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7 THREE CAPTAINS SEA PRODUCTS, INC.

FILED
SAN MATEO COUNTY

JUN - 2 2015

Clerk of the Superior Court
By [Signature]
DEPUTY CLERK

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN MATEO**
10 **UNLIMITED JURISDICTION**

11 THREE CAPTAINS SEA PRODUCTS, INC ,
12 a California corporation,

13 Petitioner

14 v

15 SAN MATEO COUNTY HARBOR
16 DISTRICT BOARD OF HARBOR
17 COMMISSIONERS and SAN MATEO
18 COUNTY HARBOR DISTRICT,

19 Respondents

Case No

CIV 534067

**VERIFIED PETITION FOR
ADMINISTRATIVE MANDATE (CCP
§1094.5) AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

20 Petitioner Three Captains Sea Products, Inc , a California corporation ("Three Captains")
21 hereby petitions this Court for a writ of administrative mandate under California Code of Civil
22 Procedure Section 1094.5. By this verified petition against Respondents San Mateo County
23 Harbor District Board of Harbor Commissioners ("Commission") and San Mateo County Harbor
24 District ("District"), Three Captains alleges as follows:

VERIFIED PETITION FOR WRIT OF MANDATE
[CODE OF CIVIL PROCEDURES § 1094.5]- 1
CASE NO

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

1
2 **I. INTRODUCTION**

3 1 Three Captains seeks an order reversing the Respondents' action directing it to
4 remove an unloading hoist ("Hoist") installed, at great expense, on Johnson Pier ("Pier") in Pillar
5 Point Harbor. A lease ("Lease") between Three Captains and the District gave Three Captains
6 the right to install the Hoist on the Pier, subject only to the Harbor Master's approval of the loca-
7 tion Three Captains installed the Hoist in the location the Harbor Master directed After Three
8 Captains installed the Hoist, the Commission-without substantial evidence to support its deci-
9 sion-ordered Three Captains to remove the Hoist

10 **II. PARTIES AND JURISDICTION**

11 2 Three Captains is a corporation formed and operating under the laws of the state
12 of California. Larry Fortado ("Fortado") is Three Captains' principal shareholder, officer and
13 director. Three Captains is a person under Government Code § 11405.70 and is a real party in
14 interest because its interests are directly affected by the outcome of these proceedings

15 3 Three Captains reasonably believes, and therefore alleges, that in 1933, a Resolu-
16 tion of the Board of Supervisors of the County of San Mateo established the District The Harbor
17 District operates two facilities. One is Pillar Point Harbor ("Harbor"), a 369 berth working fish-
18 ing harbor located at Half Moon Bay in Princeton. The other is Oyster Point Marina/Park, a 600
19 berth recreational boating marina

20 4 The District is located in San Mateo County and its boundaries are coterminous
21 with the County's boundaries.

22 5 The Commission governs the District The Commission is comprised of five
23 Commissioners who are elected countywide for staggered four-year terms

1 6 Three Captains reasonably believes, and thereon alleges, that each Respondent is
2 an agency under Government Code Section 11503.3 and is legally responsible for the actions
3 alleged herein.

4 7. This Court has jurisdiction under California Code of Civil Procedure section
5 1094.5

6 8 Venue is proper in this Court under California Code of Civil Procedure sections
7 393 and 394 because Respondents are a county and two local agencies and the actions described
8 herein occurred in San Mateo County

9 **III. FACTUAL ALLEGATIONS AND BACKGROUND**

10 9. Three tenants operate fish buying stations on the Pier in the Harbor Pillar Point
11 Seafood, owned and operated by Michael and Kim McHenry, Three Captains, owned and oper-
12 ated by Fortado, and Morningstar Fisheries, owned and operated by Dave Mallory

13 10 Each tenant on the Pier operates under a nearly identical lease with the District
14 Three Captains is the longest continually operating buyer on the Pier, having operated in that lo-
15 cation since 1981 Three Captains' current lease with the District is dated March 13, 2013
16 ("Lease").

17 11 Section 9 1(a) of the Lease authorizes Three Captains to use the leased premises
18 for its commercial fishing business:

19 Tenant shall use the Premises for its commercial fishing line and/or fish unloading
20 business and additional ancillary and compatible uses and services pursuant to
21 paragraph 9.1(b)(vii) of this lease. Tenant shall not use the premises for any other
22 purposes without landlord's prior written consent.

23 In furtherance of its commercial fishing operations, Section 9(b)(i) the Lease authorizes
24 Three Captains to install the Hoist on the Pier:

25 Tenant shall provide on the Premises all equipment required for the operation of
26 said wholesale fish dealership, including winch and hoist for the purpose of load-

1 ing or unloading fish or other merchandise to and from vessels, and scales, skiff
2 or equipment storage. *Tenant may provide a second winch and hoist at a location
approved in advance by the Harbor Master.*

3 12 In 2013, Three Captains notified the District that it intended to install the Hoist on
4 the Pier. Pursuant to Section 9(b)(i) of the Lease, Three Captains requested the Harbor Master to
5 approve installation of the Hoist on the east side of the Pier.

6 13 The Harbor Master rejected this request and, in March 2014, the Harbor Master
7 specifically directed Three Captains to install the Hoist at its current location, on the Pier's west
8 side To eliminate the potential for congestion, Three Captains agreed to establish access around
9 the area designated for the operation of the Hoist.

10 14. Three Captains installed the Hoist in the precise location directed by the Harbor
11 Master Three Captains obtained all of the County's required approvals and permits before in-
12 stalling the Hoist

13 15. In April 2014, Three Captains was installing the Hoist in the location the Harbor
14 Master specified Sabrina Brennan, the Commission's President ("Brennan"), sent an email to
15 Robert Bernardo ("Bernardo"), another Commission member, asking "Why is [the] hoist being
16 installed today at Johnson Pier in a new location without adequate public input/process, stake-
17 holder support, and without a safety plan in place?" Brennan claimed in her email that certain
18 unnamed "Fish Buyers and commercial fishing stakeholders have been in touch with me today.
19 I'm hearing strong opposition to what commercial fishermen describe as 'favoritism' and a 'gift
20 of public funds.'"

21 16. Bernardo responded to Brennan's email by pointing out that "contained within
22 each of the fishbuyers' lease agreements, there is language that specifically states that *each*
23 *fishbuyer must work directly with the Harbormaster to select an appropriate location for their*
24

1 hoists” Bernardo observed that “[t]here does not need to be any public comment or any Com-
2 mission approvals whatsoever—if we are just to follow our contractual obligations (which we
3 have to, by law). Therefore, in this particular case, Larry Fortado is just following his lease and
4 so is the District.”

5 17 Nonetheless, Brennan remained opposed to Three Captains’ installation of the
6 Hoist. In her capacity as a Commissioner, Brennan contacted the California Coastal Commission
7 (“CCC”) and asked whether Three Captains needed to obtain the CCC’s approval for installation
8 of the Hoist

9 18. Three Captains reasonably believes, and thereon alleges, that CCC did not pro-
10 vide a Community Development Permit (“CDP”) or approve the installation of the other hoists
11 on the Pier. Further, the Pier is located within the City of Half Moon Bay and the County. Both
12 Half Moon Bay and the County have CCC-approved Local Coastal Programs under California
13 Public Resource Code § 30604(b). Because the County approved the Hoist’s installation, Three
14 Captains met all the requirements of the County’s Local Coastal Program. Notwithstanding the
15 foregoing, Three Captains drafted and submitted an application to the CCC for a Coastal Devel-
16 opment Permit (“Permit”)

17 19. In September 2014, Pillar Point Seafood—one of the other tenants/fish buyers on
18 the Pier and Three Captains’ direct competitor complained to the District that the Hoist interfered
19 with its operations. In response, the District stated that it was “unaware of any instances in which
20 the new hoist has ever inconvenienced Pillar Point Seafood’s operations[.]” The District further
21 told Pillar Point Seafood that it had given “careful consideration” to the location where it di-
22 rected Three Captain’s to install the Hoist:

23 *The placement of the additional hoist—which Three Captains Sea Products, like*
24 *Pillar Point Seafood, has a right to under Section 9 0(b)(1) of the Lease—was ap-*

1 *proved by the District's Harbor Master after careful consideration of the location*
2 *of the existing fire protection equipment, the location of the existing freezers, and*
3 *the needs of the work dock. Locating the hoist at any other location would have*
4 *required impractical relocation of other facilities, to the detriment of all the les-*
5 *sees, including Pillar Point Seafood.*

6 20 As part of its application to the CCC, Three Captains submitted statements from
7 twenty commercial fishermen who offload their catch at the Pier. These commercial fishermen
8 unanimously agreed that installation of the Hoist would "promote the economic, commercial and
9 recreational needs of the commercial fishing industry." And, contrary to Pillar Point Seafood's
10 claim, the commercial fishermen believed that the Hoist would not impact access to the pier:

11 The new hoist location will not impact access to the dock or the ability of fisher-
12 men to unload catch or to load pots or other gear. There is ample space to transit
13 the dock for movement of equipment and it will not affect other Harbor associated
14 activities in the vicinity, such as fuel. The hoist is located in a position which is
15 not going to impede and access to the fuel dock. Indeed, by its location, it will al-
16 low easier access for all the fishermen that deliver to Three Captains because they
17 will not have to transport gear and fish through the building to and from our ves-
18 sels

19 The commercial fishermen concluded by stating that "[i]ndividually and collectively we
20 strongly support the waiver and request that the California Coastal Commission approve Coastal
21 Development Permit (CDP) Waiver 2-14-1592-W."

22 21. In September 2014, the Harbor Master confirmed to Three Captains that it had the
23 contractual right under the Lease to install the Hoist on the Pier and that it had installed the Hoist
24 in the location the Harbor Master specified.

As you know, at some point in early 2014 and pursuant to section 9.1(b)(i) of the
Three Captains Seafood's Lease with the San Mateo County Harbor District (Dis-
trict), you requested that the District's Harbor Master approve the location for in-
stallation of a second winch and hoist on the District's property that you lease. *On*
March 28, 2014, after consideration of a number of factors, including the location
of existing fire protection equipment and freezers, as well as the continuing needs
of the work dock, the Harbor Master approved the installation of the hoist at a
specified location.

1 22. Also in September 2014, the Harbor Master wrote to the CCC concerning Three
2 Captain's application for a Permit related to the Hoist's installation and operation. The Harbor
3 Master informed the CCC that the District's sole role concerning the Hoist was approving its lo-
4 cation:

5 We write you just to clarify that *the role of the District under the lease is limited*
6 *to approving the location on Johnson Pier* of the hoist at issue. All responsibilities
7 for applying for and receiving necessary permits and approvals for installation
8 and operation of the hoist is with the lessee. Consistent with its role, on March 28,
9 2014 the District's Harbor Master approved the location of the hoist at the loca-
10 tion specified in the above referenced permit application.

11 23. The CCC agreed that the Hoist would "facilitate existing marine use" and, in Oc-
12 tober 2014, published a "Notice of Proposed Permit Waiver." The CCC stated in the Notice that
13 it was waiving the requirement that Three Captains obtain a Permit because:

14 The proposed project will facilitate existing marine use by allowing for ongoing
15 operations in support of commercial fishing. It will ensure the economic and
16 commercial use of the harbor and increases the efficiency of existing commercial
17 fishing operations. The site does not contain sensitive habitat and the proposed
18 project includes best management practices to avoid and minimize potential im-
19 pacts to the water quality of the harbor in coastal waters. The project will not have
20 a significant impact on visual resources, public access, or biological resources.
21 For all the above reasons, the proposed project is consistent with chapter 3 of the
22 Coastal Act

23 The CCC provided the District with a copy of the waiver and advised that it intended to
24 report the waiver's issuance during the CCC's November 2014 meeting:

 Three Captains submitted a complete CDP application and the Executive Director
has issued a waiver for the hoist. The issuance of the waiver will be reported to
the Commission at the November 13, 2014 meeting as part of the Deputy Direc-
tor's Report (along with other minor items).

 24. After learning of the waiver, Brennan immediately contacted the CCC. Brennan
represented that she had "received a number of phone calls this morning from commercial fish-
ermen at Pillar Point Harbor wondering how they should communicate concerns about Three
Captains hoist permit waiver." Three Captains reasonably believes, and therefore alleges, that

1 Pillar Point Seafood (either directly, or through a representative, such as McHenry's son who is
2 the president of the Half Moon Bay Marketing Association) was the only "commercial fisher-
3 man" who contacted Brennan regarding Three Captains' permit. Brennan also claimed that cer-
4 tain unnamed "[c]ommercial fishermen feel strongly that public safety and pier access concerns
5 have not been adequately addressed " Three Captains reasonably believes, and therefore alleges,
6 that Pillar Point Seafood was the only "commercial fisherman" who expressed concerns to Bren-
7 nan concerning the Permit.

8 25 Brennan asked whether it would be possible for fishermen to meet with the CCC
9 "in advance of the next Coastal Commission meeting being held in Princeton?" Three Captains
10 reasonably believes, and therefore alleges, that this request was a subterfuge for Brennan to meet
11 with the CCC on Pillar Point Seafood's behalf.

12 26. The CCC advised that it could to meet with the commercial fishermen on No-
13 vember 6, 2014 between 10:00 a.m. and 2:30 p.m Brennan responded that "I can meet with you
14 at 1 30 p m " The CCC then requested Brennan to provide "the names of the individuals you plan
15 to accompany you to this meeting, so that I can make sure our security located in the lobby can
16 allow you entry to the building/20th floor " Brennan responded to this request by stating that "I'll
17 be meeting with you alone and as an individual "

18 27 In her official capacity as a Commission member, Brennan made a public records
19 request to the CCC for documents concerning the Hoist and the CCC's waiver The CCC deliv-
20 ered the requested information to Brennan at the District's office.

21 28 Three Captains reasonably believes, and therefore alleges, that Brennan attended
22 the November 6, 2014 meeting with the CCC alone and in her official capacity as a Commission
23 member.
24

1 29. The Commission did not authorized Brennan to speak with the CCC regarding
2 Three Captains' Permit application. The day after Brennan met with the CCC, it rescinded Three
3 Captains' waiver and pulled Three Captains' waiver application from the CCC's November 13,
4 2014 agenda Three Captains reasonably believes, and therefore alleges, that Brennan used her
5 position as a Commission member to convince the CCC to rescind its waiver.

6 30 On February 27, 2015, the CCC again delivered notice the Three Captains' appli-
7 cation was complete The CCC tentatively scheduled a hearing on Three Captains' application
8 for April 2015

9 31 On March 4, 2015, Brennan arranged for the Commission to pass a resolution di-
10 recting the District to "revoke" its "permission" allowing Three Captains to install the Hoist The
11 resolution further required the District to send a letter directing Three Captains to remove the
12 Hoist by July 2, 2015 and apply for a "location change " Three Captains reasonably believes, and
13 therefore alleges, that Brennan took these actions to prevent Three Captains from obtaining a
14 Permit.

15 32 Brennan's actions achieved her desired effect. Because of the Commission's ac-
16 tions, the CCC requested that Three Captains withdraw its permit application and refused to con-
17 sider the application during its April 2015 meeting

18 33 The Commission's actions at the March 4, 2015 meeting did not comply with the
19 required procedures and violated of San Mateo County Harbor District Ordinance Code and
20 therefore was a nullity and unenforceable. On March 28, 2015, Three Captains sent the Commis-
21 sion a letter identifying the multiple procedural defects in the Board's actions at the March 4,
22 2015 meeting

1 34 At its regularly scheduled meeting on May 6, 2015, the Commission sought to
2 remedy the procedural defects from its March 2014 actions. The Commission passed a resolution
3 (the "Resolution") that "adopts and affirms" the actions taken during the earlier meeting¹ Ac-
4 cording to the Resolution.

5 District staff, who are closely familiar with the operations on and around Johnson
6 Pier, has determined that limiting the hoist operation to less congested traffic are-
7 as than the area around the fuel dock would improve operational safety conditions
8 on Johnson Pier and would better serve the District and the public²

9 Furthermore, the Resolution found that Three Captains had failed to obtain a
10 Permit from the CCC, and therefore could not operate the Hoist.

11 35. The "staff" serving the Harbor, specifically the Harbor Mater and Assistant Har-
12 bor Mater have remained the same from 2013 to the present. Captains reasonably believes, and
13 therefore alleges, that the District's staff did not conduct a review to determine whether moving
14 the Hoist would improve safety conditions on the Pier or better serve the District and public. Fur-
15 thermore, the District's staff selected the initial location themselves. Three Captains also be-
16 lieves that it was not required to obtain a Permit from the CCC in order to operate the Hoist.
17 Even if a Permit was required, the CCC was prepared to issue Three Captains a waiver on two
18 separate occasions and would have done so but for Brennan's and the Commission's interfer-
19 ence.

20 36 The Resolution states that Three Captains has until July 2, 2105 to remove the
21 Hoist and apply for a location change. The Resolution is a final agency action.

22
23 ¹ See Exhibit A, the Board's Resolution 11-5, dated May 6, 2015

24 ² *Id.*, at Section 1(g)

1
2 **IV. CLAIMS FOR RELIEF**

3 **FIRST CLAIM FOR RELIEF**

4 The finding that the Hoist should be moved
5 for safety reasons is not supported by substantial evidence.

6 37. Three Captains realleges and incorporates herein by reference the allegations pre-
7 viously set forth in paragraphs 1 – 36 of this Petition.

8 38 The Lease provides Three Captains the right to install the Hoist on the Pier, sub-
9 ject only to the requirement that the Harbor Master approve the location in advance of the
10 Hoist's installation. As the District informed the CCC, its role "under the lease is limited to ap-
11 proving the location on Johnson Pier of the hoist at issue."

12 39. The Harbor Master determined where to place the Hoist "after careful considera-
13 tion of the location of the existing fire protection equipment, the location of the existing freezers,
14 and the needs of the work dock." The Harbor Master specifically determined that "[l]ocating the
15 hoist at any other location would have required impractical relocation of other facilities, to the
16 detriment of all the lessees[.]" Three Captains installed the Hoist in the precise location the Har-
17 bor Master directed.

18 40 The Commission identified two reasons in the Resolution for requiring Three
19 Captains to remove the Hoist. (1) the Hoist in its current location "has the potential of causing an
20 unsafe condition "on the Pier"; and (2) Three Captains is "operating" the Hoist "without requisite
21 approvals and permissions." Substantial evidence does not support either of the Commission's
22 findings.

23 41 The District's authority under the Lease was limited to approving the location
24 where the Hoist would be located. The District's Harbor master exercised that authority after

1 “careful consideration.” Nothing in the Lease authorizes the District or Commission to reconsid-
2 er that decision.

3 42. Even if the Commission could reconsider the Harbor Master’s decision, substan-
4 tial evidence does not support the Commission’s conclusion that the Hoist is unsafe in its current
5 location. The Harbor Master selected the current location after “careful consideration” of all fac-
6 tors, including safety and congestion. The Harbor Master determined that placement of the Hoist
7 in any other location would require the “impractical relocation of other facilities” and would be
8 “detrimental” to others who used the pier.

9 43. The Commission claims in the Resolution that District staff “determined that lim-
10 iting the hoist location to less congested traffic areas around the fuel dock would improve opera-
11 tional safety conditions on Johnson Pier and would better serve the District and the public.” The
12 Commission does not state any basis for this conclusion; for example, there is no evidence the
13 Commission or District conducted a use or safety analysis. The Commission does not identify
14 what location on the Pier would “improve operational safety conditions” over the Hoist’s current
15 location, nor does it explain how a different location would “better serve the public.”

16 44. In an April 28, 2015 email, the District’s counsel informed Three Captains that it
17 could “apply at any time to the Harbor Master for approval of the location of a second hoist, *in-*
18 *cluding the approval of the existing location.*” The email continued by stating that “there is no
19 question the Harbor District and the Harbor Master *stand ready to consider any request* that
20 Three Captains makes pursuant to its lease with the Harbor District.” The District does not ex-
21 plain how or why it determined, a week after its counsel sent this email to Three Captains, that
22 the Hoist was unsafe in its current location.

1 49 It is unclear whether the Hoist's installation even required issuance of a Permit
2 During a May 2014 telephone conversation with Larry Fortado, Three Captains' owner, the CCC
3 admitted that it was "not certain that a CPD is required" for installation of the Hoist. Further, the
4 County participates in the CCC's Local Coastal Program under California Public Resource Code
5 § 30604(b) Because the County approved the Hoist's installation, Three Captains met all the re-
6 quirements of the County's Local Coastal Program and did not need to obtain a separate Permit

7 50. Even though it likely did not require a Permit before installing the Hoist, Three
8 Captains subsequently submitted a complete Permit application to the CCC The CCC deter-
9 mined that the Hoist would "ensure the economic and commercial use of the harbor and reduce
10 congestion at Johnson Pier during periods of seasonal, high volume, fish-loads" The CCC fur-
11 ther determined that the Hoist would "not have a significant impact on . . . public access" to the
12 pier Because of this, the CCC's Executive Director decided in October 2014 to waive any re-
13 quirement that Three Captains obtain a Permit. This waiver would have taken effect on Novem-
14 ber 15, 2014

15 51 Pillar Point Seafood and Three Captains are competitors Pillar Point Seafood
16 does not want Three Captains to enjoy the competitive and financial advantages the Hoist pro-
17 vides

18 52 Brennan is working on behalf of Pillar Point Seafood's interests After learning of
19 the CCC's waiver, Brennan contacted the CCC in her capacity as a Commission member. On
20 information and belief, therefore, Three Captains alleges that Brennan falsely represented to the
21 CCC that she had received a number of phone calls from commercial fishermen concerned about
22 the waiver Actually, Pillar Point Seafood or its agents were the only people or entities who had
23 contacted Brennan about the waiver

1 53 After successfully lobbying for the CCC to meet with “commercial fishermen”
2 before the November 15, 2014 meeting, Brennan showed up for the meeting with the CCC alone
3 and in her official capacity as a Commission member. Brennan used her position as a Board
4 member to influence the CCC to rescind its waiver. The day after this meeting, the CCC rescind-
5 ed Three Captains’ waiver and pulled Three Captains’ waiver application from its November 13,
6 2014 agenda, stating that the CDP application was now incomplete.

7 54. In February 2015, the CCC again determined that Three Captains’ Permit appli-
8 cation was complete. The CCC tentatively scheduled a hearing on Three Captains’ application
9 for April 2015.

10 55 Days later, Brennan arranged for the Commission to pass a resolution directing
11 the District to “revoke” its “permission” allowing Three Captains to install the Hoist. The resolu-
12 tion further required the District to send a letter directing Three Captains to remove the Hoist by
13 July 2, 2015 and apply for a “location change.” Brennan took these actions on Pillar Point Sea-
14 food’s behalf to prevent Three Captains from obtaining a CCC permit.

15 56 Brennan’s actions achieved her desired effect. Because of the Resolution, the
16 CCC refused to consider Three Captains permit application during its April 2015 meeting.

17 57 The Commission is requiring Three Captains to remove the Hoist because it does
18 not have a Permit or waiver. However, the Commission—through the actions of Brennan—
19 deliberately interfered with Three Captains’ efforts and prevented Three Captains from obtaining
20 a Permit or waiver. But for Brennan’s actions, Three Captains would have obtained a waiver in
21 November 2014.

22 58 In sum, it does not appear that a Permit from the CCC is required to operate the
23 Hoist. Therefore, the Commission’s finding that Three Captains lacks the required Permit is not
24

1 supported by substantial evidence Furthermore, even if a Permit were required, the CCC was
2 ready to issue a waiver on two different occasions and would have done so but for the Commis-
3 sion's interference The Commission cannot credibly claim that a Permit is required and then
4 prevent Three Captains from operating its Hoist on the grounds that it lacks a Permit when Three
5 Captains would have obtained a Permit waiver but for the Commission's interference The
6 Commission's finding that a Permit is required and that Three Captains lacks a required permit
7 should be set aside as not supported by substantial evidence

8 **THIRD CLAIM FOR RELIEF**

9 Request for a stay of the operation of the
10 Resolution pending judicial resolution of this matter.

11 59 Three Captains incorporates by reference the allegations contained in paragraphs
12 1 – 58 of this Petition.

13 60 Cal. Code Civ. Proc 1094.5(g) and (h) allow a court to stay enforcement of an
14 administrative order pending the court's resolution of the matter A stay may be granted as long
15 as it is not against the public interest Here, numerous commercial fishermen support Three Cap-
16 tains' right to operate the Hoist in its current location Furthermore, the District selected the loca-
17 tion after careful consideration of a variety of factors The District also found that relocating the
18 Hoist would be detrimental to all lessees on the pier, including Pillar Point Seafoods, the primary
19 party objecting to the Hoist's location

20 61 Further, as a direct result of the Respondents' actions, Three Captains lost the in-
21 come it would have received had it been able to operate the Hoist from November 15, 2014 to
22 the present. The District also lost the revenue it would have obtained through lease fees had
23 Three Captains been able to operate the Hoist. Three Captains will suffer the expenses associated
24 with the removal and replacement of the Hoist. A stay of the Resolution is not against the public

1 interest, rather, a stay would be in the public interest. Three Captains requests that this Court is-
2 sue an order staying operation of the Resolution pending resolution of this matter in court.

3 **VI. PRAYER FOR RELIEF**

4 WHEREFORE, Three Captains respectfully requests the Court to enter the following re-
5 lief against the Respondents

6 A For an order of injunctive relief permanently staying enforcement of the Resolu-
7 tion,

8 B For an order declaring that Three Captains complied with its obligations under the
9 Lease regarding installation of the Hoist,

10 C. For an order prohibiting the Respondents from requiring Three Captains to re-
11 move or relocate the Hoist,

12 D For an award to Three Captains of its attorneys' fees and costs;

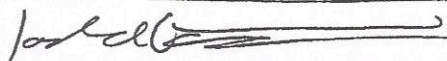
13 E For permission for Three Captains to amend its pleadings to conform to the evi-
14 dence presented at trial, and

15 F For such other and further relief as the Court may deem just and equitable.

16 DATED this 29th day of May, 2015

17 Respectfully Submitted,

18
19 WILLIAMS, KASTNER & GIBBS PLLC

20 By 
21 Todd W. Blischke, CA Bar #204680
22 Attorneys for Petitioner Three Captain Sea
23 Products, Inc.
24

VERIFICATION

I, the undersigned, declare under the penalty of perjury.

I, LARRY FORTADO, am the President of Three Captains Sea Products, Inc. in the above-entitled action and make this Verification for that reason; that I have read the foregoing **VERIFIED PETITION AND ATTACHED EXHIBIT FOR ADMINISTRATIVE MANDAMUS (CCP §1094.5) AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**, and know the contents thereof, and that the matters stated therein are true and correct to the best of my personal knowledge

Executed this 1 day of ^{June}~~May~~, 2015 at Halt Moon Bay CA.


LARRY FORTADO

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number, Address) E Michael Linscheid (SBM 221010) Law Chambers Building 345 Franklin St San Francisco, CA 94102	Reserved for Clerk's Office Stamp
TELEPHONE NO (415) 782-6002 FAX NO (Optional)	
E-MAIL ADDRESS (Optional)	
ATTORNEY FOR (Name) Petitioner Three Captains Sea Products, Inc	
Hall of Justice 400 County Center Redwood City, CA 94063	
PLAINTIFF/PETITIONER: Three Captains Sea Products, Inc DEFENDANT/RESPONDENT: San Mateo County Harbor District	CASE NUMBER:
LIST OF PROPOSED EXHIBITS	

Petitioner Respondent submits the following proposed exhibits

1 Resolution 11-15 of San Mateo County Harbor District

- 2
- 3
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Resolution 11-15
of the
San Mateo County Harbor District

**Adopting and Affirming Factual Findings Made During the
Harbor District March 4, 2015 Public Meeting Regarding Three
Captains Sea Products' Request to Maintain a Second Hoist on
Johnson Pier**

Whereas, the San Mateo County Harbor District (the "District") held a public meeting on March 4, 2015; and

Whereas, as part of its regularly noticed agenda for the March 4 meeting, the District's Board of Harbor Commissioners considered a "Possible Change in Location of Three Captains' Hoist at Pillar Point Harbor," in light of information and documents provided by District Staff, Three Captains Sea Products, Inc ("Three Captains") and its attorney, Mark Scheer, and

Whereas, all the documents included in the "Agenda Packet" prepared by District Staff for the March 4 meeting and made available to the public were considered by the District's Board of Harbor Commissioners, and

Whereas, the District's Board of Harbor Commissioners also accepted and considered a letter from Three Captains' attorney, Mark Scheer, received on March 4, 2015, and

Whereas, during the March 4 meeting, the District's Board of Harbor Commissioners considered and discussed in public whether to continue allowing Three Captains to operate a second hoist on Johnson Pier under a probationary agreement, and

Whereas, based on the documents and information provided and discussed, the District's Board of Harbor Commissioners voted three Commissioners in favor, none opposed, and two Commissioners abstaining—to authorize and direct the District's General Manager to send a letter notifying Three Captains that the District is discontinuing the March 28, 2014 probationary agreement, effective April 2, 2015, and giving Three Captains until July 2, 2015 to remove its second hoist and apply to the Harbor Commission for a location change

Therefore, be it resolved by the San Mateo County Harbor District as follows

Section 1 The District adopts and affirms the factual statements contained in the March 4, 2015 report of District Staff and the factual statements made by the Commissioners during the March 4, 2015 public meeting, finding

a. Three Captains' Lease Agreement permitted Three Captains to operate an existing winch and hoist and also permitted Three Captains to install a second winch and hoist at a location approved in advance by the Harbor Master,

b. Three Captains' Lease Agreement required Three Captains to obtain and pay for all licenses and permits required for construction and operation of a second winch and hoist and to comply with the requirements of any and all permits, licenses, and/or approvals, including from the California Coastal Commission (CCC),

c. On March 28, 2014, Three Captains signed an agreement with the District's Harbor Master authorizing Three Captains to install a second hoist on Johnson Pier,

RESOLUTION NUMBER 11-15
A RESOLUTION ADOPTING AND AFFIRMING FACTUAL FINDINGS MADE DURING THE HARBOR DISTRICT
MARCH 4, 2015 PUBLIC MEETING REGARDING THREE CAPTAINS SEA PRODUCTS' REQUEST TO MAINTAIN A
SECOND HOIST ON JOHNSON PIER

near the fuel dock, on a "probationary or tentative" basis, for one year ending April 1, 2015, and requiring Three Captains to provide the Harbor Master with copies of any and all required permits,

d On April 15, 2014, Three Captains installed its second hoist on Johnson Pier near the fuel dock,

e As of the March 4, 2015 meeting of the District's Board of Harbor Commissioners, Three Captains has not obtained a required Coastal Development Permit from the CCC,

f. Safety is paramount for operating any equipment on Johnson Pier, and added congestion has the potential of causing an unsafe condition on the Pier,

g District staff, who are closely familiar with the operations on and around Johnson Pier, has determined that limiting the hoist location to less congested traffic areas than the area around the fuel dock would improve operational safety conditions on Johnson Pier and would better serve the District and the public;

Section 2 Three Captains is operating a hoist without requisite approvals and permissions, and the District therefore affirms the March 4, 2015 decision of the District Board of Harbor Commissioners directing the District's General Manager to send a letter notifying Three Captains that the District is discontinuing the March 28, 2014 probationary agreement, effective April 2, 2015, and giving Three Captains until July 2, 2015 to remove its second hoist and apply to the Harbor Commission for a location change.

Section 3. Consistent with the Lease Agreement, Three Captains may apply to install a second hoist in a different location

Approved this 6th day of May, 2015 at a regularly noticed meeting of the San Mateo County Harbor District by a recorded vote as follows

For

Against

Abstaining

Attested

Debbie Nixon
Deputy Secretary

BOARD OF HARBOR COMMISSIONERS

Sabrina Brennan
President

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