

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Triangle Warehouse, Inc. *a Minnesota corporation*, Benchmark Logistics, LLC, *a Minnesota limited liability company*, and Cue Properties, LLC, *a Minnesota limited liability company*,

COURT FILE NO. _____

COMPLAINT

Plaintiffs,

v.

Jury Trial Requested

City of Minneapolis, *a Minnesota city*, and Hennepin County,

Defendants.

Plaintiffs Triangle Warehouse, Inc., Benchmark Logistics, LLC, and Cue Properties, LLC, as and for their Complaint against Defendants the City of Minneapolis (“City”) and Hennepin County (“County”), states and alleges as follows:

INTRODUCTION

1. Plaintiffs in this action are businesses with facilities located near 37th Avenue Northeast and Technology Drive in Northeast Minneapolis. Over the past several months the area has descended into lawlessness. Vehicles, including semi-tractor trailers, campers, recreational vehicles, personal watercraft, trucks and automobiles, have been permanently parked on Technology Drive between 36th and 37th Avenues and are being used as mobile residences. Other individuals appear to be living in makeshift encampments.

2. Those apparently living on Technology Drive, or others acting in concert with them, have been involved in the following nuisances and public safety hazards that have significantly impacted the ability of nearby businesses including Plaintiffs’ businesses

to safely and effectively operate and have significantly reduced the value of the property surrounding the area, including:

- i. Open fire pits containing burning garbage;
- ii. Refuse strewn upon the roadway and adjoining properties;
- iii. Refuse left in the pay-by-weight dumpsters of area businesses;
- iv. Trespass by encampment residents onto the property of nearby businesses, including trespass into business vehicles and other facilities;
- v. Encampment residents using extension cords to steal electricity from area businesses;
- vi. Obstructing the flow of traffic on area roadways;
- vii. Preventing ingress and egress from and to adjoining properties;
- viii. Intimidating and harassing employees and contractors from entering or leaving area businesses;
- ix. Vehicles and other materials left in no parking zones, in front of fire hydrants creating a fire hazard, and blocking access to driveways.

3. Not only has the City and County failed to take affirmative steps to ameliorate these dangerous and disruptive conditions, both Defendants have actively encouraged the continuing existence of the encampments.

4. Indeed, the City and/or County have gone so far as to set up facilities to accommodate the encampments such as installing restroom facilities and wash stations.

5. In effect, the City and County have turned the area around 37th Avenue North East and Technology Drive into makeshift accommodations for persons experiencing homelessness, or for anyone who chooses to live in the area. The makeshift encampment zone sanctioned by the City and County is causing an increase in crime and reducing the

value of surrounding properties and is damaging surrounding businesses, including Plaintiffs.

6. Through a series of regulatory decisions (as implemented by their actions and failure to act) the City and County have affected unconstitutional regulatory takings without compensation in violation of the Plaintiffs' rights under the Fifth Amendment.

PARTIES, JURISDICTION, AND VENUE

7. Plaintiff Cue Properties, LLC ("Cue") is a Minnesota limited liability corporation with its principal place of business at 3501 Marshall St. NE, Minneapolis, MN 55418.

8. Cue is the owner of the property known municipally as 3501 Marshall St. NE, Minneapolis, MN 55418 (Property Id. No. 03-029-24-13-0014) (the "Property").

9. Plaintiff Triangle Warehouse, Inc., ("Triangle") is a Minnesota corporation with its principal place of business at 3501 Marshall St. NE, Minneapolis, MN 55418. Triangle is a tenant of Cue. Triangle operates a 500,000 square foot warehouse in and around the Property that includes facilities for food grade refrigerated storage, food grade frozen storage, food grade dry storage, and other commercial and industrial dry storage solutions. Triangle's facilities include 50 dock doors and 4 rail doors to facilitate access to the adjacent BNSF railyard.

10. Plaintiff Benchmark Logistics, LLC ("Benchmark") is a Minnesota limited liability corporation with its principle place of business at 3501 Marshall St. NE, Minneapolis, MN 55418. Benchmark is a tenant of Cue. Benchmark operates a fleet of commercial transport vehicles from the Property, including tandem axle tractors, single

axle tractors, dock trucks, flatbed trucks, low clearance trucks, cube vans, and other outsourced transportation solutions. Benchmark also operates a vehicle maintenance facility from the Property.

11. Cue, Triangle and Benchmark are related and closely held companies.

12. Defendant the City of Minneapolis is a Minnesota city and municipal corporation.

13. Defendant Hennepin County is a Minnesota County, and political subdivision of the state of Minnesota.

14. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this is a civil action arising under the Constitution and laws of the United States, including U.S. Const. amend V and 42 U.S.C. § 1983.

15. Venue is proper in this district because the Property is located within the district and all defendants are entities with the capacity to sue and be sued, which are deemed to reside within the district under 28 U.S.C. § 1391(c)(2).

FACTS

16. In the wake of the COVID-19 pandemic that began in early 2020 and social unrest following the murder of George Floyd in May of 2020, both homelessness and crime increased significantly in the Twin Cities Metro Area.

17. In the area of Technology Drive, between 36th and 37th Avenues in Minneapolis' northeast, an encampment has been growing in size for over a year (the "Encampment").

18. The City and County have not only failed to remove the Encampment, they have acquiesced to its presence.

19. The City and County have in effect determined to convert the area surrounding Technology Drive, between 36th and 37th Avenues into makeshift accommodations for persons that are unhoused.

20. Instead of directing their resources at establishing appropriate public housing capacity and accommodation, including homeless shelters and alternate accommodations for the unhoused, the City and County have instead directed resources to support and maintain the Encampment, thereby encouraging and contributing to its growth.

21. By facilitating growth of the Encampment without taking adequate safeguards to monitor and police the area, the City and County have created a public health and public safety hazard that has significantly reduced the value of surrounding land including the Property and that has directly impacted the ability of the surrounding landowners and leaseholders to use their property.

22. The City and/or County are treating the Encampment as a *de facto* outdoor shelter facility, the City is even providing “hygiene and trash collection support” to the Encampment.¹

23. Encampment residents are trespassing onto local business and vandalizing buildings, littering, and stealing electricity by plugging into buildings’ external power outlets.

¹ <https://www2.minneapolismn.gov/government/programs-initiatives/homes-development-assistance/homelessness-initiative/>, accessed Jul. 27, 2021.

24. Encampment residents are treating private property in the area, including the Property, as an extension of the Encampment. By supporting the Encampment without devoting any resources to policing its boundaries the City and County are responsible for the Encampment's expansion onto private property.

25. Encampment residents are also harassing the employees of local businesses, including Plaintiffs' employees.

26. From May 21, 2021 to June 21, 2021, alone, there were 15 separate incidents on Technology Drive where police were called because of the Encampment.

27. On May 30, 2021 law enforcement were called to curtail narcotics activity.

28. On May 31, 2021 law enforcement were called to address multiple persons exhibiting symptoms of mental health challenges causing disturbances.

29. On May 4, 2021 law enforcement were called to assist in a domestic assault incident. Police reports confirm that a 22-year-old was strangled and physically assaulted. Emergency Medical Services ("EMS") was called for the victim.

30. On May 5, 2021 law enforcement were called when a trespasser engaged in a health hazard by starting a fire in the Encampment.

31. On May 9, 2021 law enforcement were called upon to curtail narcotics activity.

32. On May 9, 2021, approximately two hours later, law enforcement were called to assist with a stabbing. Three victims (ages 45-55) were stabbed, with two of them sustaining serious injuries. Additionally, one victim was strangled. EMS was needed.

33. On May 17, 2021 law enforcement were called upon to curtail narcotics activity at the Encampment.

34. On numerous occasions over the course of the last several months residents of the Encampments have harassed truck drivers and other employees of Plaintiffs as they were attempting to enter or exit Plaintiffs' properties.

35. Several customers of Triangle Warehouse have demanded that their goods be moved out of Plaintiffs' facilities located in the area of the Encampment. As a result, Plaintiffs have suffered significant financial losses.

36. Employees and contractors of Plaintiffs have been unable to report for work on numerous occasions or have been unwilling to do so out of a genuine fear for their personal safety.

37. Encampment residents are treating surrounding private land, including Plaintiffs' property, as an extension of the Encampment thereby constituting an ongoing trespass.

38. By allowing and facilitating the Encampment, the City and County have, for a public purpose, fundamentally altered the character of the area around Technology Drive, between 36th and 37th Avenues, depressing land values and interfering with use of private land in the area.

39. Growth of the Encampment is seriously eroding the ability of Plaintiffs to put the Property to an economically beneficial use.

**COUNT ONE – FIFTH AMENDMENT VIOLATION
(UNLAWFUL TAKING OF PRIVATE PROPERTY FOR PUBLIC USE
WITHOUT JUST COMPENSATION)
UNDER 42 U.S.C. § 1983**

40. Plaintiffs incorporate all other paragraphs of this Complaint as if fully stated herein.

41. By converting the area around 36th and 37th Avenues in Minneapolis' northeast, including parts of surrounding private property, into a government-sanctioned homeless encampment (or by sanctioning the Encampment and facilitating its growth) the City and County have affected a regulatory taking of the Property without paying any compensation.

42. By engaging in a regulatory program that sanctions and facilitates the Encampment and by failing to adequately monitor and police the area around the Encampment to prevent the known and substantial risk of trespass, nuisance, and other damage to property emanating from the Encampment, the City and County have affected a regulatory taking of the Property without paying any compensation.

43. By sanctioning the Encampment residents' use of private property, including the Property, as an extension of the Encampment, the City and County have affected a regulatory taking of the Property without paying any compensation.

44. Plaintiffs have suffered and will continue to suffer damages in an amount to be determined at trial until the Encampment is dismantled or until the City and County take adequate measures to ensure that the safety and peacefulness of the area is restored and maintained.

45. As a direct result of the aforementioned, the value of Cue's Property and Plaintiffs' businesses have been reduced in an amount to be determined at trial.

WHEREFORE, Plaintiffs demand judgment against Defendants the City of Minneapolis and Hennepin County as follows:

1. An award to Plaintiffs for damages in excess of \$50,000 suffered as a consequence of the City's and County's unlawful taking and violation of the United States Constitution;
2. An award to Plaintiffs for their attorneys' fees pursuant to 42 U.S.C. § 1988, costs, and disbursements;
3. Such other and further relief as the Court deems just and equitable.

MOSS & BARNETT
A Professional Association

Dated: October 18, 2021

By: /s/ Matthew P. Kostolnik
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JS 44 (Rev. 10/20)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 Triangle Warehouse, Inc., a Minnesota corporation, Benchmark Logistics, LLC a Minnesota limited liability company, and Cue Properties, LLC, a Minnesota limited liability company
(b) County of Residence of First Listed Plaintiff Hennepin
(EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorneys (Firm Name, Address, and Telephone Number)
 Matthew P. Kostolnik, Aaron P. Minster, Moss & Barnett, P.A.
 150 South Fifth Street, Suite 1200, Minneapolis, MN 55402
 (612) 877-5000

DEFENDANTS
 City of Minneapolis, a Minnesota city, and Hennepin County
 County of Residence of First Listed Defendant Hennepin
(IN U.S. PLAINTIFF CASES ONLY)
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
 Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
 1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/>	Incorporated or Principal Place of Business in This State	<input type="checkbox"/>	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) [Click here for: Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1355 ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 865 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSJ (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agriculture Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input checked="" type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motion to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District (specify)
 5 Multidistrict Litigation - Transfer
 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. 1983
 Brief description of cause:
Regulatory taking claim - Fifth Amendment Takings Clause

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE Oct 18 2021 SIGNATURE OF ATTORNEY OF RECORD s/Matthew P. Kostolnik

FOR OFFICE USE ONLY RECEIPT # _____ AMOUNT _____ APPLYING IF? _____ JUDGE _____ MAG. JUDGE _____