

OCT 17 2008

By: L McALISTER, Deputy

1 MICHAEL J. AGUIRRE, City Attorney
MALINDA R. DICKENSON, Deputy City Attorney
2 California State Bar No. 222564

EXEMPT FROM FILING FEES
PURSUANT TO GOVT CODE § 6103

3 Office of the City Attorney
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San Diego, California 92101-4100
5 Telephone: (619) 533-5800
6 Facsimile: (619) 533-5856

7 Attorneys for Plaintiff City of San Diego

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 CITY OF SAN DIEGO)	Case No. 37-2008-00094185-CU-OR-CTL
)	
11 Plaintiff,)	COMPLAINT FOR DAMAGES AND
)	AND CIVIL PENALTIES
12 v.)	(False Claims Action)
)	
13 A.J. DIANI CONSTRUCTION CO., INC.;)	
14 GRANITE CONSTRUCTION COMPANY;)	
DOES 1-100)	
)	
15 Defendants.)	

16
17 Plaintiff, CITY OF SAN DIEGO [City] respectfully submits this Complaint for
18 Damages and Civil Penalties as follows:

19 **PARTIES**

20 1. Plaintiff, CITY OF SAN DIEGO [City] is, and at all times herein mentioned
21 was, a municipal corporation organized and existing under a charter first adopted by voters on
22 April 7, 1931, and as from time to time amended pursuant to the Constitution of the State of
23 California.

24 2. Plaintiff is informed and believes and thereon alleges that Defendant A.J.
25 DIANI CONSTRUCTION CO., INC. [A.J. Diani] is and at all times herein mentioned was a
26 corporation, organized and existing under the laws of California, and doing business in
27 San Diego County, California.

1 3. Plaintiff is informed and believes and thereon alleges that Defendant
2 GRANITE CONSTRUCTION COMPANY [Granite] is and at all times herein mentioned
3 was a corporation, organized and existing under the laws of California, and doing business in
4 San Diego County, California.

5 4. DOE 1 through DOE 100, inclusive, are fictitious names of defendants sued
6 herein under the provisions of Section 474 of the Code of Civil Procedure. Plaintiff is
7 informed and believes and thereon alleges that each of the fictitiously named defendants is
8 responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages
9 as herein alleged were proximately caused by such defendants. Plaintiff will seek leave of
10 this Court to amend this Complaint to allege the true names and capacities of each as soon as
11 they are ascertained.

12 5. This action is brought under the express authority granted to the City
13 Attorney's Office by the California False Claims Act, California Government Code section
14 12650 et seq. The California Attorney General has been served with a copy of this Complaint
15 pursuant to California Government Code section 12652(b)(2).

16 **GENERAL ALLEGATIONS AND BACKGROUND INFORMATION**

17 6. In October, 2007, massive wildfires destroyed hundreds of homes in the City
18 of San Diego and wreaked havoc on the lives of its citizens. Conditions in affected
19 communities were so severe these areas were declared a major disaster by the President of the
20 United States, a state of emergency by the Governor of California, and a state of local
21 emergency by the City Council of the City of San Diego

22 7. On October 26, 2007, the Governor of California issued an executive order
23 which, among many other things, required state agencies and departments to work "with local
24 officials to put in place and implement a comprehensive structural debris removal plan that
25 will treat the removal of structural debris as a single organized project."

26 8. Pursuant to the executive order and in an effort to assist displaced families and
27 deal quickly with extensive damage to effected communities, the Mayor of the City of San
28 Diego proposed a centralized debris removal clean-up program. The proposal provided fire

1 victims with the option of joining a City program for all their debris removal needs, in which
2 the City would hire the contractor, and the City and State would be responsible for costs not
3 covered by homeowners' insurance. On November 6, 2007, the City Council of the City of
4 San Diego approved the Mayor's proposed "City of San Diego Fire Cleanup Program"
5 [Program].

6 9. The City is informed and believes and thereon alleges that, in violation of the
7 California False Claims Act, Defendants, the companies hired to carry out the Program,
8 overestimated, overstated, and overcharged costs to the City of San Diego and its taxpayers.

9 10. In connection with hiring contractors to carry out the Program, the City issued
10 a Request for Proposals [RFP] with the following stated objective:

11 ...to make an award to a qualified Proposer who will furnish the
12 City of San Diego with removal of the structural debris both
13 east and west of Interstate 15 associated with the City of San
14 Diego Fall 2007 and San Pasqual Wildfires, which represents
15 best overall value to the City meeting the specifications and
16 requirements of this RFP.

17 11. The RFP provided that the RFP itself, the responding submittal, and the City's
18 General Provisions created a binding contract between the City and Defendants if the
19 responding submittal was selected by the City.

20 12. In particular, the RFP explained:

21 Except as otherwise specified herein, the City of San Diego
22 General Provisions for Proposals, dated January 18, 2005, (on
23 file in the Office of the Purchasing Agent) are incorporated as
24 part of this Proposal and any resulting contract by reference.
25 The General Provisions are available online at
26 www.sandiego.gov/purchasing or via request from the
27 Purchasing & Contracting Department by calling (619) 236-
28 6000.

By signing and/or authorizing the Proposal submittal, the
Proposer acknowledges that they have read and understood the
meaning, intent, and requirements of said General Provisions;
and acknowledge said General Provisions are included as a part
of this Proposal.

13. The RFP further explained:

CONTRACT DOCUMENTS. Once the City issues a letter of
Award to the apparent successful Proposer, a binding Contract

1 is deemed executed by all Parties, subject only to Proposer
2 providing all requisite documentation, such as certificates of
3 insurance and bonds to the Purchasing & Contracting
4 Department within three (3) calendar days...

4 The Contract will be deemed to incorporate the City's Request
5 for Proposol, the Proposal Submitted (Technical Volume and
6 Price Volume), Best and Final Offer (if any), the City of San
7 Diego General Provisions for Proposals dated January 18, 2005
8 ("General Provisions"), and any exhibits, attachments,
9 appendices or addendums to any of the aforementioned
10 documents. Collectively, these documents will be known as
11 "the Contract Documents" and will constitute the entire
12 agreement between the Parties...

13 14. The General Provisions referenced in and made part of the contract by the RFP
14 required Defendants to perform according to industry standards:

15 Industry Standard. Services performed and goods provided,
16 must be acceptable to the City, in strict conformity with all
17 instructions, conditions, and terms of the Contract Documents
18 and performed in accordance with the standards customarily
19 adhered to by an experienced and competent professional using
20 the degree of care and skill ordinarily exercised by reputable
21 professionals practicing in the same field of service in the State
22 of California. Where approval by the City, the City Manager, or
23 other representatives of the City is required, it is understood to
24 be general approval only and does not relieve the Contractor of
25 responsibility for complying with all applicable laws, codes,
26 and good business practices.

27 15. On November 7, 2007 and November 9, 2007, respectively, Granite
28 and A.J. Diani responded to the City's Request for Proposal [RFP].

16 16. The City selected Granite to clear debris from destroyed homes west of I-15
17 and A.J. Diani to clear debris from homes east of I-15.

18 17. The City is informed and believes and thereon alleges that far from performing
19 in accordance with industry standards, Defendants overestimated, overstated, and
20 overcharged the City and the taxpayers for costs and services associated with the Program,
21 including inflating the cost of materials, the quantities and type of debris removed, and/or
22 unnecessarily and unreasonably incurring excessive costs for materials and/or services.

**FIRST CAUSE OF ACTION
FALSE CLAIMS TO THE CITY
(Against All Defendants)**

1
2
3 18. The allegations set forth above in paragraphs 1-17 are incorporated herein as
4 though fully set forth in this paragraph.

5 19. The City is informed and believes and thereon alleges that Defendants
6 knowingly presented or caused to be presented to the City a false claim for payment or
7 approval. In particular and without limitation, the City is informed and believes and thereon
8 alleges that Defendants presented claims for payment for debris removal services which were
9 based on falsified records of the quantity, cost, and/or type of materials removed. In
10 particular and without limitation, City is informed and believes and thereon alleges that
11 Defendants presented or caused to be presented claims for payment for costs of debris
12 removal services, including but not limited to services related to removal of Ash & Debris
13 and Mixed Construction & Demolition, and that these claims were based on falsified records
14 of the quantity or materials, the cost per unit, and/or the type of materials removed.
15 Furthermore, City is informed and believes and thereon alleges that Defendants presented
16 claims for payment for cost of materials, including but not limited to the cost of fiber roll
17 logs, and that these claims were based on falsified records of the quantity purchased and/or
18 the reasonable cost per unit.

19 20. The City is informed and believes and thereon alleges that Defendants
20 knowingly made, used, or caused to be made and/or used false records or statements to get a
21 false claim paid or approved by the City. In particular, and without limitation, the City is
22 informed and believes and thereon alleges that Defendants created records and/or receipts
23 upon which payment requests were based which falsely represented the quantity, cost, and/or
24 type of materials removed in connection with Defendants' debris removal services including,
25 but not limited to removal of Ash & Debris and Mixed Construction & Demolition.
26 Furthermore, City is informed and believes and thereon alleges that Defendants created
27 records and/or receipts upon which payment requests were based which falsely represent the
28

1 quantity and/or reasonable cost of materials, including but not limited to fiber roll logs,
2 purchased.

3 21. The City is informed and believes and thereon alleges that Defendants had
4 possession, custody, or control of public property or money used or to be used by the City and
5 knowingly delivered and/or caused to be delivered less property and/or services than that
6 which Defendants received a certificate or receipt. In particular, and without limitation, the
7 City is informed and believes and thereon alleges that Defendants caused to be transmitted
8 receipts for debris removal materials in an amount greater than the materials actually required
9 to be removed. Furthermore, City is informed and believes and thereon alleges that
10 Defendants caused to be transmitted to the City receipts for materials, including but not
11 limited to fiber roll logs, in an amount greater than the cost of materials actually purchased
12 and/or required to be purchased.

13 22. The City is informed and believes and thereon alleges that Defendants were
14 authorized to make or deliver a document certifying receipt of property used or to be used by
15 the City and knowingly made or delivered receipts that falsely represent the property used or
16 to be used in the Program. In particular and without limitation, the City is informed and
17 believes and thereon alleges that Defendants were authorized to deliver a document certifying
18 receipt of debris removal materials and knowingly certified and/or delivered receipts for
19 materials in amounts greater than debris removal materials actually required to be removed
20 pursuant to the contract. Furthermore, City is informed and believes and thereon alleges that
21 Defendants were authorized to deliver a document certifying receipts for materials including
22 fiber roll logs, Ash & Debris, and/or Mixed Construction & Demolition, and knowingly
23 delivered receipts for materials in an amount greater and/or unequal to the materials actually
24 used and/or required to be used.

25 23. As a result of the conduct of Defendants, the City has been damaged in an
26 amount to be proven at trial.

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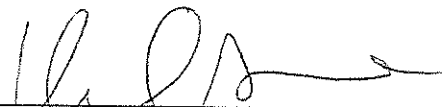
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PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays judgment as follows:

1. For three times the actual damages sustained by the City of San Diego which will be proven at trial;
2. For a civil penalty of \$10,000 to be assessed against Defendants in favor of the City of San Diego for each and every false claim made by them;
3. For the costs of suit herein incurred;
4. For reasonable attorneys fees; and
5. For such other and further relief as the court may deem proper.

Dated: October 17th, 2008

By 
MICHAEL J. AGUIRRE,
City Attorney

Attorneys for Plaintiff City of San Diego

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT:(AVISO AL DEMANDADO): A.J. DIANI CONSTRUCTION CO., INC.; GRANITE CONSTRUCTION COMPANY; DOES 1-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

F I L E D

Clerk of the Superior Court

OCT 17 2008

By: **L. McALISTER**, Deputy

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
CITY OF SAN DIEGO

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California, County of San Diego
330 West Broadway
San Diego, California 92101

CASE NUMBER:
(Número del Caso):

37-2008-00094185-CU-GR-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Michael J. Aguirre, City Attorney (619) 533-5800

Malinda R. Dickenson, Deputy City Attorney (SB #222564)
Office of the City Attorney
1200 Third Avenue, Suite 1100, San Diego, California 92101

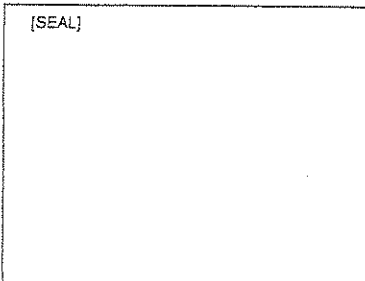
L. McALISTER

DATE: October 17, 2008
(Fecha) **OCT 17 2008**

Clerk, by _____, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served



- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- 4. by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, ... our number, and address): CSB # 222564

FOR COURT USE ONLY

MICHAEL J. AGUIRRE, CITY ATTORNEY
MALINDA R. DICKENSON, DEPUTY CITY ATTORNEY
OFFICE OF THE CITY ATTORNEY
1200 THIRD AVENUE, SUITE 1100, SAN DIEGO, CALIFORNIA 92101
TELEPHONE NO.: (619) 533-5800 FAX NO.: (619) 533-5856
ATTORNEY FOR (Name): FOR PLAINTIFF, CITY OF SAN DIEGO

FILED
Clerk of the Superior Court
OCT 17 2008
L. McALISTER, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
[X] HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827
[] NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081-6643
[] EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941
[] RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-5200
[] SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5649

CASE NAME: City of San Diego v. A.J. Diani Construction Co., Inc.

CIVIL CASE COVER SHEET
[X] Unlimited (Amount demanded exceeds \$25,000)
[] Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
[] Counter [] Joinder
Filed with first appearance by defendant
(Cal. Rules of Court, rule 1811)

CASE NUMBER: 37-2008-00094185-CU-OR-CTL
JUDGE:
DEPT.:

All five (5) items below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

- Auto Tort: Auto (22), Uninsured motorist (46), Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort: Asbestos (04), Product liability (24), Medical malpractice (45), Other PI/PD/WD (23), Non-PI/PD/WD (Other) Tort: Business tort/unfair business practice (07), Civil rights (08), Defamation (13), Fraud (16), Intellectual property (19), Professional negligence (25), Other non-PI/PD/WD tort (35), Employment: Wrongful termination (36), Other employment (15), Contract: Breach of contract/warranty (06), Collections (09), Insurance coverage (18), Other contract (37), Real Property: Eminent domain/Inverse condemnation (14), Wrongful eviction (33), Other real property (26), Unlawful Detainer: Commercial (31), Residential (32), Drugs (38), Judicial Review: Asset forfeiture (05), Petition re: arbitration award (11), Writ of mandate (02), Other judicial review (39), Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812): Antitrust/Trade regulation (03), Construction defect (10), Mass tort (40), Securities litigation (28), Environmental / Toxic tort (30), Insurance coverage claims arising from the above listed provisionally complex case types (41), Enforcement of Judgment: Enforcement of judgment (20), Miscellaneous Civil Complaint: RICO (27), Other complaint (not specified above) (42), Miscellaneous Civil Petition: Partnership and corporate governance (21), Other petition (not specified above) (43)

- 2. This case [] is [X] is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the requiring exceptional judicial management:
a. [] Large number of separately represented parties
b. [] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. Substantial amount of documentary evidence
d. [] Large number of witnesses
e. [] Coordination and related actions pending in one or more courts in other counties, states or countries, or in a federal court
f. [] Substantial post-disposition judicial supervision

- 3. Type of remedies sought (check all that apply):
a. [X] monetary
b. [] nonmonetary; declaratory or injunctive relief
[X] punitive

- 4. Number of causes of action (specify): 4
5. This case [] is [X] is not a class action suit.

Date: October 17, 2008
MALINDA R. DICKENSON, DEPUTY CITY ATTORNEY
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
• File this cover sheet in addition to any cover sheet required by local court rule.
• If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
• Unless this is a complex case, this cover sheet shall be used for statistical purposes only.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7067	
PLAINTIFF(S) / PETITIONER(S): City of San Diego	
DEFENDANT(S) / RESPONDENT(S): AJ Diani Construction Co Inc et.al.	
CITY OF SAN DIEGO VS. AJ DIANI CONSTRUCTION CO INC	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2008-00094185-CU-OR-CTL

Judge: David B. Oberholtzer

Department: C-67

COMPLAINT/PETITION FILED: 10/17/2008

COMPLAINT RECEIVED ON 10/17/08

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL RULES TO THE REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT);

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2008-00094185-CU-OR-CTL CASE TITLE: City of San Diego vs. AJ Diani Construction Co Inc

NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

ADR POLICY

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

ADR OPTIONS

1) CIVIL MEDIATION PROGRAM: The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non-binding process in which a trained mediator 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute – the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

Assignment to Mediation, Cost and Timelines: Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: \$150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

2) JUDICIAL ARBITRATION: Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

Assignment to Arbitration, Cost and Timelines: Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under \$50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

3) SETTLEMENT CONFERENCES: The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

4) OTHER VOLUNTARY ADR: Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 238-2400.

ADDITIONAL ADR INFORMATION: For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central PLAINTIFF(S): City of San Diego DEFENDANT(S): AJ Diani Construction Co Inc et.al. SHORT TITLE: CITY OF SAN DIEGO VS. AJ DIANI CONSTRUCTION CO INC	FOR COURT USE ONLY
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)	CASE NUMBER: 37-2008-00094185-CU-OR-CTL

Judge: David B. Oberholtzer

Department: C-67

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

- | | |
|---|---|
| <input type="checkbox"/> Court-Referred Mediation Program | <input type="checkbox"/> Court-Ordered Nonbinding Arbitration |
| <input type="checkbox"/> Private Neutral Evaluation | <input type="checkbox"/> Court-Ordered Binding Arbitration (Stipulated) |
| <input type="checkbox"/> Private Mini-Trial | <input type="checkbox"/> Private Reference to General Referee |
| <input type="checkbox"/> Private Summary Jury Trial | <input type="checkbox"/> Private Reference to Judge |
| <input type="checkbox"/> Private Settlement Conference with Private Neutral | <input type="checkbox"/> Private Binding Arbitration |
| <input type="checkbox"/> Other (specify): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate: (mediation & arbitration only) _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 10/17/2008

JUDGE OF THE SUPERIOR COURT