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SAN LUIS OBISPO SUPERIOR COURT
BY M. Zepeda
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4 David F. Hubbard, State Bar No. 165708
5 Attorney for Plaintiffs,
SUB CORP., LTD., and SQUARE DEAL RECORDINGS & SUPPLIES, INC.
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN LUIS OBISPO

10
11 SUB CORPORATION, LTD., a California) Case No. 18CV-0782
corporation, and SQUARE DEAL)
12 RECORDINGS & SUPPLIES, INC., a California) **COMPLAINT IN INVERSE**
corporation,) **CONDEMNATION**
13)
Plaintiffs,) [Cal. Const., Art. I, Section 19]
14)
vs.)
15) APN 002-501-002
CITY OF SAN LUIS OBISPO, a municipal)
16 corporation; CITY OF SAN LUIS OBISPO) APN 002-501-007
FIRE DEPARTMENT; and Does 1 through 20,)
17 inclusive,)
18 Defendants.)

19
20 **FIRST CAUSE OF ACTION**

21 **(Inverse Condemnation)**

22 (Against City of San Luis Obispo and Does 1-10)

23 1. Plaintiff Sub Corporation, Ltd., (Sub Corp) is a California corporation that owns the
24 properties located at 283 Higuera Street, 295 Higuera Street, 100 Pismo Street, APN 002-501-007
25 which collectively comprised a business called The Sub. Sub Corp also owns the properties where
26 Square Deal Recordings & Supplies, Inc., a California corporation, operated a business called Square
27 Deal Recordings & Supplies (Square Deal). Square Deal was the tenant in possession of real
28 properties in San Luis Obispo, California, APN 002-501-002, commonly identified as 303 Higuera

1 Street in the front and 150 Pismo Street in the rear, in San Luis Obispo, California, in the County of
2 San Luis Obispo.

3 2. Defendant City of San Luis Obispo (the CITY) is, and at all times mentioned in this
4 complaint was, a municipal corporation duly organized and existing under the laws of the State of
5 California and situated in the County of San Luis Obispo.

6 3. Defendant City of San Luis Obispo Fire Department (Fire Department) is a division of the
7 CITY.

8 4. Plaintiffs are ignorant of the true names and capacities of the defendants sued in this
9 complaint as Does 1 through 10, inclusive, and therefore sue these defendants by these fictitious
10 names. Plaintiffs will amend this complaint to allege their true names and capacities when
11 ascertained. Plaintiffs are informed and believe, and allege on that information and belief, that each
12 of these fictitiously named defendants is in some manner responsible for the injury and damage to
13 plaintiffs alleged in this complaint. Plaintiffs are also informed and believe, and allege on that
14 information and belief, that these fictitiously named defendants were, at all times mentioned in this
15 complaint, the agents, servants, and employees of their co-defendants and were acting within their
16 authority as such with the consent and permission of their co-defendants.

17 5. Inverse condemnation actions are exempt from the Government Claims Act and are
18 authorized by California Constitution Article I, Section 19.

19 6. Inverse condemnation actions are not subject to any of the statutory immunities and
20 protections extended to public entities through the Government Code.

21 7. An action for inverse condemnation is an eminent domain proceeding initiated by the
22 property owner rather than the condemner. The principles which affect the parties' rights in an
23 inverse condemnation suit are the same as those in an eminent domain action. (Breidert v. Southern
24 Pac. Co. (1964) 61 Cal.2d 659, 663, fn. 1.)

25 8. All the plaintiff in an inverse condemnation must show is that the damage resulted from an
26 exercise of governmental power while seeking to promote the general interest in its relation to any
27 legitimate object of government. (Baker v. Burbank-Glendale-Pasadena Airport Authority (1985)
28 39 Cal.3d 862, 867; Frustruck v. City of Fairfax (1963) 212 Cal.App.2d 345, 364.) Plaintiffs'

1 properties and businesses were damaged by a defective policy of firefighting, which policy reflects
2 an exercise of the CITY's governmental power; the CITY's firefighting policies seek to promote
3 the general interest and are a legitimate object of government.

4 9. In eminent domain, the government must establish that the public interest and *necessity*
5 require the project; that the project is planned in the manner that will be most compatible with the
6 greater public good and the least private injury; and that the property sought to be acquired is
7 *necessary* for the project. (Code of Civil Procedure §1240.030.) Similarly, inverse condemnation
8 offers relief where the police power is exercised in a manner that *unnecessarily* damages property
9 – in other words, where the manner by which government power is exercised is not “the manner”
10 that results in the “least private injury” – this is especially the case where the plan or policy behind
11 the exercise of government power can be shown to be inadequate or defective.

12 10. Inverse condemnation relief is also available where inadequate or negligent planning or
13 policies have caused unnecessary damage to private property. The plans and policies of the CITY
14 and the City of San Luis Obispo Fire Department (Fire Department) have caused Fire Department
15 personnel (Fire personnel) to engage in conduct that passes beyond the proper bounds of government
16 power and resulted in unnecessary invasions and damaging of property rights.

17 *The December 2015 Fire*

18 11. On December 26, 2015, six buildings on two separate parcels were destroyed by what started
19 as a small, easily containable fire in San Luis Obispo (December 26 fire).

20 12. A business called The Sub was located at 295 Higuera Street and 100 Pismo Street, in a
21 building comprised of about 4000 SF of retail space. The Sub also contained two small structures
22 at 283 Higuera Street as well, adding another 500 SF or so. The Sub was a novelty/pop culture
23 retailer, carrying posters, graphics, fantasy and Gothic statuary and gifts, body jewelry, pocket knives
24 and decorative cutlery, women's clothing, t-shirts and lots of youth oriented miscellany and gifts.
25 The Sub was founded in 1971 and has been a part of the fabric of San Luis Obispo ever since. The
26 Sub Corporation owned and operated the business as well as owning the property.

27 13. The other business, Square Deal, occupied the warehouse building on the adjoining lot.
28 Square Deal was a 10,000 SF warehouse on the main floor and 4000 SF in the basement. Square

1 Deal used the building for storage of active listed inventory, work space and shipping/ fulfillment
2 space; Square Deal rented basement space to Jose Nunez, from which he ran his internet business
3 as well as working for Square Deal part time; and Square Deal also had a small apartment attached
4 to the loading dock. This was usually rented to an employee.

5 14. Square Deal is currently a distributor of music industry related packaging and related supplies
6 as well as music and pop culture accessories such as patches, buttons and stickers. Much of Square
7 Deal's unique and valuable inventory was destroyed by the December 26 fire. Square Deal has a
8 million or so cassettes in back-stock at its storage yard, but the index to the back-stock was destroyed
9 during the fire. Square Deal also had around 300,000 comics destroyed by the subject fire and the
10 comics also contained the back-stock locations for the over a million comics Square Deal has at its
11 storage yard (to back-up the online listings).

12 15. The saddest destruction for Square Deal came in its graphics department. Square Deal
13 workers had been patiently sitting on a trove of promotional rock posters from the 70s and 80s that
14 had matured and were now very valuable on line. Square Deal had just purchased and set up a 54"
15 scanner to begin the process of listing them. Some of the graphics were rolls of 100 copies each of
16 42" x 42" rock album cover posters that were extremely scarce in the day and seemed to now be
17 worth \$100 to \$300 dollars each; other graphics lost include 1000 or so total, ranging in quantities
18 from 1 to 20 each, as well as many unique collectors' cut outs, stand up, and other one-shot limited
19 materials. Square Deal had around 120 different titles, with good quantities on most. Square Deal
20 took these against a debt when Odyssey records went bankrupt back in the late 70s.

21 16. Square Deal was also holding the remainder of an Art Print wholesaler who went out of
22 business in the 1980s. His inventory ended up in Cambria and Square Deal purchased it in the mid-
23 1990s. When the vendor was active, the least expensive print he carried was over \$20.00 wholesale
24 and most were more. The quality of paper on many of the prints was amazing. Square Deal had
25 both prints in limited numbers and new unopened rolls before the fire. Square Deal had over 300
26 different high end art prints. The plan on both the Rock and Art was to sell until Square Deal was
27 down to its last copy, then scan at high resolution and print out copies in the future. The art was old
28 and not subject to copyright, and the rock graphics were promos and limited editions that we could

1 have sold forever . . . now all of this valuable inventory is just ash.

2 17. Square Deal currently has around 13,000 listings on Amazon. Before the fire, Square Deal's
3 original primary line was discontinued sound recordings . Between sound recordings, comic books
4 and the rest of its listings, Square Deal had 161,000 items listed on Amazon. It has been almost
5 three years since the fire and this is as far as Square Deal has recovered on the lost listings. Square
6 Deal is primarily an internet seller these days. Wholesale sales are essential to maintaining Square
7 Deal's volume and price breaks, but the internet and Amazon are now its primary sales venues. The
8 best profits are when one can sell something that was purchased long ago and does not require
9 replacing. The recordings, graphics and comics involved sales at essentially no cost to Square Deal;
10 those were all destroyed by the fire.

11 *The December 26 Fire*

12 18. This December 26 fire started in the window box in the front room of The Sub facing
13 Higuera Street. This is the Northeast part of the business. The window box is within the store
14 perimeter, but it is enclosed and separate from the store. Entry into the window box is from the front
15 room of The Sub into the corner area that is at the center of the initial fire. It was apparent from the
16 start that this was a very "local" fire that could be extinguished quickly and without causing damage
17 throughout the floor, let alone the building.

18 19. The Sub neighbors Square Deal's building (303 Higuera Street). After the initial window
19 box fire was put out, any competent volunteer or professional fire department could have easily
20 walked through the front door, turned around, and safely put water on the front room from the main
21 room. Less than a minute of water would have killed the fire and only the front of The Sub would
22 have suffered damage. Square Deal should have been entirely spared any damage from the fire.

23 20. Instead, because of the Fire Department's unwritten "do not go inside a building to fight the
24 fire" policy, in tandem with the CITY's policy of zero oversight of the Fire Department, Fire
25 personnel sent a roof crew to the roof and started an accelerated burn down. Why? Because fighting
26 a fire is dangerous. Precipitating a complete burn down is safe and easy. The fire thrives, properties
27 and citizens' lives are sometimes jeopardized, but no Fire personnel get hurt during fires under these
28 unwritten policies. Not coincidentally, it has been over 30 years since the Fire Department has

1 suffered a significant injury¹ while engaging fires.

2 21. The Fire Department's roof crew first poured accelerant onto the roof to make the fire appear
3 more advanced. It was an act tantamount to arson. It served no legitimate role in fighting the fire
4 and revealed a plan of action to destroy the structure. More specifically, the purpose was to spread
5 the fire from the front room into the main room. This strategy causes the fire to spread toward the
6 cut holes; it accelerates the fire and causes more damage.

7 22. The two large holes apparently did not spread the fire as rapidly as Fire personnel desired,
8 so BC-1 Berryman (Incident Commander) stationed a hose to blow entrained air (and water) into the
9 left half of the main building under the two 8' x 8' holes to provide more oxygen for a faster burn
10 down. The hose nozzle was opened to its full capacity to ensure maximum air blown in. Fire
11 personnel pumped this entrained air into the building for over 25 minutes (the water just fell to the
12 carpet); the entrained air accelerated the fire on the left underside of the roof, and together with the
13 store merchandise burning on the right side – mission accomplished – the main roof collapsed. The
14 hose was never moved, nor was any attempt made to direct the hose toward any burning fire.

15 23. Another consequence of this entrained air strategy was that the fire burning at ground level
16 on the right was also accelerated. It burned through the fixtures and the wall and spread to a portion
17 of the structure that would never have been involved without the acceleration of the fire caused by
18 the prolonged entrained air tactic. This and other unwritten, unsupervised and unaccountable tactics
19 caused damage that the December 26 fire, if actually fought or resisted at all, never would have.

20 24. Blowing in entrained air for 25 minutes is the opposite of actual firefighting. It is not an
21 acceptable practice by any fire department, and is nowhere mentioned in written policies of this Fire
22 Department. The CITY would know of the vast gap between the Fire Department's actual practices
23 and its written policies if the CITY engaged in any oversight or showed any interest in fires and the
24 Fire Department's responses to fires.

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28 ¹ This is a fact we can all celebrate. On the other hand, it is a telling statistic, much like a team that goes through a 162-game baseball season without ever being thrown out trying to steal a base. It undoubtedly means that team was too timid on the basepaths.

1 25. During this more than twelve hour event, the Fire Department never put water on *any* of the
2 actual burning fire on the underside of *any* roof or on the merchandise to the right. Any effort to stop
3 or put out the fire in The Sub would have kept the fire in The Sub and Square Deal would not have
4 been involved. The Fire Department's Operations Manual identifies an interior attack as standard
5 operating procedure; had Fire Personnel attempted an interior attack on this (initially) easily
6 containable fire, only the front room of The Sub would have been damaged and Square Deal would
7 have been completely spared any fire damage. The tactic called "surround and drown" would have
8 kept the fire in The Sub. A defensive only posture would have kept the fire in The Sub.

9 26. In the two small buildings at 283 Higuera Street, Fire personnel almost immediately broke
10 all the windows and shortly afterwards cut open both rear sealed up doors. Fire personnel never
11 went in through the doors, they were cut to provide more air to the fire. This endured for over an
12 hour before the fire reached this part of The Sub. When the roof of the middle small building would
13 not burn through to allow for aerial extinguishment, Fire personnel cut the entire back wall of the
14 middle building open with chain saws to allow for more air and a better burn. Fire personnel must
15 not have noticed that this middle building had a metal roof, so it never did collapse. It was the only
16 roof that was not completely burned.

17 27. If the Fire Department had never arrived and the fire was simply left to burn, it would have
18 stayed in the Sub and Square Deal would have been completely spared.

19 28. If the Fire Department had taken any actions to slow, retard or diminish the fire in The Sub
20 after the initial window box fire, the fire would not have involved Square Deal or The Sub's beaded-
21 curtain room and both small rooms at 295 Higuera Street that were also part of The Sub.

22 29. Instead, the Fire Department opened all of the doors to create drafts as well as cutting holes
23 into the roof *ahead* of the fire, to pull the fire through Square Deal. The Fire Department refused
24 to put water on any fire until it had burned past its peak.

25 30. The CITY's website currently (12/17/18) offers a FAQ section, which provides an example
26 of the grand chasm between stated policy and actual practice:

27 Q: Why did you chop that big hole in my roof!?! The fire was in the kitchen, not the attic!
28 A: *Good question, and the answer lies in the next thing our people did right after the*

1 roof-venting hole was made. Other firefighters immediately entered the building and applied their
2 water stream directly to the seat (heart) of the fire. This extinguishing strategy, called a
3 "Coordinated Direct Interior Attack," is the key to stopping a structure fire in its tracks, and
4 preventing any further damage. To facilitate such an attack, the interior atmosphere must be
5 lowered from the typical 1500°F of a structure fire, to a temperature which will permit firefighters
6 to enter and to operate. The heat goes out through the hole in the roof.

7 In addition to assisting with locating and extinguishing the fire, cutting a hole in the roof
8 (commonly referred to as "vertical ventilation") decreases smoke and fire damage to the interior
9 contents of the building and creates a more survivable environment for any trapped occupants.
10 Often times, large fans are directed in the front door of a vertically ventilated building to assist with
11 replacing toxic, super-heated air with fresh air.

12 Another, less common purpose for roof venting is to eliminate a "backdraft" condition.
13 Backdraft conditions result when a free-burning fire consumes all the available oxygen in a closed
14 structure. Super-heated combustible gases remain, requiring only the introduction of oxygen (air)
15 to explode. Simply opening the front door to effect entry can trigger a backdraft explosion, and has
16 killed many firefighters.

17 31. Interestingly, the training manual explains that the hole is cut so when water is put onto the
18 fire, the huge clouds of smoke/steam that the water kicks up will vent through the roof and allow
19 firefighters to see what they are doing. Without the hole, firefighters would be blinded the moment
20 they apply water. The training manuals also advise not to cut the hole until the hose team is actually
21 going into the building or ready to go in. The manuals say that the moment the hole is cut the fire
22 will be accelerated, so the attack and hole cutting must be carefully coordinated so as not to make
23 the fire worse and endanger firefighters.

24 32. The act of cutting the hole in the roof makes the fire bigger and hotter. Proper firefighting
25 policy does not allow for waiting or trying to lower the temperature, because firefighters normally
26 do not have this information when they arrive and have to make decisions. Firefighters whose actual
27 purpose is to fight fire know that every second of delay enlarges the fire – that is why they race to
28 the scene with sirens blazing.

1 33. Back to what actually happened. Between 1:00 and 1:15 p.m., Fire personnel lit three
2 backfires inside Square Deal; had they not done that, the fire in Square Deal would have taken 24
3 to 36 hours to burn down. This would have proven embarrassing to the Fire Department. To be
4 clear, the Fire Department's policy of refusing to go into buildings that are on fire directly leads to
5 gratuitously burning buildings down, even those fires that any volunteer fire department could easily
6 have put out. This is evident to anyone paying attention. The Fire Department has to accelerate the
7 burn down so that the uninformed cannot discern, due to the protracted passage of time, that the
8 building could have been saved with even moderate effort and that the Fire Department had ample
9 time to limit the extent of the destruction. Criminals kill witnesses to eliminate evidence; our Fire
10 Department expedites the burn down of buildings and impedes investigations of the cause of the fire
11 and Fire Department conduct in order to conceal flawed policies.

12 *Policy vs. Practice & Failed Oversight*

13 34. The Fire Department's policy of refusing to accept any risk (to themselves) was
14 acknowledged by BC-1 Berryman, who told a percipient witness 12 minutes into the fire, that "the
15 Fire Department was not going to take any risk to save your property." The predetermined policy
16 was to accelerate the fire for a quicker burn in the name of firefighter safety. This policy has existed
17 for quite some time in San Luis Obispo. With respect to most fires, the safest thing to all who are
18 subject to this Fire Department – firefighters, buildings, people in buildings that are on fire – is for
19 the Fire Department to stay at the fire station, at least as long as the Fire Department is going to stay
20 true to its current policies and as long as the CITY refuses to engage in any oversight of the Fire
21 Department.

22 35. In its Operations Manual, the Fire Department postures itself as an aggressive firefighting
23 unit. This facade is supported by "action news accounts," delivered shortly after fire incidents,
24 wherein Fire Department spokespersons mischaracterize actual events to such an extent that efforts
25 to accelerate the fire's damage are repackaged as aggressive tactics employed to stop the fire and
26 minimize fire damage.

27 36. Through detailed analysis of (1) the policy, as presented in written materials, that the Fire
28 Department allegedly follows; (2) the actual practices of the Fire Department *when present during*

1 *a fire*²; and (3) self-reporting and self-evaluations provided by Fire personnel in the wake of fire
2 incidents, it is apparent that there is an unwritten policy that directly conflicts with the written policy,
3 in that Fire personnel are guided not to fight fires, but rather, to send a roof crew to cut holes in the
4 roof on the far side of the building away from the fire to accelerate the fire toward the newly cut
5 holes. Once the roof collapses, Fire personnel use the big hose on the ladder truck to put the fire out.
6 The master stream from the overhead hose takes apart the fire scene and frequently destroys most
7 of the evidence of the origin of the fire. This makes investigators' jobs difficult or impossible. After
8 the fire has been knocked down by the overhead hose, the firemen go inside to tend to the embers.

9 37. The CITY and the Fire Department have impeded plaintiffs' investigative efforts (including
10 Public Records requests) into the policies and practices that relate to the Fire Department's responses
11 to fires. Plaintiffs will continue these efforts through this litigation and expect, with the Court
12 supervising the investigation and discovery phase of this case, that plaintiffs will be more successful
13 in obtaining all relevant records.

14 38. Analysis of the direct conflict between the Fire Department's written policies and the Fire
15 Department's actual practices reveals a CITY entity gone rogue. The CITY has followed a policy
16 of zero oversight, and this policy has had drastic consequences. The CITY has failed to do anything
17 but unquestioningly accept what the Fire Department says its policy is and also what the Fire
18 Department says it has done after fires. The truth – evident to anyone willing to investigate – is that
19 the Fire Department's policy is a public relations stunt and the Fire Department's post-incident
20 reports are Orwellian in their mendaciousness. If the CITY engaged in any oversight of the Fire
21 Department whatsoever, the CITY would recognize the facts, take corrective action, save properties
22 and lives, and let Fire personnel do what they signed up to do: valiantly fight fires and save lives and
23 properties.

24 39. The CITY, cognizant of the Fire Department's broad immunity from tort liability for the
25 conduct of Fire personnel while engaged in firefighting, has a heightened duty to scrutinize the
26 conduct of the Fire Department and Fire personnel. The Fire Department's broad tort immunity must

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28 ²
The phrase "when present during a fire" is used in contrast to "when fighting a fire"
because there is scant evidence of actual firefighting by the Fire Department in recent years.

1 be accompanied by acute oversight. The CITY owes it to the people it serves.

2 40. The CITY's policy defects read as omissions, but these omissions reflect choices for which
3 government is accountable when the failed policy results in property damage. In short, these policy
4 choices, with respect to no oversight of the Fire Department, reflect a preference by the CITY of the
5 larger community over a small group. The principle relates to risk assessment. In condemnation
6 law, the choice to save money through inaction, inattentiveness or neglect comes with the risk that
7 if one person gets hurt so that 100,000 can save money, then that one person has suffered a taking
8 and the community should make him whole. Similarly, if the CITY policy of "no oversight" over
9 its Fire Department causes property to burn unnecessarily, then the CITY's policy is responsible for
10 that damage and condemnation law offers a remedy: The policy of no oversight resulted in a taking
11 or damaging of property.

12 41. Among the CITY's policy failures:

- 13 * There is no review or oversight of Fire Department reports after a fire incident
- 14 * The CITY has not ensured any outside evaluation or supervision of the Fire Department
- 15 * The CITY does not question or investigate anything the Fire Department claims
- 16 * The CITY does not require the Fire Department to report how quickly it puts water on a
17 fire upon arrival
- 18 * The CITY does not monitor the amount of damage each fire causes in relation to the
19 severity of the fire upon the Fire Department's arrival
- 20 * The CITY is likely not even aware of the following Fire Department inadequacies:

- 21 42. (1) No firefighter has rushed into a building to put out a fire in over 10 years;
22 (2) Fire personnel are not trained how to put out fires promptly (coordinated interior attacks);
23 (3) The T-1 ladder truck carries 300 gallons of water, and though they are often first to arrive
24 at a fire, they never use this water to put out the fire (they instead cut holes to accelerate the burn
25 down);
26 (4) Knowing a person was inside the building at the Alrita Street/Bahia Court fire, Fire
27 personnel waited 34 minutes before going inside – and still left the body inside to burn;
28 (5) The Fire Department does not dispatch from the closest station in response to fires –

1 dispatch is “by turn;”

2 (6) The Fire Department does not have a “doll house” for training how ventilation works
3 during fires and the importance of learning and understanding ventilation principles (departments
4 that actually fight fires make excellent use of doll houses for training);

5 (7) The Fire Department uses expensive thermal imaging cameras that leave no record
6 behind; at an expense just 10% greater, the cameras could record; at an expense 20% greater than
7 already paid, the cameras would transmit the images to the Incident Commander. Departments that
8 actually fight fires are aggressive at using these thermal imaging cameras, recording everything and
9 then sharing them with the Incident Commander; departments that do not fight fires prefer not leave
10 any evidence in their wake; and

11 (8) The Fire Department puts more time and energy into masquerading as a firefighting unit
12 than it does actually fighting fires. The effort expended to concoct pure fiction after simple incidents
13 reveals how important it is to the Fire Department to present a public image of heroism that is wholly
14 undeserved.

15 43. Sub Corp has received insurance proceeds for some of the damages it suffered as a result of
16 the December 26 fire. Sub Corp is not seeking recovery for any damage that has already been
17 reimbursed. Square Deal has not received reimbursement for the vast majority of damage it
18 sustained due to the December 26 fire. Both Sub Corp’s and Square Deal’s damages from the
19 December 26 fire were caused solely by defendants’ taking and damaging of their property through
20 flawed and defective policies and planning. Neither Sub Corp nor Square Deal were able to do
21 anything to prevent the damages described herein.

22 *Damages Caused by Failed Policies*

23 44. As a result of the CITY’s policy failures, plaintiffs have been damaged in an amount in
24 excess of \$5,000,000, through destruction of an enormous collection of music-related recordings,
25 memorabilia and miscellany, as well as personal losses, loss of income, profit loss and other
26 compensable losses. In addition, plaintiffs have incurred and will incur substantial expert and
27 attorney’s fees, all of which are reimbursable through inverse condemnation.

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1 SECOND CAUSE OF ACTION

2 (Inverse Condemnation)

3 (Against City of San Luis Obispo Fire Department and Does 11-20)

4 45. Plaintiffs reallege and incorporate by reference paragraphs 1 through 43.

5 46. Not only is the statutory immunity for firefighting not applicable to inverse condemnation
6 actions, but it is also true that when the conduct cannot be depicted as fire fighting, the immunity
7 itself should not apply, even against torts.

8 47. The Fire Department made a choice years ago and continues to honor it: Maintain a *written*
9 policy of aggressive firefighting. Because there is no CITY oversight, and no accountability, the Fire
10 Department has been able to self-report about fearless, textbook firefighting, while following an
11 actual policy of thinly-veiled accelerated burn downs. The Fire Department has been free to create
12 conditions which cause fires to destroy affected structures, while acting in a manner that simulates
13 firefighting.

14 48. The benefits to the Fire Department of this policy are apparent: No risk to personnel; it's an
15 easy policy to teach; it's an easy policy to practice; and, in the absence of any political or legal
16 supervision, and with total control over the narrative, the Fire Department can present complete
17 fabrications to the public in order to preserve an obsolete fiction of brave and heroic firefighting.

18 49. There is abundant evidence of the Fire Department offering stunning fabrications, after
19 incidents replete with planned incompetence, time and time again, resulting in unnecessary damage
20 to San Luis Obispo properties. Plaintiffs have taken the time to assemble the evidence and demand
21 accountability. The charade must end.

22 50. As a result of the Fire Department's policy failures, plaintiffs have been damaged in an
23 amount in excess of \$5,000,000, through destruction of an enormous collection of music-related
24 recordings, memorabilia and miscellany, as well as personal losses, loss of income, profit loss and
25 other compensable losses. In addition, plaintiffs have incurred and will incur substantial expert and
26 attorney's fees, all of which are reimbursable through inverse condemnation.

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WHEREFORE, as to the First Cause of Action, plaintiffs pray for judgment against defendant City of San Luis Obispo for:

- 1. Damages according to proof, with interest thereon at the legal rate;
- 2. Reasonable attorney's, expert, appraisal, and engineering fees according to proof;
- 3. Just compensation for loss of goodwill and for all other compensable losses under law;
- 4. Litigation expenses and costs of suit;
- 5. Other relief that the Court considers proper.

WHEREFORE, as to the Second Cause of Action, plaintiffs pray for judgment against defendant City of San Luis Obispo Fire Department for:

- 1. Damages according to proof, with interest thereon at the legal rate;
- 2. Reasonable attorney's, expert, appraisal, and engineering fees according to proof;
- 3. Just compensation for loss of goodwill and for all other compensable losses under law;
- 4. Litigation expenses and costs of suit;
- 5. Other relief that the Court considers proper.

DATED: December 23, 2018

HUBBARD LAW FIRM

By:  _____

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Sub Corp., Ltd.