

SCANNED

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**FILED**  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

AUG 22 2013

5 Attorneys for Real Party in Interest by Court Ordered  
6 Intervention, WAL-MART STORES, INC.

By  Deputy

7 Attorneys for Real Party in Interest,  
8 ROTHBART DEVELOPMENT CORPORATION.

9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF SAN BERNARDINO**

11 **SPRING VALLEY LAKE ASSOCIATION,**

**CASE NO. CIVMS 1200585**

12 Petitioner and Plaintiff,

**REAL PARTY IN INTEREST  
ROTHBART DEVELOPMENT  
CORPORATION AND WAL-MART  
STORES, INC.'S OBJECTIONS TO  
[PROPOSED] JUDGMENT AND  
[PROPOSED] PEREMPTORY WRIT  
OF MANDATE; AND REQUEST FOR  
HEARING**

13 vs.

14 **CITY OF VICTORVILLE; and DOES 1**  
15 **through 100,**

16 Respondents and Defendants;

17 **ROTHBART DEVELOPMENT**  
18 **CORPORATION and DOES 101 through 1,000,**

**[FILED CONCURRENTLY WITH THE  
[PROPOSED] JUDGMENT AND [PROPOSED]  
PEREMPTORY WRIT OF MANDATE**

19 Real Party in Interest.

(Code Civ. Proc. §§ 1094.5, 1085 & Pub.  
Res. Code §21000, et seq. (CEQA))

20 Filed: October 16, 2012  
21 Writ Hearing: May 10, 2013

22 Real Parties in Interest Rothbart Development Corporation ("Rothbart") and Wal-Mart  
23 Stores, Inc. ("Walmart") object to: (1) the proposed judgment granting the peremptory writ of  
24 mandate submitted to the Court by Petitioner, SPRING VALLEY LAKE ASSOCIATION  
25 ("Petitioner") on or about August 16, 2013; and, (2) the proposed peremptory writ of mandate  
26 filed concurrently therewith, as stated below.

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**ORIGINAL**

1           **I.       REQUEST FOR HEARING UNDER CALIFORNIA RULES OF COURT**  
2                           **3.1590(k)**

3           Pursuant to California Rules of Court 3.1590(k), Rothbart and Walmart request a hearing  
4 on these objections and on their concurrently filed alternative proposed judgment and  
5 peremptory writ of mandate.

6           **II.       CEQA REQUIRES THAT REMEDIES BE NARROWLY TAILORED**

7           CEQA and related case law require that a trial court fashion a narrowly tailored remedy  
8 for a CEQA violation and address “only those mandates which are necessary to achieve  
9 compliance with this division [Division 13 Environmental Quality] and only those specific  
10 project activities in non-compliance with this division.” Pub. Res. Code § 21168.9(b). *See also*  
11 *San Bernardino Valley Audubon Society v. Metropolitan Water Dist.* (2001) 89 Cal. App. 4th  
12 1097, 1103-1104 (“Section 21168.9 was enacted in 1984 to give the trial courts some flexibility  
13 in tailoring a remedy to fit a specific CEQA violation”) (citations omitted).

14           The Court of Appeal in *San Bernardino Valley Audubon Society*, explained that Section  
15 21168.9, subdivision (b) “expressly authorized the court to fashion a remedy that permits some  
16 part of the project to go forward while an agency seeks to remedy its CEQA violations. In other  
17 words, the issuance of a writ need not always halt all work on a project.” 89 Cal.App.4th at  
18 1005.

19           In *Laurel Heights Improvement Assoc. of San Francisco, Inc. v. The Regents of the*  
20 *University of California* (1988) 47 Cal.3d 376, 422-425 (“*Laurel Heights*”), the California  
21 Supreme Court held that the University of California could continue with the relocation of its  
22 biomedical research facilities for its School of Pharmacy into the Laurel Heights area of San  
23 Francisco. Although the EIR was held to be deficient under the facts of that case, the Court  
24 nevertheless authorized the continuation of the relocation activities because “CEQA [and in  
25 particular, Pub. Res. Code § 21168.9] does not require us to enjoin the present activity.”

26           Further, under Public Resources Code Section 21168.9(a), “[i]f a court finds, as a result  
27 of a trial . . . that any determination, finding, or decision of a public agency has been made  
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1 without compliance with this division, the court shall enter an order that includes *one or more of*  
2 *the following:*”

3 (1) A mandate that the determination, finding, or decision be voided by the  
4 public agency, in whole or in part.

5 (2) If the court finds that a specific project activity or activities will  
6 prejudice the consideration or implementation of particular mitigation measures  
7 or alternatives to the project, a mandate that the public agency and any real parties  
8 in interest suspend any or all specific project activity or activities, pursuant to the  
9 determination, finding, or decision, that could result in an adverse change or  
10 alteration to the physical environment, until the public agency has taken any  
11 actions that may be necessary to bring the determination, finding, or decision into  
12 compliance with this division.

13 (3) A mandate that the public agency take specific action as may be  
14 necessary to bring the determination finding or decision into compliance with this  
15 division. (Emphasis added.)

16 The California Supreme Court has emphasized that, even if an EIR is deficient in some  
17 respect, “traditional equitable principles” should govern whether a project is enjoined pending  
18 the correction of deficiencies under CEQA. *Laurel Heights*, 47 Cal.3d at 423. Thus, Public  
19 Resources Code Section 21168.9 *permits the court to issue a writ of mandate directing the*  
20 *public agency to take specific action to remedy the alleged CEQA defects, and further allows a*  
21 *project to move forward during the pendency of such action. Id.*

22 Based upon the foregoing authorities, CEQA compliance must be limited to addressing  
23 the issues of feasibility of on-site electric, consistency of the Project with General Plan  
24 Implemental Measure 7.1..1.14, and the EIR’s analysis of the third factor regarding greenhouse  
25 gas emissions only. The narrow scope of these items permits the Court to order a judgment that  
26 is limited in scope so as to correct the deficiencies without overturning the entirety of the  
27 approvals.

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1           2.     Page 2, lines 8-10: Petitioner asserts that a “peremptory writ shall issue to  
2 command Defendant and Respondent City of Victorville to set aside the Approvals and to take  
3 actions ordered in the “Disposition” section of the Ruling.

4                     OBJECTION: In accordance with Public Resources Code section 21168.9(c),  
5 the Court shall not direct the City to exercise its discretion in any particular way. The City must  
6 determine the appropriate course of action in complying with CEQA as to the specific issues for  
7 which the Court has order the writ issued. For example, the City has available a variety of other  
8 means to satisfy CEQA by taking corrective action which does not involve a supplemental EIR.  
9 Public Resources Code section 21168.9(c) forbids a Court to direct the City to exercise its  
10 discretion in any particular way.

11           B.     PROPOSED PEREMPTORY WRIT OF MANDATE

12           A.     Page 1, line 26 through page 2, line 5: Petitioner directs that “1. Respondent  
13 shall:

14                     A.     Within 60 days, of the Writ’s issuance, set aside all approvals of  
15 Respondent and Defendant City of Victorville for the project that is subject to this lawsuit  
16 (“Approvals”) –including Resolution No. 12-053 (parcel map), Resolution No. 12-054  
17 (certification of environmental impact report), and Ordinance No. 2294 (zoning  
18 ordinance); and

19                     B.     Within 270 days of this Writ’s issuance, take the actions ordered in the  
20 “Disposition” section of the Court’s August 2, 2013 Ruling on the Writ Petition....

21                     OBJECTION: Petitioner’s suggested language is not sufficiently narrowly tailored to  
22 the limited CEQA violations found by the Court in this action. As previously stated, Public  
23 Resources Code Section 21168.9 gives trial courts the option to: (1) void the finding of the  
24 agency (subd. (a)(1)); (2) order a lesser remedy which suspends a specific project activity that  
25 could cause an adverse change in the environment (subd. (a)(2)); *or* (3) order specific action  
26 needed to bring the agency’s action into compliance with CEQA (subd. (a)(3)).  
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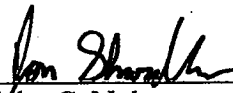
1 The purpose of the range of remedies provided for by Section 21168.9 is to give trial  
2 courts the flexibility to tailor the remedy to fit the violation. *San Bernardino Valley Audubon*  
3 *Society, supra*, 89 Cal.App.4th at 1104. The choice of a lesser remedy involves the trial court's  
4 consideration of equitable principles. *Id.* The Writ should be limited to the specific issues  
5 identified by the Court and not extend beyond the scope of the Ruling.

6 **IV. CONCLUSION**

7 Rothbart and Walmart respectfully request the Court to: (1) hold a hearing on these  
8 Objections, (2) sustain these Objections in their entirety; and; (3) enter the alternative proposed  
9 judgment and writ of mandate submitted concurrently herewith by Rothbart and Walmart.

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11 Dated: August 22, 2013

GRESHAM SAVAGE NOLAN & TILDEN,  
A Professional Corporation

12  
13 By:   
14 John C. Nolan  
15 Jonathan E. Shardlow  
16 Attorneys for WAL-MART STORES, INC.  
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