 4**) to property owners and occupants within a 500-foot radius of the Target Project site that the Planning and Land Use Management ("PLUM") Committee would hold a hearing on February 9, 2016 of the four appeals, as well as on the Project's requested amendments to the General Plan, Hollywood Community Plan, and Vermont/Western Transit Oriented District Specific Plan. The notification description correctly listed all of the entitlements recommended for approval by the City Planning Commission, as well as the four appeals.



Terri Kaufmann-Macias, Esq.  
Los Angeles City Attorney's Office  
Ms. June Lagmay, City Clerk  
City of Los Angeles  
May 27, 2016  
Page 4

On February 9, 2016, the Project's four appeals and the multiple entitlement requests were listed on the PLUM Committee agenda as Item No. 3 (**Exhibit 5**). The PLUM hearing, however, was continued to March 22, 2016 at the request of Council District 13 to alter the CPC's childcare facility requirement (COA #47).

On March 22, the PLUM Committee agenda (**Exhibit 6**) again listed the Project appeals and entitlement requests as Item No. 3. During the PLUM Committee's hearing of the Project, applicant Target withdrew its request for the general plan amendments of the Mobility Element of the General Plan and the Hollywood Community Plan. Following presentation of the four appeals, and consideration of the other entitlement requests, the PLUM Committee approved the Project and rejected the three land use appeals filed by community groups while approving in part Target's appeal by allowing it to pay an in-lieu fee instead of providing an on-site childcare facility for its employees as recommended by the City Planning Commission.

On March 23, 2016, the Project was placed on the City Council's agenda as Item No. 5 (**Exhibit 7**). The item was called "special" during the Council's consideration of the Item. Council District 13 representative Mitch O'Farrell asked Council to send the Project back to the PLUM Committee for further review of the General Plan Amendment and Ordinance (related to the child care requirement). The only action of the City Council on March 23, 2016 was a vote to refer the Project back to the PLUM Committee. On this date, City Council approved no aspect of the Target Project.

On April 8, 2016, the City Clerk mailed a "RE-NOTICE TO APPLICANT/APPELLANT/ OWNERS/OCCUPANTS WITHIN A 500-FOOT RADIUS" that the PLUM Committee would conduct a public hearing on the Project on May 3, 2016 (**Exhibit 8**). The re-notice again listed all of the entitlements sought by applicant Target Corporation for the Project in a way substantially similar to previous public notices.

On April 21, 2016, the City Clerk subsequently mailed the land use appellants and interested parties a "correction notice" (**Exhibit 9**) to the April 8 "re-notice," with a new listing identifying:

"PREVIOUS ACTIONS: The Addendum to the Certified  
Environmental Impact Report (No. ENV-2008-1421-EIR),

Terri Kaufmann-Macias, Esq.  
Los Angeles City Attorney's Office  
Ms. June Lagmay, City Clerk  
City of Los Angeles  
May 27, 2016  
Page 5

Mitigation Monitoring and Reporting Program, and the four appeals were previously heard and acted on the [sic] March 22, 2016 PLUM Committee meeting."

This April 21, 2016 "correction notice" stated that the Committee would:

"... consider a Communications [sic] from the Los Angeles City Planning Commission (LACPC) and Mayor and Resolution relative to a General Plan Amendment to the Hollywood Community Plan and the Mobility Element of the City's General Plan for the re-designation of Sunset Boulevard and De Longpre Avenue from a Modified Avenue 1 (previously a Major Highway-Class II) to a Modified Major Highway Class II; and a draft Ordinance for the Specific Plan Amendment to the Vermont/Western Transit Oriented District Specific Plan/Station Neighborhood Area Plan (SNAP), Ordinance 173749, to establish Land Use Regulations, Development Standards, and Design Guidelines for a new Subarea F, Large Scale Commercial Node designation, and to change the Subarea Designation of the subject property from Subarea C to Subarea F. . . ."

When the agenda for the May 3, 2016 PLUM Committee meeting was posted, it listed the Project as Item No. 3 (**Exhibit 10**). The PLUM Committee agenda gave notice to the public that the addendum, mitigation monitoring plan, and four appeals were previously heard and acted upon during the Committee's meeting of March 22, 2016, and that at the PLUM Committee hearing on May 3, 2016 the following items of business would be considered: 1) a General Plan Amendment to the Hollywood Community Plan; 2) a General Plan Amendment to the Mobility Element of the City's General Plan; 3) a draft Ordinance for the Specific Plan Amendment to the Vermont/Western Transit Oriented District Specific Plan for a new Subarea F, Large Scale Commercial Node designation; and 4) a change of the Subarea Designation of the subject property from Subarea C to Subarea F.

Nowhere on the May 3, 2016 PLUM Committee meeting agenda did the City inform the public that the alcohol conditional use permit, the site plan review, or the

Terri Kaufmann-Macias, Esq.  
Los Angeles City Attorney's Office  
Ms. June Lagmay, City Clerk  
City of Los Angeles  
May 27, 2016  
Page 6

specific plan permit compliance determination was made at the March 22, 2016 meeting, if it was.

On May 3, 2016, at the outset of the hearing, the PLUM Committee was told the items before it were the revised ordinance amending the SNAP Specific Plan, and the general plan amendments. During testimony by Target representatives, they again withdrew their requests for any general plan amendment. At the conclusion of the May 3, 2016 hearing, the PLUM Committee, consistent with the published PLUM Committee agenda, voted only to deny the general plan amendments and to approve the revised ordinance. The PLUM Committee did not have on its May 3, 2016 meeting agenda, and did not vote to approve, the specific plan permit compliance for the specific plan, even though the previous approval on March 22, 2016 approved compliance with a different ordinance containing a different child care condition.

Following the May 3, 2016 action of the PLUM Committee, a PLUM Committee Recommendation Report was prepared by staff but not released to the public prior to the City Council meeting on May 4, 2016. (Exhibit 11) The PLUM Committee Recommendation Report was not previously made available for public viewing on the City Clerk's web site, despite the agenda's statement that the public could "Click on the above hyperlink or go to <http://www.lacouncilfile.com> for background documents." A copy of the PLUM Committee Recommendation Report was not available to the public at the back of the City Council chambers before the City Council meeting.

Instead, as is the City's pattern and practice to withhold information from the public until the time an item is called in the middle of the meeting, the PLUM Committee Recommendation Report was distributed to City Council members only when the item was called for consideration. We believe one copy of the PLUM Committee Recommendation Report was thumbtacked to an unnamed bulletin board on the side aisle of the City Council chambers without any announcement of the Clerk or City staff. To the best of our knowledge, only one person may have inspected the PLUM Committee Recommendation Report prior to its vote, but this is of little consequence because of how the item was handled. This time, the item was not called "special" and therefore no public hearing was afforded the land use appellants and no public comment on the item was permitted. Therefore, literally no one could have exhausted an objection before the City Council that its action to adopt the PLUM Recommendation Report was at serious variance with the content of its meeting agenda Item No. 21. In a consent vote, the City

Terri Kaufmann-Macias, Esq.  
Los Angeles City Attorney's Office  
Ms. June Lagmay, City Clerk  
City of Los Angeles  
May 27, 2016  
Page 7

Council approved adoption of the PLUM Committee Recommendation Report as the City Council's action.

If the intent of the City Council was to approve some kind of combination of the recommendation decisions of the PLUM Committee on March 22 and May 3, 2016, the meeting agenda description for the May 4, 2016 City Council meeting completely failed to alert the public, or even the land use appellants, that the City Council proposed to 1) adopt the Addendum to the Project EIR; 2) adopt the findings; 3) grant in part Target's appeal to overrule the City Planning Commission's recommendation to require onsite child care; 4) deny the three community land use appeals; 5) approve the Conditional Use Permit to allow the sale of a full line of alcoholic beverages for off-site consumption; 6) approve the Site Plan Review; 7) approve the Specific Plan Project Permit Compliance Review; 8) deny the General Plan Amendment for the re-designation of Sunset Blvd. to a Modified Major Highway, Class II; 9) adopt the amendment to the SNAP creating a new Subarea F; and 10) adopt a change in designation of the subject property from Subarea C to Subarea F.

The City Council's May 4, 2016 agenda for the Project stated only that the Council would be considering an addendum to the Project EIR and "appeals regarding a General Plan Amendment to the Hollywood Community Plan and the Mobility Element of the City's General Plan." The agenda failed to state that the Council would consider two significant amendments to the Vermont/Western Transit Oriented District Specific Plan, including an amendment to create an entirely new subarea designation, and that the Project sought a Conditional Use Beverage Permit to sell a full line of alcohol, a Site Plan Review, Project Permit Compliance Review, and that the City Planning Commission's childcare facility requirement had been modified pursuant to Target Corporation's appeal into a mere in lieu fee payment.

The wholly deficient May 4, 2016 City Council meeting agenda description, which omitted several specific items being considered for approval by the City Council, i.e, the items of business actually be discussed and transacted, violated the Brown Act. This is especially significant because of the multiple times that the City delayed, rescheduled and re-noticed PLUM Committee and City Council hearings to consider various aspects of the Project, creating confusion in the public regarding exactly what was and was not being considered or approved at any particular hearing. The fact that the PLUM Committee Recommendation Report was not made available to the public prior to

Terri Kaufmann-Macias, Esq.  
Los Angeles City Attorney's Office  
Ms. June Lagmay, City Clerk  
City of Los Angeles  
May 27, 2016  
Page 8

the consideration by the City Council further limited the public's ability to know that all of the Project's entitlements would be considered on May 4, 2016, since the City Council agenda did not provide "a brief general description of each item of business to be transacted or discussed."

Furthermore, as the PLUM Committee meeting agendas and reports demonstrate, the PLUM Committee took no action on May 3, 2016 to evaluate the Project's specific plan permit compliance, and therefore, the only PLUM Committee recommendation before the City Council on May 4, 2016 related to the specific plan permit compliance was the PLUM Committee's March 22, 2016 recommendation to find the Project in compliance with the old version of the ordinance before it subsequently was amended to change the childcare requirement to Target Corporation's liking. This means that the current Project approvals for the Target Corporation contain a specific plan permit compliance review approval of the wrong version of the ordinance.

Furthermore, the failure of the City Council to ever schedule the pending community land use appeals on its meeting agenda as an "Item Noticed for Public Hearing" or "Item For Which Public Hearing Has Not Been Held," has deprived all of the land use appellants, especially those who might have appeared at the May 4, 2016 City Council meeting to present appeal argument or further evidence, of their constitutional right of due process of law.

The City's correct listing of all other actions taken and business transacted in its varied and numerous agendas for the Target Project at prior hearings, but failure to list multiple significant entitlements actually considered and approved at the Council's May 4, 2016 agenda, is a failure to proceed in accordance with law, including the Brown Act.

#### **The City Previously Was Commanded to Comply With the Brown Act.**

In *La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles* (BS108652), a writ of mandate was issued on November 12, 2008, commanding the City to comply with the Brown Act as to all actions related to land use projects before the City's planning commissions. In its return to the writ of mandate, the City stated that it was in compliance by agreeing to describe in all posted agendas the actions to be taken at meetings and hearings under the California Environmental Quality Act ("CEQA") with "the same degree of clarity, particularity, and detail as used to describe the non-CEQA



Terri Kaufmann-Macias, Esq.  
Los Angeles City Attorney's Office  
Ms. June Lagmay, City Clerk  
City of Los Angeles  
May 27, 2016  
Page 9

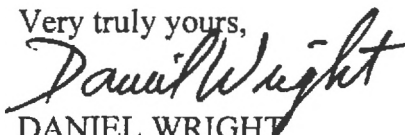
actions.” The City further agreed to “not take any actions or to discuss any items under CEQA that are not described in the ... posted agendas with clarity, particularity and detail.” (**Exhibit 12.**) Despite that the courts require all major items of proposed action related to land use projects to be disclosed on a meeting agenda, the May 4, 2016 City Council meeting agenda was fatally flawed by its omissions.

“Section 54954.2 requires the agenda to give ‘a brief general description of each item of business to be transacted or discussed.’ The word ‘specify’ means ‘to name or state explicitly or in detail.’ (Webster’s Collegiate Dict. (10<sup>th</sup> ed. 1993 p. 1129). We cannot conceive of how a City could ‘specify’ an item of business without providing a brief general description’ of that item of business....” Moreno v. City of King (2005) 27 Cal.App.4th 17, 26.

**Demand to Cure and Correct.**

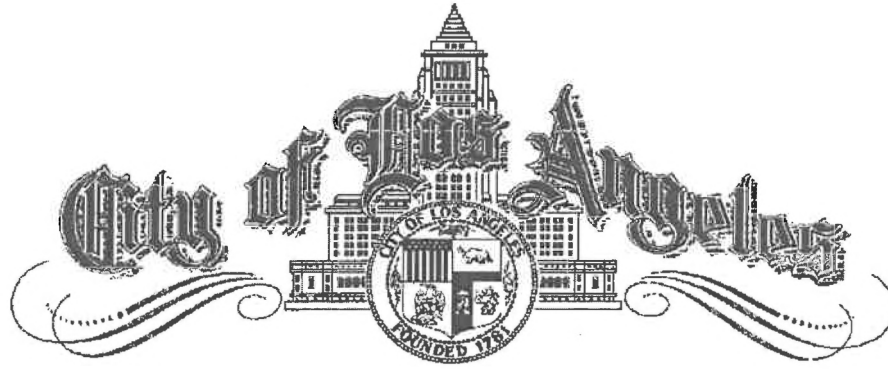
If the City does not set aside the current project approvals, and properly agendize the proposed City Council action items in relation to the Target Project, our clients will pursue all available remedies under the Brown Act, including the filing of a petition for writ of mandate.

Thank you for your courtesy and attention to this matter.

Very truly yours,  
  
DANIEL WRIGHT  
FOR  
THE SILVERSTEIN LAW FIRM, APC

DEW:lm

# Exhibit 2



**MICHAEL N. FEUER**  
CITY ATTORNEY

June 23, 2016

**VIA FACSIMILE 626-449-4205,  
E-MAIL [Dan@RobertSilversteinLaw.com](mailto:Dan@RobertSilversteinLaw.com),  
and OVERNIGHT UPS COURIER**

Daniel Wright, Esq.  
The Silverstein Law Firm  
215 North Marengo Ave., 3<sup>rd</sup> Floor  
Pasadena, CA 91101

Re: Notice to City of Brown Act Violation  
May 4, 2016, Item 21, CF 16-0033

Dear Mr. Wright:

This letter serves as the City's response, pursuant to Government Code section 54960.1(c)(2) of the Brown Act (the "Act"), Government Code § 54950 *et seq.*, to your May 27, 2016 letter regarding the May 4, 2016 City Council meeting for the above-referenced Item 21, the Target project (the "Project").

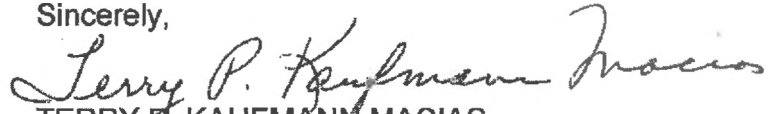
You contend that the agenda description of the items to be discussed in connection with the Project failed "to list multiple significant entitlements" in violation of the Brown Act. Your letter demands that the City "cure and correct" this alleged violation by setting aside the current project approvals and properly agendaing the proposed City Council action items related to the Project.

Please be advised that, on Friday, June 24, 2016, the City Council will rescind its action of May 4, 2016 and hold a public hearing on the matter. Copies of the June 24, 2016 City Council special agenda (see Item 28) and City Council agenda (see item 4) are attached.

Daniel Wright, Esq.  
The Silverstein Law Firm  
June 23, 2016  
Page 2

If you wish to discuss this matter further, do not hesitate to contact me at (213) 978-8233.

Sincerely,

  
TERRY P. KAUFMANN MACIAS  
Managing Assistant City Attorney

TPKM:gl

Attachments

# Exhibit 3



1 THE SILVERSTEIN LAW FIRM, APC  
ROBERT P. SILVERSTEIN (State Bar No. 185105)  
2 DANIEL E. WRIGHT (State Bar No. 144490)  
BRADLY S. TORGAN (State Bar No. 183146)  
3 215 North Marengo Avenue, 3<sup>rd</sup> Floor  
Pasadena, CA 91101-1504  
4 Telephone: (626) 449-4200  
Facsimile: (626) 449-4205  
5 Robert@RobertSilversteinLaw.com

6 Attorneys for Petitioner  
LA MIRADA AVENUE NEIGHBORHOOD  
7 ASSOCIATION OF HOLLYWOOD

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF LOS ANGELES

11  
12 LA MIRADA AVENUE NEIGHBORHOOD  
ASSOCIATION OF HOLLYWOOD, a  
13 California unincorporated association,  
14 Petitioner,

15 vs.

16 CITY OF LOS ANGELES, a municipal  
corporation; the CITY OF LOS ANGELES  
17 CITY COUNCIL; and DOES 1 through 10,  
inclusive,

18 Respondents.

19  
20 TARGET CORPORATION, a Minnesota  
corporation doing business in California; and  
21 ROES 1 through 10, inclusive,

22 Real Parties in Interest.  
23  
24  
25  
26  
27  
28

Case No.: BS140889  
[Related to Case No. BS140930]

NOTICE OF ENTRY OF  
JUDGMENT

Trial Date:

Date: February 27, 2014  
Time: 9:30 a.m.  
Dept.: 15


[Hon. Richard L. Fruin, Jr.]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN THAT judgment was entered in this action on July 31, 2014. A copy of the signed judgment is attached hereto at Exhibit 1.

DATED: August 12, 2014

THE SILVERSTEIN LAW FIRM, APC  
By:   
ROBERT P. SILVERSTEIN  
BRADLY S. TORGAN  
Attorneys for Petitioner LA MIRADA AVENUE  
NEIGHBORHOOD ASSOCIATION OF  
HOLLYWOOD

THE SILVERSTEIN LAW FIRM, APC  
215 North Marengo Avenue, 3<sup>rd</sup> Floor  
Pasadena, CA 91101-1504

**EXHIBIT 1**

---

1 THE SILVERSTEIN LAW FIRM, APC  
 2 ROBERT P. SILVERSTEIN (State Bar No. 185105)  
 3 DANIEL E. WRIGHT (State Bar No. 144490)  
 4 BRADLY S. TORGAN (State Bar No. 183146)  
 5 215 North Marengo Avenue, 3<sup>rd</sup> Floor  
 Pasadena, CA 91101-1504  
 Telephone: (626) 449-4200  
 Facsimile: (626) 449-4205  
 Robert@RobertSilversteinLaw.com

6 Attorneys for Petitioner  
 7 LA MIRADA AVENUE NEIGHBORHOOD  
 ASSOCIATION OF HOLLYWOOD

8 DAVID LAWRENCE BELL (State Bar No. 224667)  
 9 4317 Kingswell Avenue  
 Los Angeles, CA 90027  
 Telephone: (213) 814-9127  
 10 Facsimile: (213) 897-2877

11 Attorney for Petitioner  
 12 CITIZENS COALITION LOS ANGELES

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 14 FOR THE COUNTY OF LOS ANGELES  
 15

16 LA MIRADA AVENUE NEIGHBORHOOD  
 17 ASSOCIATION OF HOLLYWOOD, a  
 18 California unincorporated association,

19 Petitioner,

20 vs.

21 CITY OF LOS ANGELES, a municipal  
 corporation; the CITY OF LOS ANGELES  
 22 CITY COUNCIL; and DOES 1 through 10,  
 inclusive,

23 Respondents.

24 TARGET CORPORATION, a Minnesota  
 25 corporation doing business in California; and  
 ROES 1 through 10, inclusive,

26 Real Parties in Interest.  
 27  
 28

RECEIVED

JUL 24 2014

DEPT. 15

FILED  
 Superior Court of California  
 County of Los Angeles

JUL 31 2014

Sherril R. Carter, Executive Officer/Clerk  
 By E. Garcia Deputy

Case No.: BS140889  
 [Related to Case No. BS140930]

PETITIONER LA MIRADA AVENUE  
 NEIGHBORHOOD ASSOCIATION  
 OF HOLLYWOOD AND  
 PETITIONER CITIZENS  
 COALITION LOS ANGELES' JOINT  
 [PROPOSED] JUDGMENT  
 GRANTING PEREMPTORY WRIT  
 OF MANDAMUS

Trial Date:

Date: February 27, 2014  
 Time: 9:30 a.m.  
 Dept.: 15

[Hon. Richard L. Fruin, Jr.]

**ORIGINAL**

[PROPOSED] JUDGMENT GRANTING PEREMPTORY WRIT OF MANDAMUS

THE SILVERSTEIN LAW FIRM, APC  
 215 North Marengo Avenue, 3<sup>rd</sup> Floor  
 Pasadena, CA 91101-1504

0000000000

THE SILVERSTEIN LAW FIRM, APC  
215 North Marengo Avenue, 3rd Floor  
Pasadena, CA 91101-1504

1 CITIZENS COALITION LOS ANGELES, a  
2 California unincorporated association,

3 Petitioner,

4 vs.

5 CITY OF LOS ANGELES, a municipal  
6 corporation; LOS ANGELES CITY  
7 COUNCIL; and DOES 1 through 10,  
8 inclusive,

9 Respondents,

10 TARGET CORPORATION, a Minnesota  
11 corporation doing business in California; and  
12 ROES 1-10, inclusive,

13 Real Parties in Interest  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No.: BS140930  
[Related to Case No. BS140889]



1 Petitioner La Mirada Avenue Neighborhood Association of Hollywood's ("La  
2 Mirada") first amended verified petition for writ of mandamus and complaint for  
3 declaratory and injunctive relief against Respondents City of Los Angeles and the Los  
4 Angeles City Council (collectively "City" or "Respondents"), and Real Party in Interest  
5 Target Corporation ("Real Party"), came on for trial on February 27, 2014, the Honorable  
6 Richard L. Fruin, Jr., presiding. Petitioner Citizens Coalition Los Angeles' amended  
7 petition for writ of mandamus and injunctive relief in the related case against Respondents  
8 and Real Party came on concurrently with the La Mirada proceeding. Robert P. Silverstein  
9 and Bradly S. Torgan appeared on behalf of Petitioner La Mirada; David Lawrence Bell  
10 appeared on behalf of Petitioner Citizens Coalition Los Angeles. Mary Decker and  
11 Kenneth Fong appeared on behalf of the City; Richard Schulman appeared on behalf of  
12 Real Party. Petitioner La Mirada and Petitioner Citizens Coalition Los Angeles are  
13 collectively referred to herein as Petitioners.

14 Petitioner La Mirada's action challenged the City's approval of eight exceptions to  
15 the Vermont/Western Transit Oriented Specific Plan ("Specific Plan") for the "Target at  
16 Sunset and Western Project" in Hollywood ("Project"). La Mirada also challenged  
17 Respondents' approval of an Environmental Impact Report ("EIR") for the Project, and  
18 City actions on April 3, 2013 that La Mirada alleged denied La Mirada a fair hearing. La  
19 Mirada also alleged violation of the Brown Act. Petitioner Citizens Coalition Los Angeles'  
20 amended petition for writ of mandamus and injunctive relief alleged violation by the City  
21 of the Specific Plan for the Project, and challenged the City's approval of an EIR for the  
22 Project.

23 For the reasons stated in the Court's Final Decision on Petitions for Writ of  
24 Mandamus dated July 17, 2014, Petitioners shall have judgment against Respondents and  
25 Real Party.

26 The Court, having read and considered the pleadings on file in these cases, having  
27 reviewed and considered the administrative record admitted into evidence, having  
28 considered the argument of counsel, having taken the matter under submission and issued

1 its ruling in this case, and being fully advised, **DOES HEREBY ORDER, ADJUDGE,**  
2 **AND DECREE** as follows:

3 Judgment is entered in favor of Petitioner La Mirada's Third Cause of Action for  
4 violation of Los Angeles Municipal Code Section 11.5.7.F.2 to vacate and set aside the  
5 actions of the City in approving six of eight Specific Plan exceptions for the Project.

6 Judgment is entered in favor of Petitioner Citizens Coalition Los Angeles' Third Cause of  
7 Action for violation of Los Angeles Municipal Code Section 11.5.7.F.2 to vacate and set  
8 aside the actions of the City in approving six of eight Specific Plan exceptions for the  
9 Project. The six exceptions to the Specific Plan to be vacated and set aside, and which  
10 shall be vacated and set aside, are the same in the two proceedings. To wit:

11 1. An exception to the Specific Plan to allow a commercial building height of  
12 74 feet, four inches above grade in lieu of the maximum permitted building height of 35  
13 feet;

14 2. An exception to the Specific Plan requirement that the second floor of the  
15 development be set back a minimum of ten feet from the first floor frontage;

16 3. An exception to the Specific Plan to allow entrance canopies and balconies  
17 within 15 feet of the property line along Sunset Blvd. to exceed the maximum permitted  
18 height of 30 feet;

19 4. An exception to the Specific Plan requirement that all roof lines in excess of  
20 40 feet be broken up through the use of gables, dormers, cut-outs or other means;

21 5. An exception to the Specific Plan to allow transparent building elements  
22 such as windows and doors to occupy 24% of the ground floor façade on St. Andrews  
23 Place in lieu of the minimum 50% building transparency otherwise required; and

24 6. An exception to the Specific Plan requirement that projects containing  
25 40,000 sq. ft. or more of retail commercial floor area provide free delivery of purchases  
26 made at the site to residents living within the Specific Plan area.

27 A Peremptory Writ of Mandamus shall issue under the seal of the Court in the form  
28 that is attached to this Judgment as Exhibit A.

[illegible]

///

1 The Court shall retain jurisdiction to enter injunctive relief and compel compliance  
2 with the Peremptory Writ of Mandamus, including as provided in Code of Civil Procedure  
3 Section 1097.

4 LET THE WRIT ISSUE.

5  
6 DATED:

July 31, 2014

Richard L. Fruin, Jr.  
Honorable Richard L. Fruin, Jr.  
Judge of the Superior Court

THE SILVERSTEIN LAW FIRM, APC  
215 North Maringo Avenue, 3<sup>rd</sup> Floor  
Pasadena, CA 91101-1504

10/1/2011

EXHIBIT A

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

LA MIRADA AVENUE NEIGHBORHOOD  
ASSOCIATION OF HOLLYWOOD, a  
California unincorporated association,

Petitioner,

vs.

CITY OF LOS ANGELES, a municipal  
corporation; the CITY OF LOS ANGELES  
CITY COUNCIL; and DOES 1 through 10,  
inclusive,

Respondents.

TARGET CORPORATION, a Minnesota  
corporation doing business in California; and  
ROES 1 through 10, inclusive,

Real Parties in Interest.

Case Nos.: BS140889  
[Related to Case No. BS140930]

[PROPOSED] PEREMPTORY WRIT  
OF MANDAMUS

Trial Date:

Date: February 27, 2014  
Time: 9:30 a.m.  
Dept.: 15

[Hon. Richard L. Fruin, Jr.]

1 CITIZENS COALITION LOS ANGELES, a  
2 California unincorporated association,

3 Petitioner,

4 vs.

5 CITY OF LOS ANGELES, a municipal  
6 corporation; LOS ANGELES CITY  
7 COUNCIL; and DOES 1 through 10,  
8 inclusive,

9 Respondents,

10 TARGET CORPORATION, a Minnesota  
11 corporation doing business in California; and  
12 ROES 1-10, inclusive,

13 Real Parties in Interest  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No.: BS140930  
[Related to Case No. BS140889]

1 TO RESPONDENTS CITY OF LOS ANGELES and LOS ANGELES CITY COUNCIL:

2 In connection with the development project commonly known as the "Target at  
3 Sunset and Western Project" in Hollywood, located at 5500-5544 West Sunset  
4 Boulevard, 1417-1441 North Western Avenue, 5505-5525 West De Longpre Avenue, and  
5 1414 St. Andrews Place ("Project"), RESPONDENTS CITY OF LOS ANGELES and LOS  
6 ANGELES CITY COUNCIL, together with their officers, employees, agents, boards,  
7 commissions, other subdivisions, representatives, and successors, are hereby ordered,  
8 immediately upon receipt of this Writ, to:

9 (1) Invalidate the following Vermont/Western Transit Oriented Specific Plan  
10 ("Specific Plan") exceptions and exception approvals granted and obtained  
11 for the Project:

- 12 a) An exception to the Specific Plan to allow a commercial building  
13 height of 74 feet, four inches above grade in lieu of the maximum  
14 permitted building height of 35 feet;
- 15 b) An exception to the Specific Plan requirement that the second floor  
16 of the development be set back a minimum of ten feet from the first  
17 floor frontage;
- 18 c) An exception to the Specific Plan to allow entrance canopies and  
19 balconies within 15 feet of the property line along Sunset Blvd. to  
20 exceed the maximum permitted height of 30 feet;
- 21 d) An exception to the Specific Plan requirement that all roof lines in  
22 excess of 40 feet be broken up through the use of gables, dormers,  
23 cut-outs or other means;
- 24 e) An exception to the Specific Plan to allow transparent building  
25 elements such as windows and doors to occupy 24% of the ground  
26 floor façade on St. Andrews Place in lieu of the minimum 50%  
27 building transparency otherwise required; and,  
28



1 f) An exception to the Specific Plan requirement that projects  
2 containing 40,000 sq. ft. or more of retail commercial floor area  
3 provide free delivery of purchases made at the site to residents living  
4 within the Specific Plan area.

5 (2) Be restrained and enjoined from any actions or approvals, including  
6 granting any authority, permits, or land use entitlements, in furtherance of  
7 the invalid Specific Plan exceptions and exception approvals identified  
8 above as previously granted for the Project and/or in furtherance of  
9 construction of the Project; and

10 (3) Immediately require the cessation, restraint and enjoining of all construction  
11 activities by Real Party in Interest Target Corporation and any of its agents  
12 at the Project site *and to immediately and safely secure the*

13 *Project site.*  
EACH RESPONDENT IS FURTHER COMMANDED to make a return to the

14 peremptory writ of mandamus under oath specifying what Respondents have done to  
15 comply with the Writ, and to file that return with the Court, and serve that return by hand  
16 or facsimile upon Petitioners' counsel of record in these proceedings, no later than 30 days  
17 after issuance of the writ and service on Respondents.

18 The Court shall retain jurisdiction to enter injunctive relief and compel compliance  
19 with the Peremptory Writ of Mandamus, including as provided in Code of Civil Procedure  
20 Section 1097.

21 LET THE WRIT ISSUE.

22  
23 DATED: \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Superior Court

**PROOF OF SERVICE**

I, George Saunders, declare:

I am a resident of the state of California and over the age of eighteen years, and not a party to the within action; my business address is The Silverstein Law Firm, 215 North Marengo Ave, Third Floor, Pasadena, California 91101-1504. On July 24, 2014, I served the within document(s):

**PETITIONERS' LA MIRADA AVENUE NEIGHBORHOOD  
ASSOCIATION OF HOLLYWOOD AND CITIZENS COALITION LOS  
ANGELES' JOINT [PROPOSED] JUDGMENT GRANTING  
PEREMPTORY WRIT OF MANDAMUS**

- ☒ by placing the document(s) listed above in a sealed Overnight Express (NORCO) envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Overnight Express (NORCO) agent for delivery as set forth below.
- ☒ by transmitting the document(s) listed above via e-mail to the person(s) named below at the respective e-mail addresses and receiving confirmed transmission reports indicating that the document(s) were successfully transmitted.

**CASE NAME: LA MIRADA AVENUE NEIGHBORHOOD ASS'N OF  
HOLLYWOOD V. CITY OF LOS ANGELES, ET AL.**  
**CASE No.: BS140889 related to BS140930**

Michael Feuer, City Attorney  
Mary J. Decker, Deputy City Attorney  
Office of the City Attorney  
City of Los Angeles  
200 N. Main Street, City Hall East 701  
Los Angeles, CA 90012  
mary.decker@lacity.org  
*Attorneys for Respondents CITY OF LOS  
ANGELES and CITY OF LOS ANGELES  
CITY COUNCIL*

Richard Schulman, Esq.  
Hecht Solberg Robinson Goldberg &  
Bagley LLP  
One America Plaza  
600 West Broadway, Eighth Floor  
San Diego, CA 92101  
rschulman@hechtsolberg.com  
*Attorneys for Real Party In Interest  
TARGET CORPORATION*

David Lawrence Bell, Esq.  
Law Office of David Lawrence Bell  
4317 Kingswell Avenue  
Los Angeles, CA 90027  
dlawrencebell@gmail.com  
*Attorney for Petitioner CITIZENS  
COALITION LOS ANGELES (Related  
Case No. BS140930)*

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

Executed on July 24, 2014, at Pasadena, California.

  
GEORGE SAUNDERS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PROOF OF SERVICE

I, George Saunders, declare:

I am a resident of the state of California and over the age of eighteen years, and not a party to the within action; my business address is The Silverstein Law Firm, 215 North Marengo Ave, Third Floor, Pasadena, California 91101-1504. On August 2, 2014, I served the within document(s):

**NOTICE OF ENTRY OF JUDGMENT**

- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Pasadena, California addressed as set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

- ☒ by transmitting the document(s) listed above via e-mail to the person(s) named below at the respective e-mail addresses and receiving confirmed transmission reports indicating that the document(s) were successfully transmitted.

<b>CASE NAME:</b> LA MIRADA AVENUE NEIGHBORHOOD ASS'N OF HOLLYWOOD V. CITY OF LOS ANGELES, ET AL. <b>CASE No.:</b> BS140889 related to BS140930
--

Michael Feuer, City Attorney  
Mary J. Decker, Deputy City Attorney  
Kenneth Fong, Deputy City Attorney  
Office of the City Attorney  
City of Los Angeles  
200 N. Main Street, City Hall East 701  
Los Angeles, CA 90012  
mary.decker@lacity.org  
*Attorneys for Respondents CITY OF  
LOS ANGELES and CITY OF LOS  
ANGELES CITY COUNCIL*

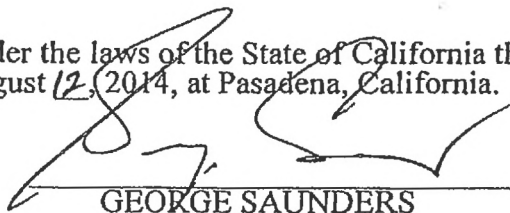
Richard Schulman, Esq.  
Hecht Solberg Robinson Goldberg & Bagley  
LLP  
One America Plaza  
600 West Broadway, Eighth Floor  
San Diego, CA 92101  
rschulman@hechtsolberg.com  
*Attorneys for Real Party In Interest  
TARGET CORPORATION*

THE SILVERSTEIN LAW FIRM, APC  
215 North Marengo Avenue, 3<sup>rd</sup> Floor  
Pasadena, CA 91101-1504

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

David Lawrence Bell, Esq.  
Law Office of David Lawrence Bell  
4317 Kingswell Avenue  
Los Angeles, CA 90027  
dlawrencebell@gmail.com  
*Attorney for Petitioner CITIZENS*  
*COALITION LOS ANGELES* (Related  
Case No. BS140930)

I declare under penalty of perjury under the laws of the State of California that the  
above is true and correct. Executed on August 12, 2014, at Pasadena, California.



GEORGE SAUNDERS

# Exhibit 4

LOCAL / L.A. Now

# L.A. building officials issue stop-work order for Hollywood Target



A Target shopping center in Hollywood is the subject of a protracted legal battle. Work continued on the project as recently as last Friday. (David Zahniser)



By **David Zahniser** · Contact Reporter

AUGUST 25, 2014, 4:55 PM

**L**os Angeles building inspectors posted a stop-work order on Monday at a partly built Target shopping center in Hollywood, the latest turn in a long-running court battle over the project.

Luke Zamperini, chief inspector for the Department of Building and Safety, said Target must halt construction "for the foreseeable future."

The order, which went into effect at 1 p.m., came a month after Superior Court Judge Richard L. Fruin Jr. ruled that the city violated the law when it allowed Target to build a 74-foot-tall shopping center on a stretch of Sunset Boulevard where such projects are limited to 35 feet.

The court [issued its own order](#) two weeks ago calling for the City Council to halt construction at the Target site. But work continued, prompting opponents of the project to seek a new court order finding the city in contempt. As recently as Thursday, a spokesman for City Atty. Mike Feuer said officials were determining what work, if any, could proceed on the site.

A Target spokeswoman referred The Times to a statement she issued last week, which said the company is "taking steps to continue construction at the store." Zamperini said he had not heard from Target since the city's order was posted at the company's job site. "I suppose when we do, we'll find out whether they're OK with it or not," he said.

Target filed an appeal of Fruin's decision. Zamperini said the appeal automatically put the judge's order on hold. However, that appeal also put various city permits for the project on hold, making it impossible for construction to continue, he said. A stop-work order, he said, "just seemed like the prudent thing to do at this point."

Two neighborhood groups -- the La Mirada Avenue Neighborhood Assn. and Citizens Coalition Los Angeles -- sued over the project in 2012. Doug Haines, with the La Mirada group, said "it's about time" the city issued the order.

"It looks like they've finally decided they need to obey the law," he said.

In city and court documents, Target's lawyers said they designed a project that exceeded the height limit in response to Mayor [Eric Garcetti](#), who wanted more stores, restaurants and a plaza. Garcetti pushed for the taller design, and additional pedestrian amenities, when he was a councilman representing Hollywood.

A hearing is set for later this week on the neighborhood groups' request to have the city found in contempt of court.

**Follow [@DavidZahniser](#) for what's happening at Los Angeles City Hall**

Copyright © 2016, Los Angeles Times

**This article is related to:** [Laws and Legislation](#), [Trials and Arbitration](#), [Eric Garcetti](#)

---

# Exhibit 5



**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**SECOND APPELLATE DISTRICT**

**LA MIRADA AVENUE NEIGHBORHOOD  
ASSOCIATION OF HOLLYWOOD,**

**Respondent (on appeal)/  
Plaintiff (at trial)  
Real Party In Interest  
(this Petition)**

**v.**

**CITY OF LOS ANGELES, et al.,**

**Respondent (on appeal).  
Defendant (at trial)  
Real Party In Interest  
(this Petition)**

**TARGET CORPORATION,**

**Appellant (on appeal)  
Real Party in Interest (at trial)  
Petitioner (this Petition).**

**CIVIL CASE NO. B258033**

**LOS ANGELES COUNTY  
SUPERIOR COURT CASE  
NO. BS 140889  
[Related Case No. BS  
140930]**

**Hon. Richard C. Fruin, Jr.  
Dept. 15 (Stanley Mosk  
Courthouse)  
Telephone: (213) 974-5606**

---

**PETITION FOR RELIEF FROM STATUTORY STAY  
AND/OR FOR WRIT OF SUPERSEDEAS AND/OR MANDATE,  
WITH MEMORANDUM OF POINTS AND AUTHORITIES  
STAY OF APPEAL REQUESTED**

---

**Richard A. Schulman (SBN 118577)  
Hecht Solberg Robinson Goldberg  
& Bagley LLP  
600 W. Broadway, Suite 800  
San Diego, California 92101  
Telephone: (619) 239-3444  
Attorneys for Petitioner  
TARGET CORPORATION**

---

## TO BE FILED IN THE COURT OF APPEAL

APP-008

<b>COURT OF APPEAL, Second APPELLATE DISTRICT, DIVISION</b>	Court of Appeal Case Number: <b>B258033</b>
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Richard A. Schulman (118577) Hecht Solberg Robinson Goldberg & Bagley LLP 600 West Broadway, Suite 800 San Diego, CA 92101 TELEPHONE NO.: 619-239-3444 FAX NO. (Optional): 619-232-6828 E-MAIL ADDRESS (Optional): tschulman@hechtsolberg.com ATTORNEY FOR (Name): Target Corporation	Superior Court Case Number: <b>BS140889</b>
APPELLANT/PETITIONER: Target Corporation  RESPONDENT/REAL PARTY IN INTEREST: La Mirada Avenue Neighborhood etc.	<b>FOR COURT USE ONLY</b>
<b>CERTIFICATE OF INTERESTED ENTITIES OR PERSONS</b> (Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.	

1. This form is being submitted on behalf of the following party (name): Target Corporation

2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.  
 b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	Target Corporation is publicly traded (NYSE: TGT).
(2)	According to recent information, no one person owns 10%
(3)	or more of it, the largest single owner being State Street
(4)	Corporation, with approximately 9.3%.
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: August 13, 2014

Richard A. Schulman

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

## TABLE OF CONTENTS

<u>Item</u>	<u>Page</u>
CERTIFICATE OF INTERESTED ENTITIES.....	[unnumbered]
TABLE OF AUTHORITIES.....	ii
PETITION.....	1
INTRODUCTION .....	1
STATEMENT OF FACTS: THE PROJECT.....	3
STATEMENT OF THE CASE.....	10
STATEMENT OF FACTS: SNAP AMENDMENT AND CONSTRUCTION.....	12
PRAYERS .....	17
VERIFICATION .....	18
MEMORANDUM OF POINTS AND AUTHORITIES.....	19
I.    RELIEF IS NECESSARY TO AVOID UNNECESSARY HARM, WASTE, AND INTERFERENCE WITH THE CITY’S PROCESS .....	20
A. Relief Is Necessary And Appropriate to Avoid Harm, Waste, and Interference With The City’s Process And Authority .....	21
B. This Court Has Several Procedural And Mechanical Means Available To Grant Relief.....	26
CONCLUSION .....	29
CERTIFICATE RE LENGTH OF BRIEF .....	31
[Table of Contents of exhibits is in front of separately-bound exhibits]	

## TABLE OF AUTHORITIES

<u>Item</u>	<u>Page</u>
 <u>California Cases</u>	
<i>Building Code Action v. Energy Resources Conservation &amp; Development Commission</i> (1979) 88 Cal.App.3d 913.....	20
<i>Building Industry Association v. City of Oxnard</i> (1985) 40 Cal.3d 1 .....	28
<i>Campbell v. Regents of the University of California</i> (2005) 35 Cal.4th 311 .....	24
<i>Chandis Securities Co. v. City of Dana Point</i> (1996) 52 Cal.App.4th 475 .....	21
<i>City of Santee v. County of San Diego</i> (1989) 214 Cal.App.3d 1438.....	25
<i>Downtown Palo Alto Committee for Fair Assessment v. City Council</i> (1986) 180 Cal.App.3d 384.....	23
<i>Estate of Hultin</i> (1947) 29 Cal.2d 825 .....	27
<i>Horwitz v. City of Los Angeles</i> (2004) 124 Cal.App.4th 1344 .....	24
<i>In re Karla C.</i> (2010) 186 Cal.App.4th 1236.....	27
<i>Mills v. County of Trinity</i> (1979) 98 Cal.App.3d 859.....	22
<i>Moss v. Board of Zoning Adjustment</i> (1968) 262 Cal.App.2d 1.....	24
<i>Neman v. Commercial Capital Bank</i> (2009) 173 Cal.App.4th 645 .....	29
<i>People ex rel. San Francisco Bay Conservation Commission</i> <i>v. Town of Emeryville</i> (1968) 69 Cal.2d 533 .....	27
<i>Sacramento Newspaper Guild v. Sacramento County</i> <i>Board of Supervisors</i> (1967) 255 Cal.App.2d 51 .....	27
 ///	

## TABLE OF AUTHORITIES (continued)

<u>Item</u>	<u>Page</u>
 <b><u>California Cases (cont'd)</u></b>	
<i>South Orange County Wastewater Authority v. City of Dana Point</i> (2011) 196 Cal.App.4th 1604 .....	21
<i>West Coast Home Improvement Company, Inc. v. Contractors'</i> <i>State License Board</i> (1945) 68 Cal.App.2d 1 .....	27
<i>Westly v. California Public Employees' Retirement System</i> <i>Board of Administration</i> (2003) 105 Cal.App.4th 1095 .....	29
<i>Wilson &amp; Wilson v. City Council of Redwood City</i> (2011) 191 Cal.App.4th 1559 .....	25
<i>Woodward Park Homeowners Association v. Garreks, Inc.</i> (2000) 77 Cal.App.4th 880 .....	25
 <b><u>California Statutes</u></b>	
CODE OF CIVIL PROCEDURE §446 .....	28
CODE OF CIVIL PROCEDURE §916 .....	2, 19
CODE OF CIVIL PROCEDURE §923 .....	26
CODE OF CIVIL PROCEDURE §1086 .....	28
CODE OF CIVIL PROCEDURE §1094.5 .....	1, 2, 19, 20, 26
CODE OF CIVIL PROCEDURE §1110b .....	26
PUBLIC RESOURCES CODE §21166.....	21
 ///	
 ///	
 ///	

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**SECOND APPELLATE DISTRICT**

**LA MIRADA AVENUE NEIGHBORHOOD  
ASSOCIATION OF HOLLYWOOD,**

**Respondent (on appeal)/  
Plaintiff (at trial)  
Real Party In Interest  
(this Petition)**

**v.**

**CITY OF LOS ANGELES, et al.,**

**Respondent (on appeal).  
Defendant (at trial)  
Real Party In Interest  
(this Petition)**

**TARGET CORPORATION,**

**Appellant (on appeal)  
Real Party in Interest (at trial)  
Petitioner (this Petition).**

**CIVIL CASE NO. B258033**

**LOS ANGELES  
SUPERIOR COURT CASE  
NO. BS 140889  
[Related Case No. BS  
140930]**

**PETITION FOR RELIEF  
FROM STATUTORY  
STAY AND/OR FOR  
WRIT OF SUPERSEDEAS  
AND/OR MANDATE;  
STAY OF APPEAL  
REQUESTED; WITH  
SUPPORTING POINTS  
AND AUTHORITIES**

Petitioner TARGET CORPORATION ("Target") respectfully petitions this Court for relief from a statutory stay under Code of Civil Procedure §1094.5(g), and/or for a writ of supersedeas and/or mandate directed to Respondent SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, and by this verified Petition alleges:

**INTRODUCTION**

1. This Petition seeks to avoid waste and the unnecessary loss of jobs. The Los Angeles City Council unanimously approved a development project of Target three different times. Target had only wanted to build a store, but at the

City's request it instead applied for a larger project with amenities such as a pedestrian plaza, separate street-level shops and restaurants, and a pedestrian thoroughway. The larger project required "exceptions," essentially variances, from a local land use plan. After two community groups sued, the trial court upheld the project's environmental impact report ("EIR") and found no defect in the City's processes. However, the trial court invalidated the exceptions. Target has appealed. Target began construction before trial in good faith reliance on the City's three unanimous approvals. **Target has now applied to the City to amend the plan in question, which will render the exceptions unnecessary and the trial court's adverse decision moot.** No one can guarantee the result of a plan amendment process, but City Council approval is nearly certain given that it had requested the project in this form and approved it unanimously three times, *and* given the trial court's approval of the EIR.

2. Ordinarily, an appeal stays the trial court's judgment issuing a writ of mandate, CODE OF CIVIL PROCEDURE §916, which would leave the exceptions in place. However, if the judgment grants a writ of administrative mandate, as here, an appeal also stays the City's decision, CODE OF CIVIL PROCEDURE §1094.5(g), which leaves the project without necessary permits to continue construction. Section 1094.5(g) allows a party to ask the reviewing court for relief from the stay of the agency decision. Target is therefore asking this Court to issue such orders as are necessary to allow construction to proceed.

3. If the Court rejects this request, construction will have to stop. This will throw dozens of largely union workers out of work – there are typically about seventy-five workers on site each day; it could lead to unknowable security problems on site; and it will waste huge amounts of money. It will put on hold an investment in Los Angeles of tens of millions of dollars in construction costs, and it will prevent a couple of hundred people from being hired for the completed Project. This will establish that no one can begin construction until after years of unnecessary litigation end. *It will cause all this harm for nothing*, as approval of a plan amendment allowing the project to proceed is almost certain.

#### STATEMENT OF FACTS: THE PROJECT

4. Documents in the exhibits filed herewith are cited as “(Exhs. Vol. #, tab:page).” Because of their unusual source, Target will cite documents from the administrative record as “(Exhs. Vol. 1, 3:page [AR page]).” The administrative record consisted of two overlapping parts, one containing 16,481 pages and the other 11,861 pages. Although the entire record will be provided for the appeal pursuant to Rules of Court, because of the size of the record only those items cited in this Petition are included in the exhibits. Conformed copies of trial court filings are included when available, but all exhibits are true and accurate copies of trial court filings, excerpts from the administrative record, construction documents, photographs and applications dated as shown.



5. The site in question is located at the southwestern corner of Sunset Boulevard and North Western Avenue in Hollywood. (Exhs. Vol. 1, 3:78-79 [AR 1767, 1769]) The site contained underutilized buildings and a surface parking area separating the street frontage from the retail uses. (Exhs. Vol. 1, 3:78-79, 84 [AR 1767, 1769, 1783])

6. The site is subject to a City specific plan called the "Vermont/Western Transit Oriented District (Station Neighborhood Area Plan)," commonly called "SNAP"; the site is in a corner of the SNAP area, far away from most of the area governed by SNAP. (E.g., Exhs. Vol. 1, 3:80, 88 [AR 1770, 4828]) SNAP designates the site as "Community Center" (e.g., Exhs. Vol. 1, 3:80 [AR 1770]), which allows a variety of commercial uses (e.g., Exhs. Vol. 1, 3:57, 88 [AR 588, 4828]). The purposes of SNAP include "establish[ing] a clean, safe, comfortable and pedestrian oriented community environment for residents to shop in and use the public community services in the neighborhood." (Exhs. Vol. 1, 3:55 [AR 566])

7. Target had initially wanted to build only a Target store, but it never submitted such a limited application. (Exhs. Vol. 1, 3:95 [AR 10951]) The local City Councilmember, in a preliminary meeting, expressed concerns that building only a Target store would not fulfill important neighborhood goals such as pedestrian-friendly access. (Exhs. Vol. 1, 3:100-101 [AR 11813-11814]) Consequently, Target submitted an application on July 2, 2008 for a

retail center that would include a (roughly) 163,000 sq.ft. Target store, 26,000 sq.ft. of other retail uses, and a parking structure containing 458 stalls (the "Project"). (Exhs. Vol. 1, 3:89-90 [AR 8460, 8462]) The City approved the Project with a negative declaration (under the California Environmental Quality Act, "CEQA") in 2010; when LA MIRADA AVENUE NEIGHBORHOOD ASSOCIATION OF HOLLYWOOD ("LA MIRADA") filed a lawsuit, though, Target surrendered its approvals and asked the City to prepare a full EIR rather than fight the litigation (Exhs. Vol. 1, 3:104 [AR 14255]) and the City rescinded its approvals (Exhs. Vol. 1, 3:53 [AR 455]). LA MIRADA then lost its case at trial and in this Court. (Exhs. Vol. 1, 6:209-212)

8. The City published notice on December 6, 2010, that it was going to prepare an EIR for the Project. (Exhs. Vol. 1, 3:103 [AR 13956]) LA MIRADA submitted forty-nine pages of comments just on the notice of preparation. (Exhs. Vol. 1, 3:87 [AR 3795 *et seq.*]) When the City made the draft EIR available for public comment, LA MIRADA filed another fifty-one pages of comments and objections. (Exhs. Vol. 1, 3:77 [AR 1569 *et seq.*])

9. The Project, with an EIR, went through several layers of hearings beginning with a hearing officer. (E.g., Exhs. Vol. 1, 3:102 [AR 13459]) The City's Central Area Planning Commission ("CAPC") approved the Project 3-0 on August 14, 2012. (Exhs. Vol. 1, 3:51-52 [AR 176-177]) The City Council's Planning and Land Use Management committee ("PLUM") approved the

Project 2-0 on November 13, 2012. (Exhs. Vol. 1, 3:48-50 [AR 172-174]) The full City Council followed suit on November 20, 2012. (Exhs. Vol. 1, 3:35 [AR 145]) The City then began issuing demolition permits and Target began removing debris and an old electrical transformer from the site. (Exhs. Vol. 1, 3:93 [AR 10686])

10. LA MIRADA then sent the City a letter claiming that, although the exceptions had been listed in previous notices and had been the object of LA MIRADA's appeals, the failure to mention the exceptions separately in the agenda for the final City Council meeting violated the open meeting law for local agencies, the "Brown Act." (Exhs. Vol. 1, 3:99 [AR 11237]) The City Attorney's office wrote back on December 31, 2012, saying that, although the City "does not concede" a violation had occurred, it would schedule another Council hearing "out of an abundance of caution." (Exhs. Vol. 1, 3:98 [AR 11200]) The Council's PLUM committee voted 3-0 for the Project on March 19, 2013 (Exhs. Vol. 1, 3:32-34 [AR 141-143]), and the full City Council approved the Project again on April 3, 2013 by a vote of 12-0 (Exhs. Vol. 1, 3:30-31, 92 [AR 138-139, 9772]).

11. As approved, the Project will consist of a Target store containing about 163,862 sq.ft. on the top of a three-level structure, with two stories of parking under the Target store; about 30,887 sq.ft. of (non-Target) ground floor neighborhood-serving retail, including restaurants; and a ground-level

pedestrian plaza of about 11,000 sq.ft. with distinctive landscaping, lighting, and a transit kiosk. (E.g., Exhs. Vol. 1, 3:46, 80-83, 108, 110 [AR 168 #125, 1770-1773, 16428, 16430]) The resulting Project is, in a word, attractive; it features pleasant, pedestrian-friendly design and premium architecture for a retail store in an urban area. (E.g., Exhs. Vol. 1, 3:121-123 [AR 16441-16443]) The City imposed 145 (often lengthy) conditions on the Project. These include such matters as conducting bird surveys (Exhs. Vol. 1, 3:37 [AR 151 #7]), directing lighting and specifying glass so as to limit light and glare going off-site (Exhs. Vol. 1, 3:38 [AR 152 #21-#23]), protecting pedestrian access (Exhs. Vol. 1, 3:39 [AR 153 #26]), providing transportation improvements that range from road widening to signals to speed humps to parking for ride-sharing employees (Exhs. Vol. 1, 3:39-43 [AR 153-156 #27-#35, 163 #88]), building a pedestrian passageway (Exhs. Vol. 1, 3:44 [AR 166 #109]), providing bike racks (Exhs. Vol. 1, 3:44-45 [AR 166-167 #112]), and providing public street benches (Exhs. Vol. 1, 3:45 [AR 167 #114]).

12. The City Council found that the Project is consistent with the City's long-range plans. (Exhs. Vol. 1, 3:74-76 [AR 757-759]) The City approved eight exceptions from SNAP:

- a. Allowing the Project to reach 74' 4" in height. SNAP limits commercial-only projects such as this one to 35', but allows projects containing both commercial and residential components to reach 75'.

(Exhs Vol. 1, 3:57-58 [AR 588-589]) The primary basis for granting this exception was the need to accommodate the other SNAP-compliant components such as parking and a pedestrian- and transit-friendly Project. Other commercial projects in the area also exceed the 35' maximum. (Exhs. Vol. 1, 3:63-66 [AR 733-736])

b. Not requiring free local delivery. (Exhs. Vol. 1, 3:62 [AR 732]) SNAP imposes an unusual obligation on large retail stores to provide free delivery for local residents. The City found that having to provide free local delivery would be an unnecessary burden on a discount use and self-defeating because it would increase local truck traffic. In addition, similar stores in the area were not providing it. (Exhs. Vol. 1, 3:62-63 [AR 732-733]) The City did require that Target post signs informing customers that free delivery could be available through Target's website. (Exhs. Vol. 1, 3:36 [AR 149 #2])

c. Allowing more parking than would normally be provided. (Exhs. Vol. 1, 3:66 [AR 736]) The City set parking between what a discount retail use usually requires and what SNAP usually allows; this balanced need with the desire to encourage the use of public transit. (Exhs. Vol. 1, 3:66-67, 85, 94 [AR 736-737, 1981, 10949]) Other nearby "large box" retailers have even higher parking ratios. (Exhs. Vol. 1, 3:94, 96-97 [AR 10949, 10994-10995]) One local resident asked that

the Project provide extra parking to replace what had recently been lost in the community. (Exhs. Vol. 1, 3:105 [AR 15944])

d. Finally, the City combined five exceptions from SNAP's subsidiary Design Guidelines because of the way they are treated in SNAP. These included allowing the entrance canopy and balconies near the street to be taller than normal, allowing the second floor of the structure to be closer to the street than normal, allowing less transparency along the ground floor facing St. Andrews Place, not using gables or similar features to break up the roof line, and allowing deliveries outside normal hours. (Exhs. Vol. 1, 3:68-73 [AR 738-743]) SNAP's design regulations provide that "valid reasons" for requesting relief "include aesthetics or architectural intent; practical or logistical concerns that emerge as a consequence of physical limitations of a site; or other design related issues that develop over time and were not anticipated." (Exhs. Vol. 1, 3:54 [AR 556]) The City found that these exceptions were necessary, especially as conditioned, to satisfy the pedestrian- and transit-friendly purposes of SNAP. (E.g., Exhs. Vol. 1, 3:47, 86 [AR 169 #129, 2025])

13. The City rejected Target's request for an exception to allow a taller sign. (Exhs. Vol. 1, 3:59-62 [AR 729-732]) Target did not contest that decision and it will not be at issue in the appeal.

### STATEMENT OF THE CASE

14. The Project has a slightly complicated litigation history. As noted above, the City Council first approved the Project with a negative declaration in 2010. After LA MIRADA filed suit, Target and the City voluntarily elected to prepare an EIR and this Court rejected the remainder of LA MIRADA's lawsuit.

15. The City Council then approved the Project unanimously with an EIR in November 2012. The next month, LA MIRADA filed a second lawsuit. In addition, a group named CITIZENS COALITION LOS ANGELES ("CITIZENS") filed its own lawsuit as well, Los Angeles Superior Court Case No. BS140930.

16. Trial in the two cases was delayed by several factors beyond Target's control. First, as explained above, the City Council re-heard the Project "out of an abundance of caution" after a procedural claim was raised. (AR 316/11200) LA MIRADA and CITIZENS then each filed amended petitions, which became the operative pleadings for trial. (Exhs. Vol. 1, 1:1-18 and 2:19-29) In addition, there was a dispute between LA MIRADA and the City regarding the contents of the administrative record. Finally, LA MIRADA and CITIZENS each filed peremptory challenges; as the cases had been consolidated for trial (but not consolidated generally), this tactic caused additional delays.

17. The LA MIRADA and CITIZENS lawsuits were tried together but were never completely or formally consolidated. Trial briefs were finally filed

in December 2013 (Exhs. Vol. 1, 4:124-158 and 5:159-178), January 2014 (Exhs. Vol. 1, 6:179-212 and 7:213-230), and February 2014 (Exhs. Vol. 1, 8:231-267 and Vol. 2, 9:268-278). The writ trial took place on February 27, 2014. (Exhs. Vol. 2, 10:279-311 and 11:312-358) The trial court issued a tentative statement of decision on June 23, 2014 (Exhs. Vol. 2, 12:359-373); heard argument (Exhs. Vol. 2, 13:374-396); and considered objections (Exhs. Vol. 2, 14:397-409, 15:410-481, 16:482-495, and 17:496-532). On July 17, 2014 the trial court issued a final decision that included an appendix addressing some previously omitted issues (Exhs. Vol. 3, 18:533-560) (together, the “Decision”). (Another Target submittal, Exhs. Vol. 3, 19:561-562, was filed without knowing that the Decision, which had been served by regular mail, had already been filed.) After La Mirada submitted another proposed Judgment and Writ, Target objected (Exhs. Vol. 3, 23:579-580), and La Mirada responded (Exhs. Vol. 3, 24:581-582), the trial court entered Judgment (Exhs. Vol. 3, 25:583-593) and issued a Peremptory Writ of Mandamus (Exhs. Vol. 3, 26:594-597). The caption of the Judgment and Writ lists both cases, but despite Target’s objection that this would lead to confusion (Exhs. Vol. 3, 23:580 lines 9-13) and LA MIRADA’s assurance that the Judgment could simply be entered in the trial court files for both cases (Exhs. Vol. 3, 24:582 line 9), as of this writing both documents had been entered only in the Superior Court’s file for the LA MIRADA case. The Superior Court had not entered either document in



its file for the CITIZENS case, which it has been maintaining separately from the LA MIRADA case.

18. The Decision and Judgment invalidate the exception for height; invalidate the design exceptions, largely on the grounds that they had been combined; and invalidate the exception that exempted the store from providing free delivery to local residents. The Decision and Judgment upheld the exceptions for additional parking and longer delivery hours. The Decision and Judgment rejected the CEQA challenges – validating the certified EIR – and rejected the fair hearing/Brown Act challenges.

19. Target filed a Notice of Appeal in the LA MIRADA case on August 5, 2014. Target will file a Notice of Appeal in the CITIZENS case (and then move to consolidate the appeals) when Judgment is entered in the CITIZENS case, or within sixty days of notice of entry based on the dual-captioned Judgment filed in the LA MIRADA case. The Writ was apparently served on the City on August 12, 2014 (Exhs. Vol. 3, 26:594 upper right), despite the filing of the appeal having automatically stayed the Judgment.

#### STATEMENT OF FACTS: SNAP AMENDMENT AND CONSTRUCTION

20. Target discussed amending SNAP with the City Council office on June 17, 2014, before the trial court issued its tentative decision. Target initiated this discussion not in anticipation of losing at trial, but rather in the hope of avoiding more years of litigation and appeal. There have been several

conference calls among Target, officials of the City's Planning Department, and the City Attorney's office, during which the parties discussed amendments that would be acceptable to the City's planning professionals.

21. Sections 11.5.7G and 12.32 of the City's Municipal Code together address the initiation of amendments to specific plans. The City's Director of Planning supplemented this in a memorandum providing for private parties to begin the process with a "request." (Exhs. Vol. 3, 21:573-574) Target submitted such a written request on July 15, 2014. (Exhs. Vol. 3, 22:575-578) Staff then evaluates the request and makes suggestion for a more formal submittal. Staff has informally estimated that the amendment process will take about a year.

22. The City retains full discretion over what environmental document to use for the amendment and whether to approve the amendment. However, two facts and two conclusions are worth noting. First, with regard to environmental review, the amendment Target has requested has been designed to fit within the certified and *court-approved* EIR. (Exhs. Vol. 3, 22:575-576) Second, the Project, as opposed to a stand-alone Target store, was the City's idea and has been unanimously approved by the City Council three times. These facts lead to two conclusions: First, approval in a form that will stand up in court is virtually certain. Second, the amendment will render the challenges to the

exceptions moot because the amendments will allow for plan compliance without needing exceptions.

23. Target began construction in good faith, relying on the City Council's three unanimous approvals and a very thorough EIR. The draft EIR Target has been citing (Tab 55 of the administrative record) contains 578 pages without the technical appendices; the final EIR Target has been citing (Tab 26 of the administrative record) contains 85 pages of additions to the draft. The foundation has been poured and vertical walls put up. The roof has been completed at its ultimate height and design except for signs. Currently, workers are putting up exterior framing and sheeting, and tying the roof to the perimeter and parapet; a sign company is surveying the site. Workers are also installing heating, ventilation and air conditioning, plumbing, fire sprinklers and overhead refrigeration; framing the interior office areas and stockroom demising wall; putting rough electrical into the offices and store entryway; installing masonry at stairwells; pouring concrete at stairwells and at the top of the generator room; performing preparation work for the concrete slab at the access driveway at DeLongpre Avenue; installing waterproofing at the perimeter of the second floor garage; and installing fireproofing of the stockroom deck. The Exhibits include a set of photographs showing the state of construction in mid-July. (Exhs. Vol. 3, 20:563-572)

24. The following breaks down recent on-site employment:

	<b>Company</b>	<b>Trade</b>	<b># of Workers</b>	<b>Union Yes / No</b>
1	Target	OSR	2	No
2	Whiting-Turner	Management	8	No
3	Whiting-Turner	Laborers	2	No
4	Securitech	Security	2	No
4	Koury	Deputy Inspectors	2	No
5	Qualtec	Concrete	14	Yes
6	Superior	Framing	64	Yes
7	JD 2	Steel	5	Yes
8	Christain Brothers	HVAC	11	No
9	Sundance	Plumbing	7	No
10	GBC	Masonry	3	No
11	Emmons	Roofing	5	No
12	Source	Refrigeration	4	No
13	Swain	Signs	1	No
14	Cabrillo Hoist	Lift Operator	1	Yes
15	Neptune	Fire Sprinklers	11	No
16	PM Electric	Electrical	15	No
17	System	Waterproofing	3	No
18	Aztec	Fire/ Burg Alarms	2	No

25. Some workers are not needed on some days, resulting in roughly seventy-five workers being present – and deriving income for themselves and their families – at some point in a typical day.

26. Construction requires many tens of millions of dollars in construction costs, invested in the City of Los Angeles. Target anticipated that the store would be ready to open in March 2015. Any delays will postpone (or worse) the employment of roughly 100-200 jobs in the store and more in the other retail uses in the Project; it will cost Target millions of dollars per month in revenue; and it will cost the City millions in sales tax revenue alone.

27. If the Court does not grant relief from the statutory stay, Target will have to suspend or cancel the construction contracts, resulting in a large cost to Target and the loss of about a hundred jobs. (Seventy-five workers are on site in a typical day, but as the chart above shows, the number relying on this Project for their livelihoods – in an already difficult economy – is higher.) The attached photos (Exhs. 20) show unsafe projections and the like. (Although the issued Writ requires the City “to immediately and safely secure the Project site” Exhs. Vol. 3, 26:597 line 12), safety problems that could arise on a non-working site are unpredictable.) The result will establish that no permit – even one approved unanimously three times during six years after the application was made – is secure until after years of litigation, even when the supposed permit flaw will be remedied.

28. Relief from the statutory stay, whether by “order” or writ of supersedeas, is necessary to preserve the status quo, preserve the effectiveness of a judgment subsequently to be entered, and otherwise in aid of the Court’s jurisdiction. The “status quo” is continuation of construction – the ongoing employment of dozens of workers and union members – not simply what is currently there. Target is beneficially interested as the Project’s developer.

29. In the alternative, a writ of mandate is necessary. Target has no plain, speedy, and adequate remedy in the ordinary course of law because of the irreparable harm that would occur while an appeal is decided.

PRAYERS

30. Target therefore requests that this Court, pending determination of this appeal and/or approval of the SNAP amendments:

a. Grant relief from the statutory stay of the exceptions. This could be by an order and/or writ of supersedeas to the trial court, and/or an order and/or writ of mandate to the City, requiring that the City maintain the effectiveness of existing construction permits and issue such additional permits as are necessary to allow Target to complete construction and begin operations of the Project. Target is not asking the Court to restrict the City's customary authority to place conditions on and provide inspections relating to those permits, only that the permits be honored and issued without regard to the statutory stay, i.e., as if no judgment or writ had been issued nullifying the exceptions;

b. Stay the appeal pending a City Council decision on the SNAP amendment, on such terms as the Court deems appropriate;

c. Award Target its costs for this Petition from any party opposing it;  
and

d. Grant such other and further relief as this Court believes appropriate.

DATED: 8/13/19 **HECHT SOLBERG ROBINSON GOLDBERG & BAGLEY LLP**

By: \_\_\_\_\_

  
RICHARD A. SCHULMAN, Attorneys for  
Petitioner TARGET CORPORATION

**VERIFICATION**

I am the Senior Director, Construction for Petitioner TARGET CORPORATION in this matter and am authorized to make this Verification on its behalf. I have read the foregoing **PETITION FOR RELIEF FROM STATUTORY STAY AND/OR FOR WRIT OF SUPERSEDEAS AND/OR MANDATE; STAY OF APPEAL REQUESTED** and know the contents thereof. I certify that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed on 8/13/14, 2014, at Minneapolis, Minnesota.

  
\_\_\_\_\_  
STEVE MAKREDES

///

///

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**SECOND APPELLATE DISTRICT**

**LA MIRADA AVENUE  
NEIGHBORHOOD ASSOCIATION OF  
HOLLYWOOD,**

**Respondent (on appeal)/  
Plaintiff (at trial)  
Real Party In Interest  
(this Petition)**

**v.**

**CITY OF LOS ANGELES, et al.,**

**Respondent (on appeal).  
Defendant (at trial)  
Real Party In Interest  
(this Petition)**

**TARGET CORPORATION,**

**Appellant (on appeal)  
Real Party in Interest (at trial)  
Petitioner (this Petition).**

**CIVIL CASE NO. B258033**

**LOS ANGELES SUPERIOR  
COURT CASE NO. BS 140889  
[Related Case No. BS 140930]**

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF PETITION**

Petitioner TARGET CORPORATION respectfully submits these points  
and authorities in support of the accompanying Petition.

**I**

**RELIEF IS NECESSARY TO AVOID UNNECESSARY HARM,**

**WASTE, AND INTERFERENCE WITH THE CITY'S PROCESS**

Target's appeal automatically stayed the trial court's Judgment and Writ.  
CODE OF CIVIL PROCEDURE §916. However, CODE OF CIVIL PROCEDURE  
§1094.5(g), applicable because the Writ was one of administrative mandate,  
also stays the City's decision that is the subject of the Writ, i.e., granting the



exceptions. Staying the exceptions creates a problem because it leaves further construction unauthorized. Fortunately, CODE OF CIVIL PROCEDURE §1094.5(g) allows “the court to which the appeal is taken” to “otherwise order.”

**A. Relief Is Necessary And Appropriate To Avoid Harm, Waste, And Interference With The City’s Process And Authority.**

No authority provides a comprehensive list of factors for the Court to consider in this situation, but the balancing of hardships, benefits, and other practical matters all appear to be relevant. *Building Code Action v. Energy Resources Conservation & Development Commission* (1979) 88 Cal.App.3d 913, 922. The primary basis of this Petition is practical: Not granting relief would throw people out of work, cost a lot of money, and interfere with the City’s process – all for nothing, given the high probability that a SNAP amendment will avoid the defects found by the trial court.

The enactment of SNAP amendments rendering the exceptions unnecessary is very likely. Target has already begun the amendment process and has plenty of incentives to pursue it to completion. The Project requiring the exceptions was the City’s idea, and the City Council unanimously approved the Project three times. One councilmember even offered praise for perseverance in the face of litigious opposition. (Exhs. Vol. 1, 3:91 [AR 9766:9-10] [“you’ve done the right thing here. You’ve stuck with it”]) As the findings state, the Project is much better than the lone store without the

exceptions. (E.g., Exhs. Vol. 1, 3:64 [AR 734] [will “promote the SNAP goal of providing for lively pedestrian uses and a walkable environment”] The trial court did not disagree with this conclusion, only with the narrower issue of whether it justified an exception. (E.g., Exhs. Vol. 3, 18:537] This is not like anticipating a change in a statewide law, such as a rewriting of CEQA; rather, it is a carefully directed change that is very likely to be approved because the decision-making agency has already, and repeatedly, supported the underlying concept.

Similarly, the Court can expect that the amendments will be valid. The adoption of an amendment to a city’s general plan and to any specific plan, such as SNAP, is a “legislative act,” e.g., *Chandis Securities Co. v. City of Dana Point* (1996) 52 Cal.App.4th 475, 481, whose substance is only reviewable for being “arbitrary, capricious, [or] entirely lacking in evidentiary support,” e.g., *South Orange County Wastewater Authority v. City of Dana Point* (2011) 196 Cal.App.4th 1604, 1619. The Project’s EIR was certified recently and the trial court upheld it. The SNAP amendment will affect few or no other properties, so none of the circumstances requiring major new environmental analysis are likely to occur. PUBLIC RESOURCES CODE §21166.

Target has acted in good faith. Target applied for the Project in 2008. (Exhs. Vol. 1, 3:89-90 [AR 8460, 8462]) It revised its plans to accommodate the City and stakeholder requests. (Exhs. Vol. 1, 3:100 [AR 11813]) The City

Council unanimously approved the Project with a mitigated negative declaration in 2010 and with an EIR in 2012. Target began demolition of the existing structures on the site in good faith reliance on those approvals. (Exhs. Vol. 1, 3:93 [AR 10686]) Target did not begin vertical construction until after the *third unanimous* approval of the Project occurred in 2013, again with an EIR. Beginning then was reasonable, given that it was five years after the application had been submitted and three years after the project had first been approved.

*Mills v. County of Trinity* (1979) 98 Cal.App.3d 859, illustrates the balancing of harms. There, the trial court issued a writ of mandate barring the enforcement of a new fee. The Court of Appeal issued a writ of supersedeas after balancing interim harms, without even attempting to evaluate the merits:

We have fully considered the respective rights of the litigants in this appeal and conclude that stay of the judgment is necessary to protect the appellants from the irreparable injury they will necessarily sustain in the event their appeal is deemed meritorious. A stay will not result in disproportionate injury to respondent in the event of an affirmance, since excessive fees may easily be refunded.

*Id.* at 861.

Similarly, here, not only Target but dozens of workers and their families will suffer. Millions of dollars in investment will be stopped, and any delays will postpone, or worse, the hiring of a couple hundred people and millions of dollars in sales tax revenue for the City. Although LA MIRADA and CITIZENS can claim that the public is being harmed by relying on invalid exceptions, that argument would miss the point because the City can and presumably will render the exceptions unnecessary. Furthermore, the building has already reached its planned height, which was the subject of the primary exception; the ongoing construction work will not increase that height.

*Downtown Palo Alto Committee for Fair Assessment v. City Council* (1986) 180 Cal.App.3d 384, illustrates appellate mootness resulting from a change of law. There, the plaintiffs sought a writ of mandate invalidating an improvement district. Although the trial court denied the writ, the city later dissolved the district anyway. The appellate court addressed the underlying legal issues, but only because they were “likely to recur”; the dispute itself was moot and no relief could be granted:

As a threshold matter, the dissolution of the improvement district by the City subsequent to the judgment has rendered moot the issues presented on appeal. The validity of the ordinance is no longer of consequence to the parties before this court. Any ruling by this court can have no

practical impact or provide appellants effectual relief. *Id.*

at 391.

Similarly, here, if the City Council enacts the requested SNAP amendments, the exceptions go away. This Court has seen a similar situation and itself has suggested a legislative solution that would render the dispute academic. *Horwitz v. City of Los Angeles* (2004) 124 Cal.App.4th 1344, 1356 (“Under these circumstances, there is only one more thing to be said—that it is time for the City to amend the relevant portions of the Municipal Code”).

The City still (or again) has jurisdiction over the Project, which will be subject to the City’s final, effective legislation. This would be true even if the City had not finalized its findings because the City retains an “unexercised power to proceed within its jurisdiction.” *Moss v. Board of Zoning Adjustment* (1968) 262 Cal.App.2d 1, 8. By prohibiting any act “in furtherance of construction of the Project,” (Exhs. Vol. 3, 26:597 lines 8-9), the trial court’s writ interferes with the City’s authority and process; it is up to the City to use its administrative processes to “mitigate[] damages,” exercise its “expertise,” and “unearth[] the relevant evidence.” *Campbell v. Regents of the University of California* (2005) 35 Cal.4th 311, 321-322 (exhaustion of administrative remedies).

Indeed, construction to the height and with the features allowed by the exceptions suggests that the exception issue – the only issue on which LA

MIRADA or CITIZENS prevailed – is already moot. E.g., *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573-1579. At the trial court's hearing on its tentative decision, LA MIRADA cited *Woodward Park Homeowners Association v. Garreks, Inc.* (2000) 77 Cal.App.4th 880, to argue that relief was still possible even after construction had been completed. (Exhs. Vol. 2, 13:394) As *Wilson & Wilson* noted, though, construction in *Woodward Park* had proceeded "in violation of a court order," *Wilson & Wilson, supra*, 191 Cal.App.4th at 1579-1580, which is not true here. Moreover, *Woodward Park* was a CEQA case in which mitigation was still possible, *Wilson & Wilson, supra*, 191 Cal.App.4th at 1580, while here the trial court upheld the EIR and the matter at issue is height, which has already been reached. Even if the exceptions are not already moot, though, stopping construction while they are being rendered moot would be pointless. Halting the Project now would send a message that no one can build – not only until after years of litigation have passed, but not even when the litigation was about to be rendered irrelevant.

For that matter, even CEQA cases allow operations to continue when appropriate. For example, in *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, the county began operating a jail under an EIR that the trial court upheld but which the appellate court later found to be inadequate. The appellate court allowed operation of the jail to continue because the county had

the “good faith and ability” to correct the problem. The appellate court presumed the opposition and trial court would “closely monitor the County’s progress” and deferred to the trial court what action to take if the county began “dragging its feet.” *Id.* at 1456.

Target cannot guarantee that the City will approve the SNAP amendments, but conversely Target is not relying on a purely speculative rewriting of CEQA, case law, or land use law. The history of this Project makes it very, very likely that SNAP will be amended – certainly, likely enough to allow the exceptions to remain in effect for now.

**B. This Court Has Several Procedural And Mechanical Means Available To Grant Relief.**

The Court’s authority to act is not in question. CODE OF CIVIL PROCEDURE §1094.5(g) expressly allows this Court to order “otherwise” than the automatic stay of the City’s decision. In addition, CODE OF CIVIL PROCEDURE §923 allows this Court “to stay proceedings during the pendency of an appeal or to issue a writ of supersedeas or to suspend or modify an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo, the effectiveness of the judgment subsequently to be entered, or otherwise in aid of its jurisdiction.”<sup>1</sup>

---

<sup>1</sup> CODE OF CIVIL PROCEDURE §1110b is inapplicable, as it would concern a request by LA MIRADA or CITIZENS.

Writs raise unusual technical issues, so Target will briefly address possible writs. There is a distinction between writs “‘on the merits,’ such as mandamus, certiorari, and prohibition, which themselves grant the substantive or procedural relief sought by the petitioner; and purely auxiliary writs such as supersedeas, which have the sole function of preserving the court’s jurisdiction while it prepares, usually in the context of an appeal, to rule on those merits.” *People ex rel. San Francisco Bay Conservation Commission v. Town of Emeryville* (1968) 69 Cal.2d 533, 538.

A writ of supersedeas would be appropriate to nullify the automatic stay engendered by the trial court’s Judgment. Irreparable harm might or might not be required. *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors* (1967) 255 Cal.App.2d 51, 53. The writ would be directed at the lower court to ensure “maintenance of the status quo while an appeal is pending.” *In re Karla C.* (2010) 186 Cal.App.4th 1236, 1261n17. “Its purpose is to preserve to an appellant the fruits of a meritorious appeal, where they might otherwise be lost to him.” *West Coast Home Improvement Company, Inc. v. Contractors’ State License Board* (1945) 68 Cal.App.2d 1, 5. “Supersedeas is available in a corrective capacity where there is a statutory [sic] stay.” *Estate of Hultin* (1947) 29 Cal.2d 825, 833. Supersedeas is thus highly appropriate to maintain the status quo and to preserve the fruits of a meritorious appeal; the



possibility of a job at some point in the future is almost meaningless to a construction worker thrown out of work for nothing.

It is important to realize that the status quo here is not an unfinished building, but rather the effectiveness of the exceptions and the construction and employment the exceptions authorize. Stopping that ongoing process is what would cause the economic harm and the hardship for the workers. Viewing the “status quo” as merely today’s state of construction would throw dozens of people out of work. Freezing construction is a change to the status quo.

In the alternative, mandate would be appropriate to compel the City to honor and issue permits without regard to the automatic stay, as if the exceptions were still in effect. Target is beneficially interested as the developer of the Project. CODE OF CIVIL PROCEDURE §1086. It lacks an adequate legal remedy because of the time needed for an appeal to be resolved. CODE OF CIVIL PROCEDURE §1086. The Petition was verified. CODE OF CIVIL PROCEDURE §446, §1086.

A stay of the appeal is appropriate to avoid a waste of the Court’s and parties’ resources arguing over something – the exceptions – that will be rendered moot. When a governing law changes, judicial review must ordinarily be under the amended law. *E.g., Building Industry Association v. City of Oxnard* (1985) 40 Cal.3d 1, 3. This Court would be unable to grant LA MIRADA or CITIZENS any relief regarding them, because the exceptions

would be “no longer of consequence.” Even if the exceptions are not already moot, they will be if and when the Council approves the SNAP amendments, so this Court should stay Target’s appeal pending action on the SNAP amendment. *Neman v. Commercial Capital Bank* (2009) 173 Cal.App.4th 645, 653-654.

This Court has the authority to choose the appropriate mechanism. E.g., *Westly v. California Public Employees’ Retirement System Board of Administration* (2003) 105 Cal.App.4th 1095, 1104n9 (petition for writ of supersedeas “treated as” request for stay). Stopping construction or destroying existing work is unjustifiable and pointless when the problem is almost certain to be rendered moot.

### **CONCLUSION**

Target acted in good faith based on the City’s repeated approval of a Project that the City itself had requested. Construction contractors hired workers in similar good faith reliance on the City’s approvals. The job site provides employment for dozens of workers each day, many of whom are union members. Allowing construction to stop because the exceptions were stayed would throw people out of work, cause extreme hardship to many families, and cause waste, only for the issue to be rendered moot by Council action. It will needlessly delay operational employment. Target proceeded under what it reasonably believed were validly-issued permits. If the Court chose not to grant relief, the effect would be that nobody could build anything in California until

after years of challenges and appeals had been exhausted, even if the issues could be rendered moot.

Petitioners respectfully request that this Court issue an order or writ to the trial court and/or City granting relief from the statutory stay of the exceptions so as to allow the exceptions to remain in effect pending the SNAP amendment and appeal. The City would thus honor existing construction permits and issue such additional permits as are necessary to allow Target to complete construction of the Project and open the store. The City would reserve its customary issuance and inspection authority. Otherwise, no permit would be safe until after years of utterly pointless litigation, litigation that will be rendered academic.

Target also requests a stay of its appeal, on such terms as the Court deems appropriate, to avoid wasting the Court's and the parties' resources arguing over exceptions that are almost certain to be rendered moot.

Dated: 8/10/17 **HECHT SOLBERG ROBINSON GOLDBERG &  
BAGLEY LLP**

By: 

RICHARD A. SCHULMAN  
Attorneys for Petitioner TARGET CORPORATION

### **CERTIFICATE RE LENGTH OF BRIEF**

I am the lead attorney for Petitioner TARGET CORPORATION. According to my computer's word count (using Word 2010, which counts each numerical citation separated by a space as a word), this document contains a grand total of 7,403 words. This figure includes everything – cover page, tables, text, and this certificate.

Dated: 8/12/14

HECHT SOLBERG ROBINSON GOLDBERG  
& BAGLEY LLP

By: \_\_\_\_\_

  
RICHARD A. SCHULMAN  
Attorneys for Petitioner TARGET  
CORPORATION

# Exhibit 6

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

COURT OF APPEAL – SECOND DIST.

**FILED**

Sep 03, 2014

JOSEPH A. LANE, Clerk

Eva McClintock Deputy Clerk

TARGET CORPORATION ,

B258033

Appellant,

(Super. Ct. No. BS140889)

v.

(Richard C. Fruin, Jr., Judge)

LA MIRADA AVENUE  
NEIGHBORHOOD ASSOCIATION OF  
HOLLYWOOD and CITY OF LOS  
ANGELES,

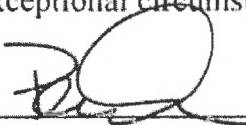
Respondents.

ORDER

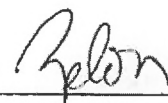
THE COURT:

The court has read and considered the petition for relief from statutory stay (Code Civ. Proc., § 1094.5, subd. (g)) filed on August 14, 2014. The court has also read and considered the response filed by respondent City of Los Angeles on August 28, 2014, and the response filed by respondent La Mirada Avenue Neighborhood Association of Hollywood on August 29, 2014. The petition is denied.

The parties shall file all briefs within the minimum periods of time specified in the California Rules of Court. No extensions of time will be granted absent exceptional circumstances.

  
PERLUSS, P. J.,

  
WOODS, J.,

  
ZELTON, J.