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11 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

13 TAXPAYERS FOR RESPONSIBLE LAND)
14 USE, et al.,)

15 Plaintiffs and Petitioners,)

16 v.)

17 CITY OF SAN DIEGO, et al.,)

18 Defendants and Respondents.)

19 HILLEL OF SAN DIEGO, et al.,)

20 Real Parties-in-Interest.)

Case No. GIC867378

**MEMORANDUM OF POINTS AND
AUTHORITIES IN REPLY TO HILLEL OF
SAN DIEGO'S OPPOSITION TO MOTION
FOR PRELIMINARY INJUNCTION AND
STAY**

ASSIGNED FOR ALL PURPOSES TO:
Hon. Linda B. Quinn

Date: November 6, 2006

Time: 1:30 PM


Dept: 74

Action filed: June 12, 2006

21 **Respectfully Submitted,**

22
23 **DATED: October 30, 2006**

24 **COAST LAW GROUP LLP**

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26 **Christian C. Polychron.**
27 **Attorneys for Plaintiffs and Petitioners**
28 **TAXPAYERS FOR RESPONSIBLE LAND USE**
and LA JOLLA SHORES ASSOCIATION

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I. Summary of Reply

In opposing Plaintiffs' Motion for Preliminary Injunction, or Alternatively for a Stay under Code of Civil Procedure § 1094.5, Real Party-in-Interest Hillel of San Diego ("Hillel") argues that Plaintiffs lack a "reasonable probability" of prevailing under CEQA and under Code of Civil Procedure ("CCP") section 526a, and that Plaintiffs will not be irreparably harmed if the injunction is denied.

Hillel's arguments, as discussed below, are unavailing.

II. Plaintiffs Are Likely To Prevail under CCP § 526a

Hillel asserts Plaintiffs' claim under CCP § 526a lacks the "reasonable probability" of success necessary to support a preliminary injunction. It argues Plaintiffs lack sufficient evidence to meet the legal standard by which "waste" is measured. It further argues Plaintiffs misinterpret San Diego Municipal Code § 22.0902, and consequently cannot show the sale of Site 653 was "illegal" for purposes of section 526a. Hillel is wrong.

A. The City Committed "Waste" by Collusion and by Selling the Site for Less than Fair Market Value.

As briefed by Hillel: "the term 'waste' as used in section 526a means more than an alleged mistake by public officials in matters involving the exercise of judgment or discretion." (*Sundance v. Municipal Court* (1986) 42 Cal. 3d 1101, 1138-1139.) However, "... a court must not close its eyes to wasteful, improvident and completely unnecessary public spending, merely because it is done in the exercise of a lawful power." (*Id.*)

Within these guidelines, taxpayers may sue for "waste" if the disposition of public property is the result of "collusion" or "fraud," or if the disposition is deficient as measured against a definite legal standard. (*Harman v. City and County of San Francisco* (1972) 7 Cal. 3d 150, 160-161 ("*Harman*").) This rule ensures that courts "do not trespass into the domain of legislative or executive discretion." (*Id.*; *See Sundance, supra*, 42 Cal. 3d at 1139 ("... courts should not take judicial cognizance of disputes which are primarily political in nature").) It further "serves to prevent the courts from hearing complaints which seek relief that the courts cannot effectively render, the courts cannot formulate decrees that involve the exercise of indefinable discretion; their decrees can only restrict conduct that can be tested against legal standards." (*Id.* at 161.)

The sale of Site 653 constitutes waste under these rules. The sale was the result of collusion and

1 fraud, and was deficient as measured against a definite legal standard.

2 **1. The sale of Site 653 was consummated through collusion and fraud.**

3 The City sold Site 653 for \$940,000. Hillel argues this price reflects the Site's fair market value,
4 as determined by its actual appraised value, less certain "planned improvement" costs that "the City – or
5 any third party – would otherwise bear to develop the property." (Opp. pp 12-13, n.1.)

6 This argument, however, completely misrepresents how the Site's price was derived. City
7 documents (including the appraisal on which Hillel relies) prove the sale price was not based on any
8 legitimate calculation of Site 653's value, but rather on collusive dealings between Hillel and the City.

9 In an appraisal report for the City dated June 8, 2005, Rasmuson Appraisal Services
10 ("Rasmuson") concluded the market value of Site 653 was \$780,000. (Ex. 13, p.13:2.) It reported the
11 "total value" of the Site as \$1,200,000, but reduced that amount by \$421,333 to reflect certain off-site
12 costs. (*Id* at 13:44.) At the time, it was assumed these costs would be required regardless of whether the
13 Site was developed by Hillel or as residential lots (the Site's highest and best use). (*Id* at 13:29-30.)

14 On November 8, 2005, Roger Bush of the City's Real Estate Assets Department requested that
15 Rasmuson update its prior appraisal. (Ex. 14.) The request instructed Rasmuson to "estimate the
16 Market Value" of the Site. (*Id*.)

17 Rasmuson sent the City Attorney's office a draft of its updated appraisal on January 25, 2006.
18 (Ex.15). It concluded the Site's value, at its highest and best use, was \$1,310,000. (*Id*.)

19 This updated value was circulated among City officials. In an April 6, 2006 email, Roger Bush
20 explained to Jim Waring (Deputy Chief of the Land Use and Economic Development Department):

21 We have received a draft updated appraisal The preliminary value is
22 \$1,310,000.

23 You should be aware that the March, 2005, value Hillel agreed to was
24 \$780,000. The primary difference is due to \$400,000+ in site development
25 costs required of the Hillel specific project. DSD (Development Services
26 Department) now says those requirements would not be typical of a single
27 family development. As such, we have a much higher "as is" value with the
28 update. (Emphasis added.) (Ex.16.)

26 Later the same day, after City officials confirmed "the appraisal is reasonable and we're sticking
27 to that number," Morgan Dene Oliver got involved. (Ex.17.) Mr. Oliver is Chief Executive Officer of
28 Hillel's Development Consultant, the OliverMcMillan Company. (Ex.18, p.18:13.) He also works "on

1 behalf of the Mayor on the design of the Convention Center expansion.” (Ex.19, p.2.) He further
2 participated in prior Hillel-related meetings at the Mayor’s office with “Jerry” and Jim Waring. (Ex.17.)

3 Mr. Oliver requested the updated appraisal information. His April 6, 2006 email to Jim Waring
4 stated: “I look forward to getting (sic) the price and appriasal (sic) if possible so I can help Hillel with
5 this process. Jim A please give me an email when you can on value and the appraisal.” (Ex.17.)

6 James Anthony, of the City’s Real Estate Assets Department, responded the next morning. His
7 April 7th email informed Mr. Oliver that: “the preliminary value is \$1,310,000.” (Ex.20.) He explained,
8 as Roger Bush did the previous day:

9 You should be aware that the March, 2005, value Hillel agreed to was
10 \$780,000. The primary difference is due to \$400,000+ in site development
11 costs required of the Hillel specific project. The Development Services
12 Department now says those requirements would not be typical of a single
family development. As such, we have a much higher ‘as is’ value”
(Emphasis added) (Ex.20.)

13 To this point, City Councilman Scott Peters’ Chief of Staff, Betsy Kinsley, had been sent
14 courtesy copies of the foregoing emails. Perhaps alarmed at their significance, she sent an email to Mr.
15 Oliver, James Anthony, Jim Waring, Roger Bush and others. She requested: “Please leave me off
16 subsequent emails on this topic.” (Ex.21.) She further cautioned: “Correspondents should assume that
17 all communication to or from this address is recorded and may be reviewed by third parties.” (Ex.21.)

18 Mr. Oliver responded to the updated appraisal in his April 11th email to Jim Waring. Mr. Oliver
19 expressed his own displeasure, and, using his relationship with the Mayor as leverage, urged a meeting
20 to “look at this issue of value carefully.” (Ex.22.) He stated:

21 Jim, I have reviewed the first appraisal and you should as well.... It does not
22 make sense that the appraised value as residential went up by more than 50
23 percent in less than 6 months. We need to look at this issue of value carefully.
24 There are also offsets to value based on the items of public benefit that are
25 being required of Hillel long term. Perhaps you are not aware of the extent of
26 these requests. Consideration also needs to be given to the fact that this is a
27 nonprofit buyer. The City has a history of dealing fairly and favorably with
28 non profits. A price of 1.3 million will kill this deal which is NOT Jerry’s
desire. I am on vacation this when (sic) with my family. could you meet next
week to discuss this? (Italics and underscoring added). (Ex.22.)

26 Jim Waring agreed to Mr. Oliver’s requested meeting. (Ex.22.) The meeting, apparently, was a
27 fruitful one for Mr. Oliver and his client.

28 In his April 18, 2006 email to Betsy Kinsley, Jim Waring explained: “Thanks to Jim and Roger’s

1 good work we have reached a verbal agreement to sell the Hillel site for \$940,000 cash” (Ex.23.)
2 He assured Ms. Kinsley that, at the May 9, 2006 City Council hearing, “we will simply present a report
3 supporting the \$940,000, with little if any backup or explanation This really isn’t about the price
4 from the opposition’s perspective.” (Emphasis added) (Ex.23.)

5 Three days later, on April 21st, Roger Bush authorized Rasmuson “to complete your updated
6 appraisal of the above-referenced property” (Ex.24.) However, Mr. Bush provided Rasmuson with
7 explicit instructions ensuring that the final updated appraisal would not reflect the Site’s fair market
8 value, but would rather reflect the \$940,000 purchase price that had already been agreed upon. Mr. Bush
9 wrote: “The value conclusion should be based on a private highest and best use scenario, as if available
10 for sale in the open market, subject to the street and cul-de-sac vacation and offsite requirements as
11 depicted on the Hillel development plan.” (Emphasis added) (Ex.24.) Thus, though it had previously
12 been determined that anyone developing the Site for its highest and best use would not incur the offsite
13 costs required for Hillel’s use, the City nevertheless instructed the appraiser to reduce the Site’s
14 appraised value to account for the “offsite requirements as depicted on the Hillel development plan.” By
15 doing so, the City ensured the final appraisal would not reflect the Site’s actual value, but would instead
16 reflect the price Hillel and the City had already agreed upon.

17 Rasmuson completed its final “appraisal” as instructed. (Ex.25.) The report, predictably,
18 reflected the \$940,000 purchase price. However, in its cover letter, Rasmuson explicitly, and in
19 emphasized italics, disclaimed the \$940,000 value. He stated: “*The valuation is based on a private*
20 *highest and best use for sale in the open market, subject to the street and cul-de-sac vacation and offsite*
21 *requirements as depicted on the Hillel development plan This is a specific valuation assumption at*
22 *the request of my client.”* (Ex.25, p.25:1.) The final appraisal further concluded that, absent this
23 “specific valuation assumption” requested by the City, the Site’s value was \$1,360,000. (Ex.25, p.25:44.)

24 So, in Rasmuson’s January 25, 2006 draft updated appraisal, the City received an accurate
25 appraisal of the Site’s fair market value. Through its consultant with ties to the Mayor, however, Hillel
26 successfully persuaded City officials to sell the Site at an approximately \$400,000 discount. To cover its
27 tracks, the City instructed Rasmuson to update its appraisal to reflect *not* the Site’s fair market value, but
28 rather its fair market value less certain costs that were specific to the Hillel project. This conjured value

1 was presented to the City Council “with little if any backup explanation.” The Council, based on this
2 tainted appraisal, approved the sale of Site 653 to Hillel.

3 The purchase and sales contract has now been executed. All that keeps Hillel and the City from
4 closing escrow is their stipulation not to transfer the Site until Plaintiffs’ preliminary injunction motion
5 is resolved. If the injunction is denied, escrow will close, and Plaintiffs’ cause of action to restrain the
6 sale will be moot. Hillel, through fraud and collusion, will have sought and received an unreviewable
7 gift from Plaintiffs and the public.

8 **2. The City committed waste by selling Site 653 at less than fair market value.**

9 Waste can be established not only by proof of “fraud or corruption,” but also by proof of a
10 “manifest abuse of discretion.” (*Rathbun v. City of Salinas* (1973) 30 Cal. App. 3d 199, 202
11 (“*Rathbun*”).) A “manifest abuse of discretion,” however, can exist only in relation to a definite “legal
12 standard.” (*Id* at 202-203.) This rule ensures courts “do not trespass into the domain of legislative or
13 executive discretion.” (*Harman, supra*, 7 Cal. 3d at 160-161.) It further “serves to prevent the courts
14 from hearing complaints which seek relief that the courts cannot effectively render, the courts cannot
15 formulate decrees that involve the exercise of indefinable discretion; their decrees can only restrict
16 conduct that can be tested against legal standards.” (*Id* at 161.)

17 The rule was applied in *Harman, supra*, 7 Cal. 3d 150. There, a taxpayer challenged the City of
18 San Francisco’s practice of selling encumbered vacated streets at 50% of their unencumbered value.

19 At the time, the City of San Francisco’s charter provided that, unless sold at public auction, City
20 property must be sold for at least 90% of the property’s appraised fair market value. (*Id* at 164.) As
21 explained by the Court, this provision “serves a fundamental purpose: it enjoins the city from the waste
22 of assets which have been obtained or maintained at public expense.” (*Id.*) It further manifested an
23 intent “to prevent the enrichment of individual private purchasers who in a noncompetitive sale would
24 obtain city assets at less than fair value.” (*Id.*)

25 In overruling a demurrer by the City, the Court held that, because the universally applied 50%
26 discount did not reflect the value of the vacated streets’ encumbrances, the City’s sale of the vacated
27 streets, as measured against the definite standard prescribed by its charter, could constitute “waste” of
28 public property. (*Id* at 160-161 and 168-169.)

1 Here, the City of San Diego, like San Francisco in *Harman*, has enacted a definite standard
2 against which to measure sales of public property. City Council Policy 700-10 governs the “Disposition
3 of City-Owned Real Property.” (Ex.26.) This policy, enacted by City Council resolution, provides:
4 “City property designated for sale shall generally be offered by public auction unless the parcel meets the
5 criteria for a negotiated transaction as hereinafter set out” (*Id* at 3.) The Policy’s negotiated sales
6 criteria, in relevant part, state:

7 Negotiated transactions shall comply with the requirements of Municipal
8 Code Sections, as applicable, and may be approved under one of the following
9 conditions: ... (e) When qualified nonprofit institutional organizations offer to
10 purchase City-owned land, a negotiated sale may be consummated at fair
market value providing there is 1) a development commitment, and 2) a right
to repurchase or a reversion upon a condition subsequent. (*Id.* at 4.)

11 The policy also provides that “(d)iscounts will not be negotiated unless an extraordinary need or
12 circumstance is recognized by Council Resolution prior to negotiation, setting forth the amount of the
13 discount and the justification for it.” (*Id* at 1.)

14 This Policy establishes precisely the type of definite standard against which “waste” can be
15 measured. Like the charter provision at issue in *Harman*, Policy 700-10 “serves a fundamental purpose:
16 it enjoins the city from the waste of assets which have been obtained or maintained at public expense.”
17 The policy further serves “to prevent the enrichment of individual private purchasers who in a
18 noncompetitive sale would obtain city assets at less than fair value.” Additionally, a judicial decree of
19 waste, as measured against the Policy’s “fair market value” standard, would neither “involve the exercise
20 of indefinable discretion” nor “trespass into the domain of legislative or executive discretion.” It would
21 instead require the adjudicatory determination of whether a negotiated sale of property satisfies a clearly
22 defined standard. This type of decree is precisely what CCP § 526a contemplates, and is precisely what
23 the Supreme Court rendered in *Harman*.

24 In this context, the Court can and should decree that the City’s negotiated sale of Site 653
25 constitutes “waste” under CCP § 526a and Council Policy 700-10. As discussed above, the City’s
26 appraisals by Rasmuson prove the Site will not be sold “at fair market value,” but will rather be sold at a
27 significant discount because Hillel’s Consultant, using his ties to the Mayor, demanded that City
28 officials set a price below the Site’s \$1.31 million appraised value. Further, though the draft updated
appraisal had not been disclosed, offers were made at the City Council’s hearing on the Hillel Project to

1 purchase the Site for \$1.2 million and \$1.3 million respectively¹ – values nearly identical to that stated
2 in Rasmuson’s draft updated appraisal. (Lighter Dec.) These offers affirm the draft appraisal’s \$1.3
3 million valuation, and further establish that the Site was sold substantially below its fair market value.²

4 Plaintiffs, therefore, stand more than a reasonable probability of establishing that Site 653 was
5 sold in violation of the City’s definite “fair market value” standard, and that the sale constitutes “waste”
6 under CCP § 526a.

7 **B. The City Sold Site 653 in Violation of Its Municipal Code.**

8 Hillel contends Plaintiffs misinterpret the San Diego Municipal Code (“SDMC”) in arguing that
9 the Sale of Site 653 did not satisfy the Code’s requirements. Specifically, Hillel argues SDMC §
10 22.0902 does not require that negotiated sales of City property be made pursuant to a prior resolution.
11 Hillel, again, is wrong.

12 In relevant part, § 22.0902 provides: “No real property ... shall be sold except in pursuance of a
13 resolution ... which shall contain ... (e) A statement that the property will be sold by negotiation or by
14 public auction, or by sealed bids ...providing, however, that in the event such property is to be sold by
15 negotiation, the reasons therefore shall be included in the resolution.” (Emphasis added) (Ex.6.)

16 This provision requires that sales of City property be in pursuance of a resolution stating the
17 manner in which the property will be sold, and imposes additional requirements if the property is to be
18 sold by negotiation. The provision therefore expressly requires that the process of selling City property
19 occur after the City Council adopts a resolution that, among other things, identifies the process (i.e.,
20 auction, sealed bids or negotiation).

21 For example, a sale of City property by public auction must be “in pursuance of” a resolution
22 stating that the property “will be sold” by public auction. The resolution must precede the process.

23 Similarly, a sale by sealed bids must be “in pursuance of” a resolution stating that the property
24 “will be sold” by sealed bids. Again, the resolution must precede the identified process.

25 It follows, logically and from the provision’s plain meaning, that a sale by negotiation must be in
26

27 ¹Hillel argues these offers must be disregarded because they are “textbook” hearsay. They are not. Offers to enter a
28 contract have independent legal significance and are therefore not offered for their truth. *See State of Oregon v. Superior Court* (1994) 24 Cal.App.4th 1550; *People v. Dell* (1991) 232 Cal.App 3d). They are “textbook” nonhearsay. ...

²As argued in Plaintiffs’ moving papers, additional evidence of Hillel’s discount includes Willis Allen’s May 5, 2006 letter to Sue Moore, which appraised the Site’s value at \$2.5 to \$3 million. (Ex.5).

1 “pursuance of” a resolution that identifies how the property will be sold, and that, as with sales by
2 auction or sealed bids, the required resolution must precede the negotiation process. This conclusion is
3 supported by the additional provision, applicable solely to sales by negotiation, that the required
4 resolution must state the reasons the property “is to be sold by negotiation.” Again, the required
5 resolution must precede the identified process.

6 In contrast to the Municipal Code’s plain meaning, however, the process by which the City sold
7 Site 653 preceded the resolution that identifies the process. As admitted by Hillel, the only resolution
8 that speaks to the negotiated *sale* of Site 653 was the City Council’s May 9, 2006 resolution R-301436.
9 But that resolution was adopted years after negotiations for the sale began, and approximately one month
10 after the terms for the sale were illicitly and finally agreed upon. (*See* Exh.23.) The City therefore
11 violated SDMC § 22.0902, and Plaintiffs have more than a “reasonable probability” of establishing that
12 the sale of Site 653 is an “illegal expropriation” of public property.³

13 **III. Plaintiffs Are Likely To Prevail under CEQA.**

14 Hillel argues Plaintiffs’ claim under CEQA lacks the reasonable probability of success necessary
15 to support a preliminary injunction. It argues input from lay residents cannot constitute “substantial
16 evidence” that the Hillel Project may cause significant environmental impacts. This argument is legally
17 incorrect, but also fails to address the City’s admission that the project may have significant impacts, the
18 City’s improper deferral of mitigation, and the omissions by Hillel’s traffic study.

19 **A. Hillel’s Opposition Ignores the City’s Admission, the Improper Deferral of Mitigation and** 20 **the Omissions of Hillel’s Traffic Study.**

21 Hillel fails to address the City’s admission that the Project may cause significant parking
22 impacts. The City’s approval of the Hillel Project was conditioned on Hillel’s preparation of annual
23 post-occupancy parking demand studies. (Ex.8, p.8-19.) This condition, as formally adopted in
24 Resolution R-301433, provides: “The parking demand study should monitor the on-street parking in the
25 vicinity of the project and eliminate any adverse impact of the project on the on-street parking.”
26 (Emphasis added) (*Id.*) Thus, the City formally admitted exactly what Plaintiffs must prove to prevail
27 on their CEQA claim: that, notwithstanding the required mitigation, the Hillel Project may have

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³Further, even if the Municipal Code does not require a resolution that precedes the “sale by negotiation” process, Resolution R-301436 is deficient because it does not state the reasons the property was sold by negotiation. (Ex.2).

1 significant parking impacts. Accordingly, the Mitigated Negative Declaration (“MND”) was approved
2 in violation of CEQA, and Plaintiffs stand more than a “reasonable probability” of prevailing.

3 Hillel’s argument similarly fails to address that the City, in violation of *Sundstrom v. County of*
4 *Mendocino* (1988) 202 Cal.App.3d 296, improperly defers mitigation of the Project’s significant
5 impacts. (See e.g., Ex.7, mitigation measure # 29 (requiring future “post-occupancy demand studies” to
6 determine, *inter alia*, if the project will have “any adverse impact on ... the on-street parking”).)

7 Hillel also ignores that the MND, and the traffic study on which the MND relies, fail to address
8 traffic impacts to La Jolla Village Drive caused by increased pedestrian traffic between the Hillel facility
9 and UCSD.⁴ This omission was raised on the record (Ex.9, G-9), and gives rise to a fair argument that
10 the project may have significant parking impacts. (See, *Sundstrom, supra*, 202 Cal.App.3d at 311.)

11 **B. Hillel’s Argument Is Legally Inaccurate.**

12 Hillel argues that testimony by lay residents cannot constitute substantial evidence requiring
13 preparation of an EIR. This argument, however, is unsupported by law. Indeed, “... personal
14 observations are evidence. For example, an adjacent property owner may testify to traffic conditions
15 based upon personal knowledge.” (*Citizens Association for Sensible Dev. of Bishop Area v. County of*
16 *Inyo* (1985) 172 Cal. App. 3d 151, 173.) Similarly, a “decision not to require an EIR can be upheld only
17 when there is no credible evidence to the contrary.” (*Quail Botanical Gardens v. City of Encinitas*
18 (1994) 29 Cal.App.4th 1597, 1602.) Thus, “... input from non-experts can be substantial evidence where
19 such input is credible and does not purport to embody analysis that would require special training.”
20 (Remy et al., Guide to the Cal. Environmental Quality Act (1999 ed.) p.219.)

21 Here, La Jolla residents have proffered precisely the type of evidence the foregoing rules
22 contemplate. For example, one resident noted that Hillel’s traffic study did not consider the impacts by
23 increased pedestrian traffic between the Hillel facility and UCSD. This input is credible and does not
24 purport to embody analysis that would require special training. It can and does give rise to a fair
25 argument that the Project may have significant traffic impacts.

26 **IV. Plaintiffs Will Suffer Irreparable Harm if the Injunction Is Denied**

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28 ⁴The declaration of Hillel’s executive director, Lisa Goldstein, supports this potential impact. It states: “Site 653 will be ideal for a Hillel center because UCSD students will be able to walk to the center from campus between and after classes and from campus housing. Many UCSD students do not have cars on campus and must walk to events.”

1 Hillel argues Plaintiffs will suffer no irreparable harm if the injunction is denied, and also that
2 “Hillel is the party who stands to suffer the greater harm.” Hillel’s argument, however, is not credible.

3 If the injunction is denied, Plaintiffs’ claim to *restrain* the sale of Site 653 will become
4 immediately moot. This conclusion, contrary to Hillel’s argument, is unaffected by the Real Estate
5 Purchase and Sale Agreement (“Agreement”) between the City and Hillel. The Agreement, though it
6 requires Hillel to reconvey the Site if the sale is invalidated, would do nothing to restore Plaintiffs’ claim
7 to *restrain* the sale once the Site has been conveyed. The claim would be moot, and the Court could not
8 invalidate the sale on its grounds. Thus, if their motion is denied, Plaintiffs will irreparably lose their
9 opportunity to restrain the sale as an illegal expenditure or waste of public property.

10 This potential loss is sufficient in and of itself to warrant the requested injunction, but is even
11 greater given its context. As discussed above, preliminary evidence and the City’s files suggest the sale
12 was consummated through collusion and deceit. If Hillel prevails in its opposition to this motion,
13 however, it would close escrow on the Site, and thereby nullify Plaintiffs’ ability to confirm this
14 preliminary evidence through discovery. It would also preclude Plaintiffs and the public from ever
15 enjoining the sale under CCP § 526a. If the injunction is denied, Hillel will have successfully sought
16 and obtained an illicit gift of property at the public’s expense.

17 Hillel, however, contends it would suffer greater harm if the preliminary injunction were granted.
18 It argues solely that any delay beyond the six years Hillel has already waited would cause harm that
19 outweighs the potential harm to Plaintiffs and the public if the injunction were denied. This argument is
20 patently unpersuasive.

21 **V. A Stay under CCP § 1094.5 Would Further the Public’s Interest**

22 Hillel argues a stay should not issue under CCP § 1094.5 because it would be against the public
23 interest to prevent the City and its citizens from acquiring \$940,000 for Site 653. This argument, again,
24 is patently unpersuasive. The Site is worth substantially more than \$940,000, and its sale price was
25 procured through collusion and deceit. Staying the Site’s transfer would further the public’s interest.

26 **VI. Conclusion**

27 Plaintiffs respectfully request that the Court preliminarily enjoin the City from transferring Site
28 653 to Hillel, or alternatively that it stay operation of the Hillel Project’s approvals.