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[Fee exempt Pursuant to
Govt. Code § 6103]

6 Attorneys for Defendants, POWAY UNIFIED SCHOOL
7 DISTRICT, POWAY DISTRICT BOARD OF EDUCATION; and
8 MARIAN KIM PHELPS, in her capacity as Superintendent

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN DIEGO - CENTRAL

11
12 PROTECT OUR COMMUNITY NOW, a
California nonprofit public benefit
13 corporation,

14 Petitioner and Plaintiff,

15 v.

16 POWAY UNIFIED SCHOOL DISTRICT, a
California public school district; POWAY
17 DISTRICT BOARD OF EDUCATION; and
MARIAN KIM PHELPS, in her capacity as
18 Superintendent,

19 Respondents and
20 Defendants.

21 COSTCO WHOLESALE CORPORATION, a
Washington profit corporation,

22 Real Party-in-Interest.
23

Case No. 37-2020-00037296-CU-WM-CTL
Civil-Unlimited Jurisdiction

**DECLARATION OF JENIFER MURILLO
IN SUPPORT OF RESPONDENT'S
OPPOSITION TO VERIFIED PETITION
FOR WRIT OF MANDATE AND
COMPLAINT**

(RELATED TO ROA#1)

Judge: Hon. Eddie C. Sturgeon
Dept. C-67
Complaint Filed: October 15, 2020
Trial Date: November 20, 2020

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25 I, Jenifer Murillo, declare as follows:

26 1. I am the Director of Real Estate for Costco Wholesale Corporation ("Costco") and
27 was involved in the discussions between the POWAY Unified School District ("District") and
28 Costco regarding to subject property, identified as the approximately 27.22 acres of vacant land

1 located at the intersection of Carmel Valley Road and Camino Del Sur within the incorporated
2 area of the city of San Diego (“Property”).

3 2. Costco submitted a proposal in response to the District’s Request for Proposals
4 (“RFP”) by the February 3, 2020 deadline set forth in the RFP, including proposed terms to
5 potentially lease the Property.

6 3. On August 13, 2020, Costco submitted a “Revised Letter of Intent” (“LOI”)
7 updating the terms offered by Costco to lease the Property. A true and correct copy of the Revised
8 LOI is attached hereto as Exhibit A. The Revised LOI was not meant to constitute, and does not
9 constitute, a binding agreement on the District or Costco. The Revised LOI, as is the original LOI,
10 is merely an offer letter signed by Costco.

11 4. As set forth in the Revised LOI, Costco requested a “Right of First Refusal” if the
12 District decides to long term ground lease the Property to Costco but acknowledges this right will
13 only apply “after the District follows and applicable statutory authority for such sale.”

14 5. As also set forth in the Revised LOI, Costco committed to “pursue all zoning,
15 entitlements, governmental approvals and permits, and the like, and the costs of such shall be
16 incurred by Costco,” which is the same commitment required of all entities submitting RFPs.

17 6. Costco did not engage in any direct negotiations with the District regarding the
18 ground lease of the Property prior to submitting its written proposal in response to the RFP by
19 February 3, 2020; however, Costco did express informal interest if the Property were to become
20 available.

21 7. Specifically, although it is alleged that “PUSD documents reflect that following the
22 declaration of surplus property . . . RPAC engaged in a number of closed sessions with ‘Real
23 Property Negotiators’ on December 3, 2013, January 17, 2017 and March 14, 2019, respectively”
24 (Petition at para. 30), Costco did not engage in any negotiations or discussions with District
25 employees at the closed session Board meetings cited in the Petition for Writ of Mandate on
26 December 3, 2013, January 17, 2017, and March 14, 2019 nor was it the “Real Property
27 Negotiator” related to those closed session Board meetings.

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8. As of this this date, Costco’s non-binding LOI has been approved by the Board, and the District has selected Costco’s final RFP proposal as the “most beneficial proposal” pursuant to the RFP process; however, these actions by the Board have only shown its concurrence with Costco’s intent, and Costco has not entered into any binding ground lease, option agreement, or any other agreement with the District for the Property.

I declare, under penalty of perjury, under the laws of the State of California that the foregoing is true and correct.

Executed on this 12th day of November 2020, at Issaquah, Washington.


Jenifer Murillo
Director of Real Estate
Costco Wholesale Corporation

PROOF OF SERVICE
[CCP § 1013; CRC Rule 2.304 - Revised 01/01/07]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 12800 Center Court Drive South, Suite 300, Cerritos, California 90703-9364;

On **November 12, 2020**, I served the foregoing document described as:

**DECLARATION OF JENIFER MURILLO IN SUPPORT OF RESPONDENT'S
OPPOSITION TO VERIFIED PETITION FOR WRIT OF MANDATE AND
COMPLAINT**

on the interested parties in this action by the method indicated below:

John C. Lemmo, Esq.	(619) 238-1900	Attorneys for Petitioner and Plaintiff Protect Our Community Now
Rebecca L. Reed, Esq.	(619) 235-0398 fax	
Justin M. Fontaine, Esq.		
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- BY ELECTRONIC SERVICE VIA ONE LEGAL:** Complying with Local Rule of Court 352, California *Rule of Court* 2.253(a)(1)(2) and *Code of Civil Procedure* § 1010.6, I caused a true and correct copy of the document(s) to be served through One Legal at www.onelegal.com addressed to the parties shown herein appearing on the above-entitled case. The service transmission was reported as complete and a copy of One Legal's Receipt/Confirmation Page will be maintained with the original document in this office.

Executed on **November 12, 2020**, at Cerritos, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and, that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Stephanie L. Thomas

