

1 BRIGGS LAW CORPORATION [FILE: 1434.09]
2 Cory J. Briggs (State Bar no. 176284)
3 Mekaela M. Gladden (State Bar no. 253673)
4 99 East "C" Street, Suite 111
5 Upland, CA 91786
6 Telephone: 909-949-7115
7 Facsimile: 909-949-7121

10 DEC 15 11:57

5 Attorneys for Plaintiff San Diego Navy
6 Broadway Complex Coalition

7 **BLC Copy**

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 '10 CV 2565 IEG RBB

12 SAN DIEGO NAVY BROADWAY
13 COMPLEX COALITION,

CASE NO. _____

14 Plaintiff,

COMPLAINT FOR DECLARATORY,
INJUNCTIVE, AND MANDAMUS
RELIEF

15 vs.

16 UNITED STATES COAST GUARD;
17 CAPTAIN THOMAS H. FARRIS, in his
18 official capacity as the United States Coast
19 Guard Captain of the Port, San Diego; SAN
20 DIEGO UNIFIED PORT DISTRICT;
21 ROBERT VALDERRAMA, in his official
22 capacity as San Diego Unified Port District
23 Commissioner; SCOTT H. PETERS, in his
24 official capacity as San Diego Unified Port
25 District Commissioner; STEPHEN C.
26 PADILLA, in his official capacity as San
27 Diego Unified Port District Commissioner;
28 MICHAEL B. BIXLER, in his official
capacity as San Diego Unified Port District
Commissioner; LEE BURDICK, in his
official capacity as San Diego Unified Port
District Commissioner; STEPHEN P.
CUSHMAN, in his official capacity as San
Diego Unified Port District Commissioner;
LOU SMITH, in his official capacity as San
Diego Unified Port District Commissioner;
and JOHN A. BOLDUC, in his official
capacity as the Chief of Harbor Police for
the San Diego Unified Port District,

Defendants.

1 Plaintiff SAN DIEGO NAVY BROADWAY COMPLEX COALITION alleges
2 as follows:

3 **Parties**

4 1. Plaintiff SAN DIEGO NAVY BROADWAY COMPLEX COALITION is
5 a non-profit, social-advocacy organization formed and operating under the laws of the
6 State of California. Plaintiff's members reside in or near the City of San Diego,
7 California, and have an interest in promoting quality-of-life issues concerning San
8 Diego Bay, including security.

9 2. The United States Coast Guard is an agency or instrumentality of the
10 United States.

11 3. Captain Thomas H. Farris is the United States Coast Guard Captain of the
12 Port, San Diego, and is being sued solely in his official capacity as such.

13 4. The San Diego Unified Port District is public agency established under
14 Section 4 of the San Diego Unified Port Act. Plaintiff is informed and believes that the
15 San Diego Unified Port District is financially self-sufficient, generating its own
16 revenues and paying its own debts, has the right to sue in its own name, and holds
17 property in its own name.

18 5. Robert Valderrama, Scott H. Peters, Stephen C. Padilla, Michael B. Bixler,
19 Lee Burdick, Stephen P. Cushman, and Lou Smith are Port Commissioners of the San
20 Diego Unified Port District and are being sued solely in their official capacities as such.

21 6. John A. Bolduc is the Chief of Harbor Police for the San Diego Unified
22 Port District and is being sued solely in his official capacity as such.

23 7. Plaintiff is informed and believes and on that basis alleges that, at all times
24 stated in this pleading, each Defendant was the agent, servant, or employee of each other
25 Defendant and was, in doing the things alleged herein, acting within the scope of said
26 agency, servitude, or employment and with the full knowledge or subsequent ratification
27 of his or its principals, masters, and employers. Alternatively, in doing the things
28

1 alleged in this pleading, each Defendant was acting alone and solely to further his or its
2 own interests.

3 **Background Information**

4 8. The United States Coast Guard regulations, sections 165.33(a) and
5 165.1108(b)(2) of Title 33 of the Code of Federal Regulations in particular, require a
6 “security zone” on “[t]he shore area and all waters extending from the surface to the sea
7 floor, within a 100 yard radius around any cruise ship that is moored at any berth within
8 the San Diego port area inside the sea buoys bounding the Port of San Diego.” No
9 person or vessel “may enter or remain in a security zone without the permission of the
10 Captain of the Port.”

11 9. In establishing the security regulations, the United States Coast Guard
12 determined that security zones are needed for national security reasons to protect the
13 public and ports from potential terrorists acts. The development of the regulation was
14 intended to “take steps to prevent the catastrophic impact that a terrorist attack against
15 a cruise ship would have on the public interest.” 68 Fed. Reg. 1005, 1006 (Jan. 8,
16 2003). The 100-yard security zone is “the minimum necessary to provide adequate
17 protection for the cruise ships, their crews and passengers, other vessels operating in the
18 vicinity of the cruise ships and their crews, adjoining areas, and the public.” *Id.* at 1007.

19 10. Broadway Pier, located in downtown San Diego, is an approximately
20 1,000-foot pier.

21 11. Plaintiff has been informed and believes that the cruise ship known as the
22 Holland America Line *Oosterdam* will arrive at Broadway Pier on December 22, 2010.
23 The *Oosterdam* is approximately 936 feet long. Other cruise ships of similar length are
24 scheduled to arrive at Broadway Pier after December 22, 2010.

25 12. Given the length of the *Oosterdam* in relation to the length of Broadway
26 Pier, an on-shore security zone is required under United States Coast Guard regulations.

27 13. Plaintiff has been informed by San Diego Unified Port District officials that
28 the United States Coast Guard has not historically enforced an on-shore security zone

1 around cruise ships berthed in the Port of San Diego and that San Diego Unified Port
2 District has no plans to enforce a security zone on shore around cruise ships berthed at
3 the Port of San Diego.

4 14. Through this action, Plaintiff seeks declaratory, injunctive, and mandamus
5 relief to compel agency action unlawfully withheld or unreasonably delayed. The
6 failure of the United States Coast Guard, the San Diego Unified Port District, and the
7 other Defendants to enforce existing laws and regulations is arbitrary, capricious, an
8 abuse of discretion, and otherwise not in accordance with the law.

9 **Jurisdiction, Venue, and Exhaustion of Remedies**

10 15. This Court has jurisdiction over this proceeding pursuant to Sections 1331
11 and 1361 of Title 28 of the U.S. Code because this pleading alleges violations of federal
12 regulations and seeks to compel Defendants to perform duties owed to Plaintiff, its
13 members, and other members of the public. The Court also has jurisdiction over this
14 proceeding pursuant to Section 701 *et seq.* of Title 5 of the U.S. Code, because the
15 pleading seeks judicial review of action taken by one or more agencies of the United
16 States.

17 16. Venue is proper in this Court under Section 1391(e) of Title 28 of the U.S.
18 Code, because (i) Defendants are either officers, employees, or agencies of the United
19 States and/or (ii) both a substantial part of the events or omissions giving rise to this
20 proceeding were committed in this judicial district and a substantial part of the property
21 at issue in this proceeding is located in this judicial district.

22 17. Plaintiff has no plain, speedy, adequate remedy in the ordinary course of
23 law since Plaintiff, its members, and other members of the public will suffer irreparable
24 harm as a result of Defendants' violations of the federal regulations and other laws.
25 Defendants' refusal to enforce a security zone also rests on the failure to satisfy a clear,
26 present, ministerial duty to act in accordance with those laws.

27 18. Plaintiff has a beneficial right and interest in Defendants' fulfillment of all
28 their legal duties, as alleged in this pleading.

1 **FIRST CLAIM:**
2 **Declaratory Relief**
3 **(Against All Defendants)**

4 19. Paragraphs 1 through 18 are fully incorporated into this paragraph.

5 20. Defendants have repeatedly failed to enforce federal laws and regulations
6 with respect to establishing a security zone on shore around cruise ships entering and
berthing in the Port of San Diego.

7 21. Plaintiff has an interest in knowing whether a security zone will be in place
8 when the *Oosterdam* and other cruise ships are berthed at Broadway Pier because its
9 members desire to undertake lawful recreational activities within 300 feet of the
10 *Oosterdam* and other cruise ships berthed at Broadway Pier without violating the United
11 States Coast Guard's regulations. Alternatively and additionally, Plaintiff and its
12 members want to ensure that national security is not compromised because terrorists or
13 other persons desiring to do harm are able to get within 300 feet of the *Oosterdam* or
14 any other cruise ship berthed at Broadway Pier.

15 22. Plaintiff has requested clarification from the United States Coast Guard
16 about the existence and enforcement of the on-shore security zone around cruise ships
17 berthed at Broadway Pier, but the request has gone unanswered.

18 **SECOND CLAIM:**
19 **Injunctive/Mandamus Relief**
20 **(Against All Defendants)**

21 23. Paragraphs 1 through 22 are fully incorporated into this paragraph.

22 24. Defendants have repeatedly failed to enforce federal laws and regulations
23 with respect to establishing an on-shore security zone around cruise ships entering and
berthing in the Port of San Diego.

24 25. Plaintiff has a beneficial right to the enforcement of the security
25 regulations. The security zones around and under cruise ships are designed to protect
26 Plaintiff, comprised of members of the public, from potential terrorist attacks. Thus,
27 Defendants owe Plaintiff and its members a duty to enforce these regulations in order
28 to provide the level of security that the regulations are intended to provide.

1 26. Plaintiff seeks an order compelling Defendants to enforce the security
2 regulations with respect to cruise ships berthing at Broadway Pier in San Diego,
3 California.

4 **Prayer**

5 FOR ALL THESE REASONS, Plaintiff respectfully prays for the following relief
6 against Defendants (and any and all other parties who may oppose Plaintiff in this
7 proceeding):

8 A. A judgment determining or declaring that Defendants are obligated to
9 enforce a 100-yard security zone around cruise ships berthed at Broadway Pier or
10 otherwise comply with Section 165.1108 of Title 33 of the Code of Federal Regulations,
11 including an on-shore security zone around the *Oosterdam*;

12 B. An order requiring Defendants to enforce a 100-yard security zone around
13 cruise ships berthed at Broadway Pier or otherwise comply with Section 165.1108 of
14 Title 33 of the Code of Federal Regulations, including an on-shore security zone;

15 C. All legal fees and other expenses incurred in connection with this
16 proceeding, including but not limited to reasonable attorney fees as authorized by law;
17 and

18 D. Any and all further relief that this Court may deem appropriate.

19
20 Date: December 14, 2010.

Respectfully submitted,
BRIGGS LAW CORPORATION

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23 By: *Original Signed*
Mekaela M. Gladden

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25 Attorneys for Plaintiff San Diego Navy
26 Broadway Complex Coalition
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