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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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CP III CENTREPOINT, LLC, a
Delaware limited liability company,

Plaintiff,

vs.

CITY OF SAN DIEGO, a municipal
entity; KELLY BROUGHTON, in his
capacity as Director of the Development
Services Department of the City of San
Diego; and AFSANEH AHMADI, in her
capacity as the Chief Building Official of
the Development Services Department of
the City of San Diego,

Defendants.

Case No. '13CV1089 L NLS

COMPLAINT FOR:

- 1. Injunctive Relief (Mandamus)
- 2. Declaratory Judgment
- 3. Violation Of 42 U.S.C. § 1983 (Procedural Due Process)
- 4. Violation Of 42 U.S.C. § 1983 (Equal Protection)
- 5. Violation of Cal. Const. Art. I § 7(a) (Procedural Due Process)
- 6. Violation of Cal. Const. Art. I § 7(a) (Equal Protection)

DEMAND FOR JURY TRIAL

Plaintiff CP III Centrepont, LLC ("Centrepont") alleges upon knowledge as to itself and its own actions, and upon information and belief as to all other matters, against Defendants City of San Diego (the "City"), Kelly Broughton in his capacity as Director of the Development Services Department of the City of San Diego (the "Director"), and Afsaneh Ahmadi, in her capacity as the Chief Building Official of the Development Services Department of the City of San Diego ("Chief Building Official") as follows:

1 **NATURE OF THE ACTION**

2 1. This is an action to, *inter alia*, enforce the provisions of the San Diego
3 Municipal Code ("SDMC") and to remedy the City's violation of Centrepoint's
4 federal and state constitutional rights to procedural due process and equal protection.
5 Centrepoint is the owner of certain real property located within the City, as further
6 described below. Centrepoint applied for permits to build a mixed-use
7 commercial/residential project, as further described below, on that property. The
8 City confirmed that the project to be constructed by Centrepoint was subject to
9 ministerial approval; the City approved the project in accord with its ministerial
10 duties; and the City issued permits authorizing demolition, grading, and
11 construction. Centrepoint entered into contracts for the construction of the project,
12 and commenced construction, including demolition of existing improvements,
13 grading, and construction of new structures and other improvements.

14 2. After construction began, residents of the area complained about the
15 project because it is located near San Diego State University and is likely to be
16 occupied by some number of students. Opponents of the project contacted the
17 Development Services Department of the City of San Diego ("DSD") to inquire
18 about the approval of the project. In response, DSD confirmed that the project was
19 subject to ministerial approval, that it complied with all applicable regulations, and
20 that the approval of the project was therefore mandatory and City staff had no legal
21 authority to deny the permits for the project.

22 3. In an apparent attempt to curry favor with those vocal members of the
23 electorate opposed to the construction of the project, and with intended
24 discriminatory result, Mayor of the City of San Diego Robert Earl "Bob" Filner (the
25 "Mayor") then instructed the Director to issue an order halting construction of the
26 project. On March 22, 2013, DSD sent an email to Centrepoint informing
27 Centrepoint that an "administrative hold" had been placed on the project because,
28 contrary to all previous approvals and confirmations that the project was subject to

1 ministerial review, the project was now to be subject to discretionary review. The
2 position of DSD now is that Centrepoint is required to obtain additional permits and
3 approvals following public hearings. The City, through the Chief Building Official,
4 now refuses to conduct inspections of the construction site, claiming that the
5 existing permits issued by the City are not valid, thereby effectively preventing
6 Centrepoint from continuing with the project.

7 4. If Centrepoint is unable to continue with construction, it will be
8 irreparably harmed in that its constitutional rights will have been violated, its
9 reputation damaged, its contractual relationships with consultants, contractors, and
10 material suppliers jeopardized, construction already completed may be lost to waste
11 and/or may become an attractive nuisance, and Centrepoint's ability to perform
12 under its loan for the construction of the project may be impaired. In addition, the
13 actions of Defendants have discriminatory intent and effect.

14 5. Accordingly, Centrepoint seeks declaratory and injunctive relief for
15 Defendants' violation of the City's development procedures and Centrepoint's
16 constitutional rights. Moreover, Centrepoint seeks to recover all money damages
17 caused by Defendants' conduct.

18 JURISDICTION AND VENUE

19 6. Centrepoint seeks, *inter alia*, to remedy the City's violation of
20 Centrepoint's federal constitutional rights, pursuant to 42 U.S.C. § 1983.
21 Accordingly, this Court has subject matter jurisdiction over this action under 28
22 U.S.C. §§ 1331 and 1343.

23 7. This Court has supplemental jurisdiction over the state law claims
24 herein, pursuant to 28 U.S.C. § 1367, because these state law claims are so related to
25 the federal law claims over which this Court has original jurisdiction that they form
26 part of the same case and controversy under Article III of the United States
27 Constitution.

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1 8. Venue is proper in this District under 28 U.S.C. § 1391, because all of
2 the Defendants reside in this District, the property that is the subject of this action is
3 located in this District, and a substantial part of the events or omissions giving rise
4 to Centrepont's claims occurred in this District.

5 **THE PARTIES**

6 9. Plaintiff CP III Centrepont, LLC is a Delaware limited liability
7 company, authorized to conduct and conducting business in the State of California
8 at the time of the acts alleged herein.

9 10. Defendant City of San Diego is a municipal entity in the State of
10 California.

11 11. Defendant Kelly Broughton is a citizen of the State of California and is
12 being sued in his capacity as Director of DSD.

13 12. Defendant Afsaneh Ahmadi is a citizen of the State of California and is
14 being sued in her capacity as the Chief Building Official of DSD.

15 **FACTUAL BACKGROUND**

16 **The Property And The Project**

17 13. Centrepont is the owner of that certain real property located, generally,
18 at the intersection of 63rd Street and El Cajon Blvd., in the City of San Diego,
19 commonly known as, and with addresses including, 6303 El Cajon Blvd., 6345 El
20 Cajon Blvd., 6351 El Cajon Blvd., 6363 El Cajon Blvd., 4645 63rd St., 4720
21 Seminole Dr., and 4740 Art St., San Diego, California, 92115 (the "Property").

22 14. Centrepont has obtained permits for construction of a mixed-use
23 project on the Property consisting of 332 residential apartment units and
24 approximately 10,000 square feet of commercial space in four buildings, and a
25 parking structure (the "Project"). In reliance on the permits issued by the City, as of
26 the filing of this Complaint, demolition of existing structures and the grading of the
27 Property are complete. Construction of improvements has commenced, but is not
28 completed.

1 **Centrepoint Acquired The Property And The City Ministerially Approved**
2 **The Project And Issued Permits For The Project**

3 15. On January 26, 2006, prior to Centrepoint's involvement with the
4 Property, a discretionary Site Development Permit and vesting tentative subdivision
5 map were approved for a project on the Property consisting of for-sale residential
6 units, with certain deviations from zoning and/or code requirements (such as
7 allowing tandem parking).

8 16. In connection with its due diligence for the purchase of the Property,
9 Centrepoint investigated the possibility of building a project on the Property that
10 would be subject to ministerial, rather than discretionary, approval. Centrepoint
11 submitted due diligence questions to the City, met with representatives of DSD, and
12 submitted applications and plans to DSD. Centrepoint was repeatedly informed by
13 the City that construction of the Project it proposed would be subject to ministerial
14 review, provided the previous discretionary approvals were rescinded. For example,
15 on or about January 11, 2012, DSD sent an email to Centrepoint which stated:

16 The approved SDP [site development permit] allowed for
17 deviations (as an affordable housing project) to count
18 tandem parking spaces toward the required parking and to
19 allow a "variance" to the allowable unit mix/type per the
20 City's Inclusionary Housing Ordinance. **If the project no
21 longer requests deviations, the project can be
22 processed ministerially if the SDP and VTM are
23 rescinded and if the project complies with all current
24 requirements.** Please be aware that the project site is
25 located within the Campus Impact Overlay Zone. If the
26 SDP and VTM are rescinded and a new project is
27 proposed, the project shall comply with current
28 requirements for parking. [Emphasis added.]

23 17. In reliance on the City's assurances that it could build a project that
24 would be processed ministerially, on February 2, 2012, escrow closed for
25 Centrepoint's purchase of the Property. Centrepoint proceeded with plans for the
26 Project, which did not include deviations from the SDMC.

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1 18. The City's development procedures include a "Preliminary Review"
2 process. The Preliminary Review process and its purpose is explained by the City in
3 the City's Information Bulletin 513, entitled "Preliminary Review," which states as
4 its purpose: "This information bulletin describes the Preliminary Review service we
5 [the City] offer to our customers." Among other things, Information Bulletin 513
6 informs the public:

7 The information provided to you during preliminary
8 review is valid for one year from the date of the
9 correspondence, except if 1) the code on which this
10 information is based is changed; 2) emergency legislation
11 is enacted by City Council; or 3) there is a change in the
12 project scope. Our goal is to give you the information you
13 need to make informed decisions about how to proceed
14 with the design of your project.

15 None of the exceptions to the one year validity of information provided by the City
16 during the Preliminary Review process applies to the Project.

17 19. Centrepoint submitted the Project to the City for Preliminary Review,
18 pursuant to the City's process. On or about February 9, 2012, Centrepoint submitted
19 to the City a Single Discipline Preliminary Review – Planning Application and a
20 Single Discipline Preliminary Review – Map Check Application, which described
21 the Project. Centrepoint's applications also asked when the previously approved
22 entitlements should be canceled so that the Project could proceed ministerially, and
23 again asked for confirmation that the Project could be developed ministerially. The
24 City confirmed that the Project could be processed ministerially.

25 20. On or about April 10, 2012, Centrepoint submitted to the City a Multi
26 Discipline Preliminary Review for the Project, which included multiple pages of
27 specific questions and requests. Among the questions and requests submitted was
28 the following:

The applicant intends to rescind the Site Development Permit for the project property and proceed to develop the project represented in the submittal as a project as-of-right without a Site Development Permit. Please confirm that the project represented in this submittal complies with all applicable development regulations and can be built on the

1 project site without a Site Development Permit or Planned
2 Development Permit.

3 On or about May 7, 2012, City reviewers from various disciplines responded to the
4 April 10, 2012, submission, and again provided written confirmation that the Project
5 could proceed ministerially, without the need for discretionary approval such as a
6 Site Development Permit or Planned Development Permit.

7 21. With the City having confirmed that the Project did not require
8 discretionary approval, Centrepoint began applying for permits. On or about June 7,
9 2012, Centrepoint submitted to the City an application for a grading permit for the
10 Project, and on or about July 18, 2012, Centrepoint submitted to the City an
11 application for a public improvements permit for the Project.

12 22. During the Preliminary Review process, the City advised Centrepoint
13 that it should consolidate the two lots on which the Project was to be built. Per the
14 City's recommendation, on or about August 14, 2012, Centrepoint submitted to the
15 City an application for a lot consolidation in connection with the Project, including a
16 map.

17 23. On or about August 24, 2012, Centrepoint submitted an application for
18 cancellation of the previously approved discretionary entitlements. On September
19 21, 2012, the cancellation of the previously-issued discretionary site development
20 permit was recorded.

21 24. On or about September 26, 2012, Centrepoint submitted to the City an
22 application for building permits for the Project.

23 25. The City approved all of Centrepoint's permit applications. On or
24 about October 29, 2012, the City issued a grading permit for the Project; on or about
25 December 4, 2012, the City issued a demolition permit for the demolition of
26 preexisting improvements on the Property; on or about December 20, 2012, the City
27 issued a building permit for the parking structure for the Project; on or about
28 February 7, 2013, the City issued a right of way permit for public improvements

1 related to the Project; and on or about February 20, 2013, the City issued building
2 permits for each of the three residential buildings and for the mixed-use
3 residential/commercial building at the Project. Centrepoint paid to the City all fees
4 associated with these permits, in the total amount of more than \$7 million in impact
5 fees alone, in addition to processing fees, and the City accepted Centrepoint's
6 payments.

7 26. In reliance upon, and as authorized by, the permits issued by the City,
8 Centrepoint began construction of the Project. Centrepoint completed demolition of
9 previously existing structures and completed grading, and began construction of the
10 buildings and the parking structure at the Project. As of the filing of this Complaint,
11 Centrepoint's contractual commitments to contractors, consultants, and suppliers for
12 the construction of the Project are in excess of \$30 million.

13 **Opponents Of The Project Complained That It Will Be Occupied By Students**
14 **And Were Informed That The Project Was Subject To Ministerial Approval**

15 27. The Property is located near San Diego State University ("SDSU").
16 However, neither Centrepoint nor the Project is affiliated with SDSU. The Project
17 is not a "dormitory" under the SDMC. A certain number of units at the Project will
18 likely be occupied by students. The law prohibits discriminatory housing practices,
19 including discrimination directed toward students.

20 28. Some residents of the area are opposed to the Project because units may
21 be occupied by students. Opponents of the Project asked the City to stop the
22 construction of the Project, improperly calling it a "dormitory" that should be
23 subject to discretionary review. Opponents of the Project sent emails to the Mayor
24 and to DSD asking that the Project be stopped.

25 29. On or about March 4, 2013, in response to inquiries from opponents of
26 the Project, the Director asked for a re-review of the plans for the Project to
27 determine if a discretionary approval was required. DSD staff informed the Director
28 that discretionary approval was not required.

1 30. On or about March 11, 2013, the Director asked DSD staff to prepare
 2 an email explaining why the Project was subject to ministerial, and not
 3 discretionary, approval. The email requested by the Director was prepared, and was
 4 circulated for review and editing by various senior members of the DSD staff. On
 5 or about March 13, 2013, the Director then sent this email to Chris Pearson, a staff
 6 representative of the Councilmember for Council District Nine of the City, the
 7 Council District in which the Project is located. The Director's email dated March
 8 13, 2013, stated, in part:

9 The Development Services Department issued building
 10 permits on February 20, 2013, for the 332 multi-dwelling
 11 unit project entitled "Carmel Luxury Apartments" (Project
 12 No. 294762). A building permit for the associated 1,091
 13 space parking structure (Project No. 295138) was issued
 14 on December 21, 2012. The site was previously subject to
 15 Site Development Permit No. 235622 (Project No. 74816),
 16 however, the permit was cancelled in September 2012
 17 under Project No. 293366, **enabling the project to be
 18 reviewed against the applicable zoning requirements
 19 under a ministerial construction permit application.**

20 Staff reviews construction permit applications based on all
 21 applicable regulations (setbacks, floor area, height,
 22 parking, landscaping, etc.) contained in the Land
 23 Development Code (LDC) **and must approve a project if
 24 it complies with all applicable regulations.** Zoning
 25 review of the building permits determined that **the
 26 Carmel Luxury Apartments projects complied with all
 27 regulations of the CUPD-CU-2-3 and CT-2-3 zones and
 28 that no discretionary permit was required.** A student
 dormitory requires approval of a Conditional Use Permit,
 however, **this project is not considered a student
 dormitory.** . . . The project provides individual dwelling
 units, consistent with the definition of a dwelling unit in
 LDC 113.0103 and was therefore reviewed as a multi-
 dwelling unit project.

**In conclusion, staff had no legal authority to deny the
 permit for this project.**

[Emphasis added.]

31. On or about March 14, 2013, after receiving the Director's email, the
 office of the Councilmember for Council District Nine sent a memorandum to the
 Mayor. This memorandum ignored the Director's confirmation that the Project does

1 not constitute a "dormitory" under the SDMC and that the City had no authority to
2 deny its construction. Instead, this memorandum demanded that the Project be
3 stopped because members of the neighborhood did not want a "sprawling
4 dormitory" to be built. Specifically, the March 14, 2013, memorandum from the
5 Councilmember to the Mayor stated:

6 My office and constituents in the Rolando neighborhood
7 have grave concerns about a project now under
construction . . .

8 It now appears this project may really be a sprawling
9 dormitory for upwards of 1100 students who attend San
10 Diego State University. This is the last thing residents of
11 Rolando want encroaching on their quiet neighborhood.
12 Yet, the city's Development Services Department now
13 informs us new permits were issued recently . . .

14 The Rolando community and our council office have made
15 it abundantly clear at town hall events and other public
16 meetings for the past five years that a dormitory is not an
17 acceptable use for this property. . . ."

18 **I also want an immediate halt to this construction
19 project until we receive an acceptable answer . . .**

20 Because of the urgent nature of this issue, we hope you
21 will support us in this effort.

22 [Emphasis added.]

23 **The City Improperly Stopped The Project**

24 32. The Mayor did decide to support the opponents of the Project. On or
25 about March 19, 2013, the Mayor attended a community meeting for the local area,
26 at which the Project was discussed. The Mayor promised that the plans for the
27 Project would be reexamined, and publicly objected to the City's procedures
28 approving the Project. The Mayor informed the attendees of the meeting that the
community members were the "real experts" on the issue and should be heard on
whether or not the Project could be built.

33. Centrepoint is informed and believes that the Mayor then ordered DSD
to stop the construction of the Project.

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1 34. To halt construction, and in effect revoke the previous approvals of the
2 Project, the Director arbitrarily imposed upon the Project the requirement to obtain a
3 discretionary Site Development Permit, citing SDMC Section 126.0502(b)(4) and
4 "Table 126-05A." These provisions do not, however, apply to the Project, which is
5 a commercial/residential mixed-use development in the Central Urbanized Planned
6 District.

7 35. Centrepoint has investigated the processing and approval of
8 developments within the City that are similar to the Project, and has not identified a
9 single such project in a commercial zone for which a discretionary Site
10 Development Permit was required based on Section 126.0502(b)(4) and Table 126-
11 05A. The City did not previously require discretionary approval for the Project, and
12 Centrepoint is informed and believes that the City has not previously required
13 discretionary Site Development Permit approval due to Section 126.0502(b)(4) and
14 Table 126-05A for other similar developments in commercial zones.

15 36. By email dated March 20, 2013, DSD staff reiterated to the Director
16 that developments such as the Project are not subject to the requirements of Table
17 126-05A and a discretionary Site Development Permit is not required.

18 37. Despite this, on March 22, 2013, the Chief Building Official sent an
19 email to Centrepoint over the Director's signature block and with the Director's
20 authorization with the subject line "RE: STOP WORK – FW: Carmel Partners
21 Centrepoint Luxury Apartments." This email informed Centrepoint that an
22 "administrative hold" had been placed on the Project. The March 22, 2013, email
23 stated that the Project was subject to Table 126-05A, and that, because the Project
24 included a lot consolidation and exceeded the threshold requirements of Table 126-
25 05A, the Project was subject to discretionary review and required a Site
26 Development Permit.

27 38. Citing the "administrative hold" placed on the Project, the City now
28 refuses to conduct inspections of completed construction performed pursuant to the

1 permits issued by the City. Because the City will not perform inspections of
2 completed phases of construction, Centrepoint cannot continue the construction of
3 the Project.

4 39. Following the transmission of the March 22, 2013 email, on March 25,
5 2013, Centrepoint met with the Director to request that the "administrative hold" be
6 lifted. In advance of this meeting, the Director notified the Mayor's office by email
7 of the meeting. The Mayor's office instructed the Director, "Be strong!" The
8 Director then advised Centrepoint that he would consider Centrepoint's request and
9 would advise Centrepoint of his decision by the end of the day. Despite repeated
10 attempts by Centrepoint to contact the Director, as of the date of this Complaint the
11 Director has yet to inform Centrepoint of any decision on Centrepoint's request.

12 40. On March 27, 2013, Centrepoint spoke with the Mayor's office about
13 the "administrative hold." Centrepoint was informed that the decision to impose the
14 hold was final. Centrepoint then met with the Mayor, in an effort to have the
15 "administrative hold" lifted and obtain the City's performance of its ministerial
16 duties in connection with the Project and under the previously issued permits as
17 required by law. The Mayor informed Centrepoint that 1) the Project was a
18 "dormitory;" 2) the Project required a discretionary Site Development Permit; 3) the
19 City made a mistake in issuing permits for the Project; and 4) Centrepoint would
20 need to talk with the community to obtain their support for the Project before it
21 could go forward.

22 41. On or about April 12, 2013, a community organization sent a letter to
23 the Mayor and the Councilmember for Council District Nine, thanking them for
24 stopping construction of the Project. The community group's letter stated, "We wish
25 to emphasize that the community 'will not and cannot' support any student apartment
26 complex on this site," and reiterated the demand that the Project be redesigned. In
27 addition, the April 12 letter requested that the City assist in obtaining improvements
28 for a local park, and improvements to streets, curbs, gutters, and sidewalks on streets

1 near the Property, by requiring that these unrelated improvements be constructed as
2 a condition of construction upon the Property. A copy of this letter was provided to
3 Centrepoint.

4 42. In an effort to resolve this matter, Centrepoint offered to agree to the
5 improper demands for unrelated improvements asserted by the community group
6 opposing the Project. On April 17, 2013, Centrepoint sent a letter to the
7 Councilmember for Council District Nine, offering to pay, in addition to the more
8 than \$7 million in impact fees already paid to the City, another \$150,000 for
9 improvements to the local park or other nearby community amenities. However,
10 Centrepoint did not agree to redesign the already approved and already under
11 construction Project.

12 43. On or about April 24, 2013, the Councilmember for Council District
13 Nine responded to Centrepoint's April 17 letter. The Councilmember's April 24
14 letter thanked Centrepoint for its "generous" offer to pay \$150,000 for unrelated
15 community improvements. The April 24 letter then continued by objecting to the
16 room configurations and layouts of the apartments in the approved Project, and
17 demanded that the Project be completely redesigned.

18 44. As of the filing of this Complaint, Defendants have not lifted the
19 "administrative hold" on the Project, and the City continues to refuse to perform
20 inspections of completed construction. With no legal basis for doing so, Defendants
21 continue to demand that Centrepoint obtain discretionary approval for the Project.
22 Though the Project satisfies all requirements of the SDMC (as the City has
23 admitted), was already approved, and is already under construction, Defendants now
24 demand that the Project be redesigned in deference to an area community group, in
25 violation of law and Centrepoint's rights.

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FIRST CLAIM FOR RELIEF

Injunctive Relief (Mandamus) Against All Defendants

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3 45. Centrepoint realleges and incorporates by reference paragraphs 1
4 through 44 of this Complaint as though fully set forth herein.

5 46. As the Director has admitted, the Project complies with the SDMC. As
6 a result, the City "had no legal authority to deny the permit for this project." All
7 permits were properly issued for construction of the Project.

8 47. Centrepoint expended considerable sums in good faith reliance on the
9 permits issued and assurances given by the City and Centrepoint has a vested right
10 in the completion of the Project. Defendants are estopped from now asserting that
11 the previously issued permits were improper or are ineffective, or that a
12 discretionary Site Development Permit is required. Defendants have a clear and
13 present ministerial duty to perform all duties required of them under the previously
14 issued permits, including the duty to perform inspections and issue approvals if
15 construction complies with code requirements.

16 48. Centrepoint has a clear and present right to construct the Project and
17 therefore a right to the performance of Defendants' ministerial duties in connection
18 with the construction of the Project.

19 49. Centrepoint does not have a plain, speedy, and adequate remedy in the
20 ordinary course of law for Defendants' wrongful conduct described herein.

21 50. To remedy Defendants' improper acts and avoid irreparable harm,
22 Centrepoint seeks injunctive relief prohibiting Defendants from continuing the
23 "administrative hold" on the Project and prohibiting defendants from requiring
24 Centrepoint to obtain a discretionary Site Development Permit for the Project.
25 Alternatively, Centrepoint seeks an order requiring that Defendants lift the
26 "administrative hold" on the Project, and requiring that Defendants perform all
27 ministerial duties in connection with the construction of the Project, including the

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1 duty to perform inspections and issue approvals if construction complies with code
2 requirements.

3 **SECOND CLAIM FOR RELIEF**

4 **Declaratory Judgment Against All Defendants**

5 51. Centrepoint realleges and incorporates by reference paragraphs 1
6 through 50 of this Complaint as though fully set forth herein.

7 52. An actual controversy has arisen and now exists between Centrepoint
8 and Defendants relating to their respective rights and duties, in that Centrepoint
9 contends that Defendants' demand that Centrepoint obtain discretionary approval for
10 the Project is invalid, unenforceable, and contrary to law. Instead, the Project is
11 subject to ministerial review, the Project has properly been ministerially approved,
12 and Defendants are legally required to perform the ministerial duties in connection
13 with the construction of the Project, including the acts of performing inspections and
14 issuing approvals if construction complies with code requirements. Defendants
15 dispute these contentions and contend that their demand that Centrepoint obtain
16 discretionary approval is valid.

17 53. Pursuant to 28 U.S.C. § 2201, Centrepoint desires a declaration that (1)
18 the Defendants' purported requirement that Centrepoint obtain a discretionary Site
19 Development Permit for the Project is improper, unlawful and invalid; (2) the
20 Project is subject to ministerial review and approval; and 3) Centrepoint may
21 proceed with construction of the Project pursuant to the previously issued permits
22 referenced above, and Defendants must perform all ministerial duties associated
23 with those permits.

24 54. Such a declaration is necessary and appropriate at this time under the
25 circumstances in order that Centrepoint and Defendants may ascertain their
26 respective rights and duties, to avoid a multiplicity of lawsuits, and for Centrepoint
27 to avoid irreparable harm.

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THIRD CLAIM FOR RELIEF

Violation of 42 U.S.C. § 1983 (Procedural Due Process)

Against The Director and the Chief Building Official

55. Centrepoint realleges and incorporates by reference paragraphs 1 through 54 of this Complaint as though fully set forth herein.

56. At all times relevant herein, all Defendants' conduct was subject to 42 U.S.C. § 1983.

57. Centrepoint obtained all necessary permits and approvals for construction of the Project, which were properly issued by the City. Centrepoint possesses a protected property right in its building permits and the approval to construct the Project.

58. On March 22, 2013, Defendants, acting under color of state law, purported to deprive Centrepoint of its protected property rights by causing an email to be sent to Centrepoint with a subject line of "STOP WORK" and stating that "An administrative hold was placed on the above project for the following reason: . . .," and by causing an "administrative hold" to be imposed on the Project and by ordering building inspectors for the City of San Diego not to perform routine inspections of the Project in the ordinary course of business. The "administrative hold" imposed by Defendants prohibits Centrepoint from continuing construction of the Project.

59. The March 22, 2013, email and the corresponding "administrative hold" operate as and constitute a *de facto* Stop Work Order under Section 121.0309 of the SDMC. In placing the "administrative hold," however, Defendants failed to satisfy the procedural requirements of Section 121.0309 for the issuance of a stop work order. Furthermore, Centrepoint has not been afforded any meaningful right of appeal of the "administrative hold," contrary to the provisions of Section 121.0309. Defendants provided Centrepoint no notice and opportunity to be heard before depriving Centrepoint of its property rights. Moreover, any post-deprivation

1 hearing would be ineffective and insufficient because construction has already
 2 commenced and Centrepoint has already incurred substantial expense in connection
 3 with construction. Further, Centrepoint can no longer receive a fair hearing and any
 4 hearing or appeal would be a sham, due to public statements made by the Mayor in
 5 opposition to the Project and the Mayor's order that construction be stopped.
 6 Accordingly, Defendants violated Centrepoint's constitutional right to procedural
 7 due process.

8 60. Because Defendants are improperly withholding Centrepoint's rights
 9 under the previously issued approvals and permits for the Project, Centrepoint
 10 stands to suffer reputational harm and may lose all or a portion of its contracts with
 11 consultants, contractors, and material suppliers, may lose all or a portion of the
 12 previously completed construction to waste, the previously completed construction
 13 may become an attractive nuisance, and Centrepoint's ability to perform under its
 14 loan for the construction of the Project may be impaired. Centrepoint may also lose
 15 profits in relation to the Property, and may incur additional carrying costs and other
 16 expenses related to the Property.

17 61. To remedy this constitutional violation and avoid irreparable harm,
 18 Centrepoint seeks to recover from Defendants, pursuant to 42 U.S.C. § 1983,
 19 appropriate declaratory and injunctive relief as well as its damages, together with
 20 interest, and its costs and attorneys' fees incurred in bringing this lawsuit.

FOURTH CLAIM FOR RELIEF

Violation of 42 U.S.C. § 1983 (Equal Protection)

Against The Director and The Chief Building Official

24 62. Centrepoint realleges and incorporates by reference paragraphs 1
 25 through 61 of this Complaint as though fully set forth herein.

26 63. At all times relevant herein, all Defendants' conduct was subject to 42
 27 U.S.C. § 1983.

28 ///

1 64. The Project is a commercial/residential mixed-use development,
2 including residential apartments, which will be operated subject to all applicable
3 anti-discriminatory housing regulations.

4 65. Centrepoint is informed and believes that Defendants seek to halt the
5 construction of the Project in an attempt to prevent students from residing at the
6 Property. Centrepoint is informed and believes that Defendants seek to prevent
7 students from residing at the Property because of the age of the typical student and,
8 as such, Defendants' conduct is discriminatorily aimed at a protected class.

9 66. Further, Centrepoint is not aware of a single development within the
10 City that was required to obtain discretionary Site Development Permit approval
11 based on Section 126.0502(b)(4) and Table 126-05A under the circumstances
12 applicable to the Project. Centrepoint is informed and believes that the City has not
13 previously required discretionary Site Development Permit approval due to Section
14 126.0502(b)(4) and Table 126-05A for projects similar to the Project in commercial
15 zones. DSD staff has confirmed that developments such as the Project are not
16 subject to the requirements of Table 126-05A and do not require a Site Development
17 Permit.

18 67. Defendants now demand that Centrepoint obtain discretionary review
19 of the Project based Section 126.0502(b)(4) and Table 126-05A. Defendants have
20 not articulated any rational basis or legitimate state interest for this disparate
21 treatment of Centrepoint. Instead of being motivated by any rational basis or
22 legitimate state interest, Defendants' disparate treatment is politically motivated by a
23 desire to please vocal individuals who oppose the Project because some units are
24 likely to be occupied by students.

25 68. Accordingly, Defendants have violated Centrepoint's constitutional
26 right to equal protection.

27 69. To remedy this constitutional violation and avoid irreparable harm,
28 Centrepoint seeks to recover from Defendants, pursuant to 42 U.S.C. § 1983,

1 appropriate declaratory and injunctive relief as well as its damages, together with
2 interest, and its costs and attorneys' fees incurred in bringing this lawsuit.

3 **FIFTH CLAIM FOR RELIEF**

4 **Violation of Cal. Constitution Art. I § 7(a) (Procedural Due Process)**

5 **Against The Director and The Chief Building Official**

6 70. Centrepoint realleges and incorporates by reference paragraphs 1
7 through 69 of this Complaint as though fully set forth herein.

8 71. At all times relevant herein, all Defendants' conduct was subject to
9 Article I, Section 7(a) of the California Constitution.

10 72. As further set forth above, Centrepoint obtained all necessary permits
11 and approvals for construction of the Project, which were properly issued by the
12 City. Centrepoint possesses a protected property right in its building permits and the
13 approval to construct the Project.

14 73. The March 22, 2013, email further described above and the
15 corresponding "administrative hold" operate as and constitute a *de facto* Stop Work
16 Order under Section 121.0309 of the SDMC. In placing the "administrative hold,"
17 however, Defendants failed to satisfy the procedural requirements of Section
18 121.0309 for the issuance of a stop work order. Furthermore, Centrepoint has not
19 been afforded any meaningful right of appeal of the "administrative hold," contrary
20 to the provisions of Section 121.0309. Defendants provided Centrepoint no notice
21 and opportunity to be heard before depriving Centrepoint of its property rights.
22 Moreover, any post-deprivation hearing would be ineffective and insufficient
23 because construction has already commenced and Centrepoint has already incurred
24 substantial expense in connection with construction. Further, Centrepoint can no
25 longer receive a fair hearing and any hearing or appeal would be a sham, due to
26 public statements made by the Mayor in opposition to the Project and the Mayor's
27 order that construction be stopped. Accordingly, Defendants violated Centrepoint's
28 constitutional right to procedural due process.

1 74. Because Defendants are improperly withholding Centrepont's rights
2 under the previously issued approvals and permits for the Project, Centrepont
3 stands to suffer reputational harm and may lose all or a portion of its contracts with
4 consultants, contractors, and material suppliers, may lose all or a portion of the
5 previously completed construction to waste, the previously completed construction
6 may become an attractive nuisance, and Centrepont's ability to perform under its
7 loan for the construction of the Project may be impaired. Centrepont may also lose
8 profits in relation to the Property, and may incur additional carrying costs and other
9 expenses related to the Property.

10 75. To remedy this constitutional violation and avoid irreparable harm,
11 Centrepont seeks to recover from Defendants, pursuant to Article I, Section 7(a) of
12 the California Constitution, appropriate declaratory and injunctive relief.

13 **SIXTH CLAIM FOR RELIEF**

14 **Violation of Cal. Constitution Art. I § 7(a) (Equal Protection)**

15 **Against The Director and The Chief Building Official**

16 76. Centrepont realleges and incorporates by reference paragraphs 1
17 through 75 of this Complaint as though fully set forth herein.

18 77. At all times relevant herein, all Defendants' conduct was subject to
19 Article I, Section 7(a) of the California Constitution.

20 78. The Project is a commercial/residential mixed-use development,
21 including residential apartments, which will be operated subject to all applicable
22 anti-discriminatory housing regulations.

23 79. Centrepont is informed and believes that Defendants seek to halt the
24 construction of the Project in an attempt to prevent students from residing at the
25 Property. Centrepont is informed and believes that Defendants seek to prevent
26 students from residing at the Property because of the age of the typical student and,
27 as such, Defendants' conduct is discriminatorily aimed at a protected class.

28 ///

1 80. Further, Centrepoint is not aware of a single development within the
2 City that was required to obtain discretionary Site Development Permit approval
3 based on Section 126.0502(b)(4) and Table 126-05A under the circumstances
4 applicable to the Project. Centrepoint is informed and believes that the City has not
5 previously required discretionary Site Development Permit approval due to Section
6 126.0502(b)(4) and Table 126-05A for projects similar to the Project in commercial
7 zones. DSD staff has confirmed that developments such as the Project are not
8 subject to the requirements of Table 126-05A and do not require a Site Development
9 Permit.

10 81. Defendants now demand that Centrepoint obtain discretionary review
11 of the Project based Section 126.0502(b)(4) and Table 126-05A. Defendants have
12 not articulated any rational basis or legitimate state interest for this disparate
13 treatment of Centrepoint. Instead of being motivated by any rational basis or
14 legitimate state interest, Defendants' disparate treatment is politically motivated by a
15 desire to please vocal individuals who oppose the Project because some units are
16 likely to be occupied by students.

17 82. Accordingly, Defendants have violated Centrepoint's constitutional
18 right to equal protection.

19 83. To remedy this constitutional violation and avoid irreparable harm,
20 Centrepoint seeks to recover from Defendants, pursuant to Article I, Section 7(a) of
21 the California Constitution, appropriate declaratory and injunctive relief.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Centrepoint prays for judgment as follows:

24 1. A preliminary and permanent injunction prohibiting Defendants from
25 continuing the "administrative hold" on the Project and prohibiting defendants from
26 requiring Centrepoint to obtain a discretionary Site Development Permit for the
27 Project; or alternatively, requiring that Defendants lift the "administrative hold" on
28 the Project, and requiring that Defendants perform all ministerial duties in

1 connection with the construction of the Project, including the duty to perform
2 inspections and issue approvals if construction complies with code requirements;

3 2. A judicial declaration that (1) the Defendants' purported requirement
4 that Centrepoint obtain a discretionary Site Development Permit for the Project is
5 improper, unlawful and invalid; (2) the Project is subject to ministerial review and
6 approval; and 3) Centrepoint may proceed with construction of the Project pursuant
7 to the permits previously issued by the City for the Project, and Defendants must
8 perform all ministerial duties associated with those permits;

9 3. Damages according to proof, together with interest;

10 4. Costs of suit incurred herein, including attorneys' fees; and

11 5. Such other and further relief as the Court may deem just and proper.
12

13 Dated: May 7, 2013

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

14
15 By: /s/ Valentine S. Hoy

16 VALENTINE S. HOY
17 CHARLES L. PERNICKA
Attorneys for Plaintiff
CP III CENTREPOINT, LLC

18
19
20 **DEMAND FOR JURY TRIAL**

21 Centrepoint hereby demands trial by jury of all issues so triable.
22

23 Dated: May 7, 2013

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

24
25 By: /s/ Valentine S. Hoy

26 VALENTINE S. HOY
27 CHARLES L. PERNICKA
Attorneys for Plaintiff
CP III CENTREPOINT, LLC
28

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CP III CENTREPOINT, LLC, a Delaware limited liability company

(b) County of Residence of First Listed Plaintiff San Francisco
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Valentine S. Hoy, SB# 121766; Charles L. Pernicka, SB# 224134
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Fl., San Diego, CA 92101; 619-233-1155

DEFENDANTS

CITY OF SAN DIEGO; KELLY BROUGHTON, Director of the Development Services Department of the City of San Diego; and AFSANEH AHMADI, Chief Building Official of the Development Services Department of the City of San Diego

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'13CV1089 L NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. section 1983; 28 U.S.C. section 2201

Brief description of cause:
Violation of Rights to Due Process and Equal Protection due to Withdrawal of Development Approvals

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 05/07/2013 SIGNATURE OF ATTORNEY OF RECORD /s/ Valentine S. Hoy

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____