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9 HOMEOWNERS ASSOCIATION, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

DE ANZA COVE HOMEOWNERS
ASSOCIATION, INC., a California non-profit
corporation,

Plaintiff,

v.

CITY OF SAN DIEGO, a California
municipality;
and DOES 1-100, inclusive,

Defendants.

Case No. GIC 821191

[REPRESENTATIVE ACTION]

**PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES FOR:
(1) VIOLATIONS OF THE
MOBILEHOME RESIDENCY LAW;
(2) VIOLATION OF THE MELLO ACT;
(3) FAILURE TO DISCHARGE A
MANDATORY DUTY; (4) ABUSE OF
PROCESS; (5) NEGLIGENT
MISREPRESENTATION; (6) FRAUD
AND INTENTIONAL DECEIT;
(7) CONSTRUCTIVE FRAUD;
(8) VIOLATION OF THE DUE PROCESS
AND EQUAL PROTECTION CLAUSES
OF THE CALIFORNIA CONSTITUTION;
(9) INVERSE CONDEMNATION;
(10) VIOLATION OF STATE
RELOCATION ASSISTANCE
REQUIREMENTS; (11) BREACH OF
CONTRACT**

[REQUEST FOR JURY TRIAL]

Plaintiff DE ANZA HOMEOWNERS ASSOCIATION, INC. alleges as follows against the
Defendants and each of them:

Representative Action Allegations

1. Plaintiff DE ANZA COVE HOMEOWNERS ASSOCIATION, INC., a California

1 non-profit corporation, is and at all relevant times was a corporation duly organized under the laws
2 of the State of California, and conducting business and residing in the CITY of San Diego, County
3 of San Diego, State of California.

4 2. Plaintiff DE ANZA COVE HOMEOWNERS ASSOCIATION, INC. (“HOA”) was
5 formed in order to pursue and protect the legal rights of its members, as well as the legal rights of
6 the approximately 1,100 mobilehome present and former owners, tenants, residents, and occupants
7 of the approximately 509 lots within the De Anza Harbor Resort mobilehome park (“Park”),
8 located at 2727 De Anza Road, San Diego, California.

9 3. The HOA has a common interest with its members and the present and former
10 owners, tenants, residents, and occupants of the Park in enforcing the applicable state and local
11 laws, and has a community of interest in the determination of the questions of law and fact, causes
12 of action, and damages as further alleged in this Complaint. Plaintiff brings this action in its
13 representative capacity as a Class Representative on behalf of these present and former owners,
14 tenants, residents, and occupants of the Park both in the public interest and in the interests of
15 necessity, convenience, and justice.

16 17 **Procedural Allegations**

18 4. Defendant CITY OF SAN DIEGO (“CITY”) is a California municipality chartered
19 pursuant to the Constitution and laws of the State of California and located in the County of San
20 Diego and was so at all relevant times herein.

21 5. Plaintiff does not know the true names or capacities of Defendants sued herein as
22 DOES 1 through 100, inclusive, and therefore sues these Defendants as DOES until their identities
23 and involvement can be determined. Plaintiff will amend this Complaint to allege their true names
24 and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of
25 the fictitiously named Defendants is in some manner responsible for the injury and damage to
26 Plaintiff alleged herein.

27 6. Plaintiff is informed and believes and thereon alleges that at all relevant times
28 Defendants CITY and DOES 1 through 100, and each of them, were acting in their capacity as

1 agents, servants, independent contractors, joint venturers, partners, alter egos, assigns, successors in
2 interest and/or employees of their co-defendants, and at all times relevant hereto were acting within
3 the full course and scope of their authority as such agents, servants, assigns, independent
4 contractors, joint venturers, partners, alter egos, successors in interest and/or employees with the
5 express, implied, and/or apparent consent, knowledge, permission and ratification of their co-
6 defendants, and each of them, and are in some way liable to Plaintiff on the facts alleged herein,
7 and proximately caused injuries and damages thereby as herein alleged.

8 7. This court has jurisdiction and is the proper venue because the Defendants’
9 violations of state law, misconduct, and misrepresentations occurred here in the County of San
10 Diego, the contracts at issue were to be performed and/or were breached in the CITY of San Diego,
11 Defendants are believed to reside in the CITY of San Diego, the Park is located in the CITY of San
12 Diego, County of San Diego, and the HOA and the representative class are domiciled within the
13 County of San Diego.

14 15 **General Allegations**

16 8. The vast majority of Park residents are elderly, many are infirm, and most live on a
17 limited, fixed income, such as Social Security disability benefits. Many have lived in the Park for
18 decades, finding strength in a community that revolves around Sunday gatherings at the Park
19 church. Since the CITY threatened them with eviction on October 22, 2003, however, the residents
20 are terrified that they are going to lose their homes and their community.

21 9. The State legislature has passed extensive measures to protect mobilehome
22 residents, recognizing that mobilehome parks are one of the last vestiges of affordable housing,
23 particularly for the elderly.

24 10. For this reason, State law mandates that, prior to lease termination or park closure,
25 the CITY must conduct a Tenant Impact Report (“Impact Report”), must hold open session
26 hearings at the residents’ request to discuss the findings of the Impact Report, must provide the
27 Impact Report to the residents in advance of any such hearings, and must take affirmative steps to
28 mitigate the harm resulting from park closure, taking into account the availability of alternate

1 housing and relocation costs.

2 11. Furthermore, because Park homes are located in a coastal zone, the CITY must
3 comply with special low income housing initiatives that require additional feasibility studies to
4 determine the availability of affordable replacement housing in the area.

5 12. The vast majority of Park residents do not have the resources to even get on a
6 waiting list at another mobilehome park, much less to have their homes retrofitted for safe transport
7 or relocation. Moreover, most of the homes located at the Park, having been exposed to salt water
8 for so long, are simply too old to move. In fact, most other mobilehome parks will not even accept
9 homes more than five to ten years old. So, effectively, the CITY is attempting to force Park
10 residents to abandon and demolish their homes without regard for the utter scarcity of alternate
11 housing or the financial hardship that the CITY is attempting to impose on these residents.

12 13. The Park was established by six land grants from the State to the CITY between
13 1939 and 1963. In 1953, the CITY entered into a 50-year lease to develop a mobilehome park and
14 passed Resolution No. 102320 that permitted **384 permanent** and 280 transient units at the Park.
15 Mobilehomes were then moved into the Park. In 1962, the CITY dedicated lands within Mission
16 Bay, including a portion of the Park property, to park use, notwithstanding the mobilehome Park's
17 pre-existing, non-conforming use.

18 14. Over time, mobilehomes became larger, more elaborate, and less mobile. However,
19 the CITY continued to issue individual permits for permanent improvements and allowed the Park
20 to balloon to 509 homes, making millions of dollars as a percentage of Park revenues and property
21 taxes. The elderly flocked to the Park as an ideal retirement location. Out of this densely-packed
22 collection of over 500 homes emerged a tightly-knit community that unites retirees, the disabled,
23 American veterans, and single parent families, all clinging to one of the last locales of affordable
24 housing.

25 15. Several years of public hearings about the Park and the use of the land culminated in
26 a legislative effort in 1981—Assembly Bill 447—which is known as the Kapiloff Bill. The
27 Kapiloff Bill was enacted to protect the tenancy of Park residents through the balance of the
28 CITY's 50-year lease.

1 16. On January 29, 1982, in reaction to the Kapiloff Bill, the CITY entered into the
2 Tenth Amendment to its Master Lease of the Park, which substantially increased the amount of rent
3 being paid to the CITY under the Lease.

4 17. Beginning in 1989, the CITY entered into another series of agreements with De
5 Anza Harbor Resort & Golf, LLC (“DHRG”) to consider redeveloping the Park for other uses,
6 including a hotel. About this time, DHRG also entered into a Long Term Rental Agreement
7 (“LTRA”) with the majority of new and existing Park residents after several years of escalating
8 rents. Among other things, the LTRA promised substantial relocation benefits if the CITY
9 approved DHRG’s hotel development proposal.

10 18. In 1999, the CITY signed a Memorandum of Understanding (“MOU”) with DHRG
11 in which the CITY agreed to negotiate exclusively with DHRG in the development of a large 600-
12 room hotel resort. The proposal in the MOU would necessitate closing the Park and/or changing
13 the use of the land. The CITY claimed that the MOU precluded the CITY from negotiating with
14 Park residents from 1999 until May 2003, when the MOU expired. Despite requests from the Park
15 residents and members of the HOA, the CITY refused to discuss the plans for the Park with
16 residents throughout this period of time.

17 19. On May 7, 2003, DHRG notified the CITY and Park residents that it had abandoned
18 its efforts to develop a hotel; the MOU then expired on May 23, 2003. With the expiration of the
19 MOU, Park residents viewed this as a long-sought opportunity to finally speak with the CITY
20 regarding the future of the Park and the CITY’s intentions. The CITY, however, continued to keep
21 Park residents at bay after May 2003 by conducting City Council hearings in closed session and
22 refusing to disclose the CITY’s plans.

23 20. The residents submitted various proposals to the CITY, which were designed to fund
24 a relocation plan and provide the CITY with needed revenue, but the CITY rejected them.

25 21. Ultimately, with time running out, the CITY appeared at a resident meeting at the
26 Park hall on or about October 22, 2003, to talk with Park residents about its long-awaited
27 “Transition Plan” for the first time. Presenting the “plan” was the CITY’s Director of Real Estate
28 Assets, who was flanked by four armed policemen. The message was clear: waive your statutory

1 rights and sign the CITY's take-it-or-leave-it agreement or the CITY will evict you starting on
2 November 24, 2003. The actual written documents were sent to residents in the following days.
3 They were accompanied by a cover letter stating: "Please be advised that if you do not accept the
4 offer, eviction proceedings will be commenced against you and all other occupants of your
5 mobilehome beginning November 24, 2003."

6 22. From October 22, 2003 through December 31, 2003, the CITY and its agents
7 continued to use the threat of eviction and other threats, misinformation, half-truths, false legal
8 information, confusion, and misrepresentations in order to coerce and improperly convince Park
9 residents to either leave the Park or sign the CITY's take-it-or-leave-it agreement.

10 23. When the CITY took exclusive possession of the premises on November 24, 2003—
11 and although a temporary restraining order was in place—the CITY and its agents continued their
12 take-it-or-leave-it efforts. The CITY retaliated against Park residents by, among other things,
13 reducing Park services, limiting access to the Park's common areas, towing the residents' trailers,
14 impounding their items from storage areas, unilaterally creating new "rules" for the Park without
15 even disclosing those "rules" in writing to the residents, the HOA, or its representatives, prohibiting
16 the mobilehome owners from renting their units, refusing to allow the HOA to replace the chairs
17 and tables that the CITY had ordered DHRG to remove from the Park's church and club house,
18 failing to maintain the Park's common areas, and otherwise making life at the Park as unpleasant as
19 possible. The CITY's latest tactic—as of the week of January 12, 2003—was to reduce the
20 temperature of the Park's swimming pool—which is used by elderly residents for exercise—from
21 85 degrees to a chilly 70 degrees.

22 24. The HOA's representatives have repeatedly requested, both orally and in writing, a
23 meeting with the CITY's representatives to discuss and rectify these and other issues, but the CITY
24 has thus far refused to schedule any such meeting. The CITY's stated mantra has been: "No one is
25 going to tell us how to run this Park."

26 25. As a result of the CITY's coercive actions, some tenants and residents recently
27 entered into settlement agreements with the CITY whereby they purportedly gave up their legal
28 rights—including unwaivable statutory rights guaranteed under California's Mobilehome

1 Residency Law and other statutes and common law decisions.

2
3 **First Cause of Action**

4 **Violations of the Mobilehome Residency Law**

5 (Civ. Code §§ 798 *et seq.*, Gov't Code §§ 65863.7, 67863.8)

6 (Against CITY and DOES 1-100)

7 26. Plaintiff hereby incorporates by reference all preceding and succeeding paragraphs
8 of this Complaint as though fully set forth herein.

9 27. Under the Mobilehome Residency Law, the Legislature has provided for special
10 protections of mobilehome owners. “The Legislature finds and declares that, because of the high
11 cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements
12 relating to the installation of mobilehomes, and the costs of landscaping or lot preparation, it is
13 necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the
14 unique protection from actual or constructive eviction afforded by the provisions of this chapter.”
15 Civ. Code § 798.55(a).

16 28. The Legislature has mandated that a mobilehome owner’s “[t]enancy may only be
17 terminated for reasons contained in [Civil Code] Section 798.56.” If the reason for terminating the
18 tenancy is not one of the eight authorized reasons permitted by the Legislature in section 798.56,
19 the tenancy *cannot* be legally terminated.

20 29. Under State law, the Legislature requires that a mandatory Tenant Impact Report be
21 completed and filed with the local legislative body or its appointed agency by the person or entity
22 proposing closure of the park or a change in use of the park. “Change in use” is expressly defined
23 by Civil Code section 798.10 as any “use of the park for a purpose other than the rental, or the
24 holding out for rent, of two or more mobilehome sites to accommodate mobilehomes used for
25 human habitation.” The mandatory Tenant Impact Report must “address the availability of
26 adequate replacement housing in mobilehome parks and relocation costs.” Gov’t Code
27 § 65863.7(a). A copy of the Tenant Impact Report must be provided to the resident of each
28 mobilehome in the park at least 15 days before a hearing before the advisory agency or the

1 legislative body, and, when a park closure is proposed, the Tenant Impact Report must be provided
2 to a resident of each mobilehome “at the same time as the notice of the change is provided to the
3 residents pursuant to paragraph (2) of subdivision (f) of Section 798.56 of the Civil Code.” Gov’t
4 Code § 65863.7(b)-(c).

5 30. When a park closure—or cessation of use of the land as a mobilehome park—is
6 even proposed, the provisions of the Mobilehome Residency Law are triggered. Park residents
7 have the right to an open hearing before the legislative body on the sufficiency of the Tenant
8 Impact Report. Gov’t Code § 65863.7(d). After reviewing the Impact Report and before any
9 change of use or closure, the legislative body “may require, as a condition of the change, the person
10 or entity to take steps to mitigate any adverse impact of the conversion, closure, or cessation of use
11 on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome
12 park.” Gov’t Code § 65863.7(e). If the closure or cessation of use of the park is the result of a
13 decision by a local governmental entity or planning agency not to renew a conditional use permit or
14 zoning variance under which the mobilehome park has operated—or as a result of any other zoning
15 or planning decision, action, or inaction—the local governmental agency proposing the closure or
16 cessation of use of the land as a mobilehome park “is required to take steps to mitigate the adverse
17 impact of the change as may be required under subdivision (e).” Gov’t Code § 65863.7(i).

18 31. The mandates of these sections of the Mobilehome Residency Law found in
19 Government Code section 65863.7 are specifically applicable to the CITY since the Legislature
20 expressly made this section “applicable to charter cities.” Gov’t Code § 65863.7(h). The
21 Legislature made the protections applicable to cities in 1988 “for the immediate preservation of the
22 public peace, health, or safety within the meaning of Article IV of the Constitution.... It is
23 anticipated that there will be many mobilehome park closures in charter cities in the near future and
24 thousands of mobilehome owners may be displaced. This act will provide some remedy for the
25 situation, and it is necessary that this act take effect immediately.” Statutes of 1986, ch. 190, p.
26 1058, §4.

27 32. In addition to the protections afforded mobilehome owners and residents as
28 described above, the Mobilehome Residency Law mandates the timing, content, form, and manner

1 of service of notices to mobilehome owners before any lawful termination of the tenancy (or refusal
2 to extend the tenancy) can occur or any eviction process can be instituted. (See, e.g., Civ. Code
3 § 798.56(g), Gov't Code §§ 65863.7, 65863.8.)

4 33. Moreover, the statutory protections mandated by the state Legislature cannot be
5 waived by the Park's tenants and residents, by contract or otherwise. Gov't Code § 798.77.

6 34. CITY OF SAN DIEGO and all Defendants violated the Mobilehome Residency Law
7 and related sections by, among other things:

- 8 • failing to provide an authorized reason under Civil Code section 798.56 for the termination
9 of the Park residents' tenancy;
- 10 • failing to timely and properly serve written notices as required by the Mobilehome
11 Residency Law that provide an authorized reason under Civil Code section 798.56 for the
12 termination of the Park residents' tenancy;
- 13 • failing and refusing to prepare a mandatory Tenant Impact Report that would have, among
14 other things, addressed the availability and paucity of adequate replacement housing in
15 other mobilehome parks and relocation costs;
- 16 • failing and refusing to file the required Tenant Impact Report with the local legislative body
17 or its advisory agency;
- 18 • failing and refusing to provide—at any time—a copy of the Tenant Impact Report to any
19 resident, let alone to the resident of each mobilehome in the Park;
- 20 • failing and refusing to provide a copy of the Tenant Impact Report at the time of service, if
21 any, of a notice that complies with Civil Code section 798.56(f)(2) to any resident, let alone
22 to the resident of each mobilehome in the Park;
- 23 • failing and refusing to provide a public hearing before the legislative body on the
24 sufficiency of the Tenant Impact Report;
- 25 • failing and refusing to take adequate steps to mitigate any adverse impact of the closure or
26 cessation of use on the ability of displaced mobilehome park residents to find adequate
27 housing in another mobilehome park or elsewhere;
- 28 • failing to serve notices that comply with the timing, content, form, and/or manner of service

- 1 required by the Mobilehome Residency Law and other statutes;
- 2 • failing to serve notices on the legal owners and junior lienholders of all Park mobilehomes
- 3 that comply with the timing, content, form, and/or manner of service required by the
- 4 Mobilehome Residency Law and other statutes;
- 5 • failing and refusing to meet with the HOA and its representatives—as they had repeatedly
- 6 requested—and continuing to fail and refuse to meet within 30 days of written request in
- 7 violation of Civil Code section 798.53;
- 8 • creating a public nuisance by failing and refusing to properly maintain and service the
- 9 Park’s common areas;
- 10 • failing to meet and consult with the Park’s residents and their representatives before the
- 11 CITY unilaterally created new “rules” for the Park, failing to give 10 days’ written notice of
- 12 the proposed change of the Park’s rules, failing to provide all residents the proposed rule
- 13 changes in the required notice, failing to hold such a meeting, failing to disclose up to the
- 14 present time the purported “rules” in writing to the residents, the HOA, or its
- 15 representatives, all of which is in violation of Civil Code section 798.25. Furthermore, all
- 16 such “rules” unilaterally adopted by the CITY without the consent of the Park’s
- 17 homeowners are void and unenforceable under Civil Code section 798.25.5;
- 18 • creating a take-it-or-leave-it agreement in October 2003 that purportedly waived the
- 19 provisions of the Mobilehome Residency Law and other statutorily protected rights and
- 20 convinced some Park residents to enter into that agreement with the CITY;
- 21 • failing and refusing to allow mobilehome owners to sell their mobilehomes in violation of
- 22 Article 7 of the Mobilehome Residency Law;
- 23 • failing and refusing to allow mobilehome owners from renting their mobilehomes in
- 24 violation of, among other things, Article 3 of the Mobilehome Residency Law;
- 25 • retaliating against Park residents after the CITY took possession of the Park on November
- 26 24, 2003 by, among other things, reducing Park services, limiting access to the Park’s
- 27 common areas, towing the residents’ trailers and vehicles, impounding their items from
- 28 storage areas, unilaterally creating new “rules” for the Park without even disclosing those

1 “rules” in writing to the residents, the HOA, or its representatives, prohibiting the
2 mobilehome owners from renting their units, refusing to allow the HOA to replace the
3 chairs and tables that the CITY had ordered DHRG to remove from the Park’s church and
4 club house, failing to maintain the Park’s common areas, and—as of the week of January
5 12, 2003—reducing the temperature of the Park’s swimming pool—which is used by
6 elderly residents for exercise—from 85 degrees to a chilly 70 degrees. These retaliatory
7 acts also violate Civil Code section 1942.5 and common law anti-retaliatory act doctrines.

8 35. To prevent the CITY OF SAN DIEGO and the other Defendants from committing
9 further violations of the various provisions of the Mobilehome Residency Law (Civ. Code §§ 798
10 *et seq.*, Gov’t Code § 65863.7), Plaintiff has and will seek an injunction ordering Defendants to:

- 11 • stop any attempt to institute any Unlawful Detainer or other eviction proceeding or process
12 against the homeowners and residents of the Park, located at 2727 De Anza Road, San
13 Diego, California, until the time that the factual and legal issues alleged herein reach a final
14 judicial determination;
- 15 • stop any attempt to cease, discontinue, or decrease the level of any services, maintenance,
16 common area access, and security provided to homeowners and residents of the Park; and
- 17 • comply in full with the Mobilehome Residency Laws, including but not limited to
18 preparation of a Tenant Impact Report and all other aspects of the Mobilehome Residency
19 Law and Government Code § 65863.7.

20 36. As a further result of CITY OF SAN DIEGO and the other Defendants’ violations of
21 the various provisions of the Mobilehome Residency Law (Civ. Code §§ 798 *et seq.*, Gov’t Code
22 § 65863.7), Plaintiff and the Park’s current and former owners, tenants, residents, and occupants
23 have directly and proximately suffered damages according to proof. Moreover, due to Defendants’
24 willful violations alleged above, Plaintiff seeks statutory penalties under Civil Code section 798.86
25 of \$2,000 for *each* separate violation committed by Defendants as to *each* of the up to 509 units in
26 the Park. Plaintiff also seeks to recover its attorneys’ fees and costs pursuant to Civil Code section
27 798.85 and as otherwise allowed by law.

28 ////

1 **Second Cause of Action**

2 **Violation of the Mello Act**

3 (Gov't Code §§ 65590 et seq.)

4 (Against CITY and DOES 1-100)

5 37. Plaintiff hereby incorporates by reference all preceding and succeeding paragraphs
6 of this Complaint as though fully set forth herein.

7 38. The Mello Act prohibits the conversion or demolition of dwelling units occupied by
8 persons and families of low or moderate income within a coastal zone *unless* local government has
9 provided replacement dwelling units within the coastal zone of the same CITY or county as the
10 converted or demolished dwelling units. “‘Conversion’ means a change of a residential dwelling,
11 including a mobilehome...or a mobilehome lot in a mobilehome park...to a nonresidential use.”
12 Gov’t Code § 65590(g)(1). “‘Demolition’ means the demolition of a residential dwelling,
13 including a mobilehome...or a mobilehome lot in a mobilehome park.” Gov’t Code § 65590(g)(2).
14 If replacement housing is not feasible within the coastal zone of the same CITY or county, then the
15 local government must provide replacement dwelling units within three miles of the coastal zone.
16 Gov’t Code § 65590(b).

17 39. The Mello Act requires that all local governments comply with its requirements.
18 Gov’t Code § 65590(a).

19 40. Here, before the CITY can evict the Park’s residents, convert the Park to another use
20 such as parkland or a hotel development, or otherwise effectuate the closure of the Park, the CITY
21 must, among other things, evaluate the feasibility of replacement housing, taking into account
22 “economic, environmental, social, and technical factors” to determine whether adequate
23 replacement housing can be “accomplished in a successful manner within a reasonable period of
24 time.” Gov’t Code § 65590(g)(3).

25 41. In its resolution dated November 18, 2003, the CITY asserted—in a self-serving,
26 unsubstantiated, and conclusory fashion—“That the discontinuance of the use of the Property as a
27 permanent residential mobile home park is not a conversion or demolition by the CITY or the
28 Lessee within the meaning of Government Code section 65590 or any other provision of law.”

1 42. Plaintiff alleges that, among other things, CITY and DOES 1-100:

- 2 • failed to make a threshold determination whether the residential units to be converted or
- 3 demolished have been occupied by low or moderate-income persons;
- 4 • failed to make factual findings to determine whether the proposed new use for the Park is
- 5 “coastal dependent” or “coastal related”;
- 6 • failed to complete a feasibility analysis as required by the Mello Act;
- 7 • failed to identify and/or provide replacement dwelling units within the coastal zone in the
- 8 CITY of San Diego or County of San Diego;
- 9 • failed to provide replacement dwelling units within three miles of the coastal zone in the
- 10 CITY of San Diego or County of San Diego;
- 11 • failed to provide a fee payment procedure in lieu of providing replacement dwellings; and
- 12 • failed to reconcile the displacement of over 1,100 residents with the State of Emergency
- 13 recently declared by the San Diego Housing Commission regarding the critical shortage of
- 14 low-income housing.

15 43. As these determinations are a mandatory condition precedent to allowing the

16 destruction and/or removal of low to moderate income housing in a coastal zone, Plaintiff seeks

17 injunctive relief to:

- 18 • stop any attempt to institute any Unlawful Detainer, eviction proceeding, or other legal
- 19 action or procedure against the current or former owners or residents of the Park, located at
- 20 2727 De Anza Road, San Diego, California, until the time that the factual and legal issues
- 21 alleged herein reach a final judicial determination;
- 22 • stop any attempt to cease, discontinue, or decrease the level of any services, maintenance,
- 23 common area access, and security provided to owners and residents of the Park; and
- 24 • comply in full with the provisions of the Mello Act pursuant to Government Code § 65590.

25 44. In addition, Defendants’ breach of these mandatory duties proximately caused

26 Plaintiff and the Park’s current and former owners, tenants, residents, and occupants’ injuries and

27 damages, which include, but are not limited to special damages, general damages, attorneys’ fees

28 and costs, as well as all other forms of relief allowed by law. Plaintiff further prays for a writ of

1 mandate compelling the CITY to comply with the provisions of the Mello Act.

2
3 **Third Cause of Action**

4 **Public Entity Liability: Failure to Discharge a Mandatory Duty**

5 (Violation of Gov't Code § 815.6 et al)

6 (Against CITY and DOES 1-100)

7 45. Plaintiff hereby incorporates by reference all preceding and succeeding paragraphs
8 of this Complaint as though fully set forth herein.

9 46. CITY OF SAN DIEGO and DOES 1-100 were under a mandatory duty to comply
10 with the Mobilehome Residency Laws and the Mello Act, specifically, Civ. Code §§ 798 *et seq.*,
11 Gov't Code §§ 65590 *et seq.*, 65863.7, and 65863.8. The language of these enactments explicitly
12 require that particular action be taken or not taken.

13 47. The injuries and damages claimed by Plaintiff are among the consequences that the
14 Legislature sought to prevent by imposing the mandatory duties.

15 48. Defendants' breach of the mandatory duties proximately caused Plaintiff's injuries
16 and damages, which include, but are not limited to special damages, general damages, attorneys'
17 fees and costs, as well as all forms of relief provided for in Government Code section 810.8.

18
19 **Fourth Cause of Action**

20 **Abuse of Process**

21 (Against CITY and DOES 1-100)

22 49. Plaintiff hereby incorporates by reference all preceding and succeeding paragraphs
23 of this Complaint as though fully set forth herein.

24 50. CITY OF SAN DIEGO and DOES 1-100 willfully used the threat of a civil legal
25 process—unlawful detainer and eviction—against the residents and owners of the Park to
26 accomplish an improper purpose for which that legal process was not designed.

27 51. CITY OF SAN DIEGO—by threatening immediate eviction of the residents and
28 owners of the Park beginning on November 24, 2003, unless each signed the CITY's unilaterally-

1 prepared settlement agreement and stipulation for judgment—has committed acts done in the name
2 of the court and under its authority by use of a legal process for the purpose of perpetrating an
3 injustice. The purpose of the ultimatum and the threat of forcible eviction, based on information
4 and belief, was to compel Park residents to waive their substantial legal rights and protections
5 found, among other places, in the Mobilehome Residency Law and the Mello Act and thereby
6 improperly reduce the liability of CITY and DOES 1-100 to assist the Park residents with
7 relocation and replacement housing costs.

8 52. As a result of DOES 1-100 and CITY OF SAN DIEGO’s abuse of process, Plaintiff
9 will seek an injunction ordering Defendants to:

- 10 • stop any attempt to institute any Unlawful Detainer or other eviction proceeding or process
11 against the owners or residents of the Park, located at 2727 De Anza Road, San Diego,
12 California, until the time that the factual and legal issues alleged herein reach a final judicial
13 determination;
- 14 • stop any attempt to cease, discontinue, or decrease the level of any services, maintenance,
15 common area access, and security provided to owners and residents of the Park; and
- 16 • comply in full with the provisions of the Mello Act pursuant to Government Code § 65590
17 and the Mobilehome Residency Law, including but not limited to preparation of a Tenant
18 Impact Report and all other aspects of Government Code § 65863.7.

19 53. As a further result of CITY OF SAN DIEGO and the other Defendants’ abuse of
20 process, Plaintiff has directly and proximately suffered consequential and other damages according
21 to proof. Moreover, due to Defendants’ willful violations, Plaintiff seeks punitive damages in
22 accordance with Civil Code section 3294. Plaintiff also seeks to recover its attorneys’ fees and
23 costs as allowed by law.

24
25 **Fifth Cause of Action**

26 **Negligent Misrepresentation**

27 (Against CITY and DOES 1-100)

28 54. Plaintiff hereby incorporates by reference all preceding and succeeding paragraphs

1 of this Complaint as though fully set forth herein.

2 55. Based on information and belief, CITY representatives and/or agents told Park
3 owners and/or residents that the lease, which was to expire on November 23, 2003, would be
4 extended.

5 56. Based on information and belief, CITY representatives and/or agents told Park
6 owners and/or residents that the CITY would take care of the mobilehome owners and reach a fair
7 and equitable solution if the lease was not extended.

8 57. Defendants made these and other representations to Plaintiff and the Park owners
9 and/or residents that were untrue as to past and/or existing material facts without any reasonable
10 ground for believing them to be true or in a manner not warranted by their information.

11 58. These representations were made with the intent to induce Plaintiff and the Park
12 owners and/or residents to act in reliance on them. Plaintiff and the Park owners and/or residents
13 justifiably relied on these representations and suffered damages as a proximate result in an amount
14 according to proof.

15
16 **Sixth Cause of Action**

17 **Fraud and Intentional Deceit**

18 (Civil Code §§ 1572, 1710)

19 (Against CITY and DOES 1-100)

20 59. Plaintiff hereby incorporates by reference all preceding and succeeding paragraphs
21 of this Complaint as though fully set forth herein.

22 60. Defendants made affirmative misrepresentations, concealed the actual facts or half
23 truths, and/or made false promises—promises made without any intent of performing them.
24 Defendants made the representations with the knowledge of its falsity or the knowledge of the
25 effect of the concealment of a material fact. Defendants intended to induce Plaintiff and the Park
26 owners and/or residents to act in reliance on them to alter their position to their detriment. Plaintiff
27 and the Park owners and/or residents justifiably and reasonably relied on Defendants’
28 representations and altered their position based on Defendants’ representations.

1 confidence in CITY OF SAN DIEGO and DOES 1-100. Defendants' acts, omissions, and/or
2 concealment involved their breach of a legal or equitable duty, trust, or confidence constituting
3 constructive fraud. Defendants' breaches of duty led to an advantage gained by Defendants over
4 Plaintiff and the Park owners and/or residents. Plaintiff and the Park owners and/or residents
5 justifiably relied on Defendants' acts, omissions, and/or concealment and were misled to their
6 prejudice.

7 65. Plaintiff has directly and proximately suffered special damages in an amount subject
8 to proof, as well as general and incidental damages, which are also subject to proof. Moreover, due
9 to Defendants' egregious conduct, fraud, and concealment, Plaintiff seeks punitive damages under
10 Civil Code section 3294, as well as prejudgment interest and all other relief that the court deems
11 proper.

12 **Eighth Cause of Action**

13 **Violation of Due Process and Equal Protection Clauses of the Constitution,** 14 **and/or Violation of the State Preemption Doctrine**

15 (Against CITY and DOES 1-100)

16
17 66. Plaintiff hereby incorporates by reference all preceding and succeeding paragraphs
18 of this Complaint as though fully set forth herein.

19 67. CITY OF SAN DIEGO and DOES 1-100 have acted under color of law to deny
20 Plaintiff and the Park owners and/or residents' Due Process and Equal Protection of the laws of the
21 State of California by treating them differently from similarly situated persons.

22 68. CITY OF SAN DIEGO and DOES 1-100 have violated fundamental rights of these
23 mobilehome owners by attempting to exempt CITY from mandatory obligations created by state
24 law for the specific benefit and protection of mobilehome owners.

25 69. CITY's Municipal Code section 143.0615 is unconstitutional in that it violates,
26 among other things, the Due Process and Equal Protection clauses of the California Constitution
27 (Violation of Article I, Sec. 7(a) of the California Constitution).

28 70. In addition, Municipal Code section 143.0615 is preempted by state law.

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Tenth Cause of Action

Violation of State Relocation Assistance Requirements

(Violation of Gov't Code §§ 7260 *et seq.*)

(Against CITY and DOES 1-100)

77. Plaintiff hereby incorporates by reference all preceding and succeeding paragraphs of this Complaint as though fully set forth herein.

78. Government Code section 7262 provides: “Whenever a program or project to be undertaken by a public entity will result in the displacement of any person, the displaced person is entitled to payment for actual moving and related expenses....” Government Code section 7263 provides: “In addition to the payments required by Section 7262, the public entity, as part of the cost of acquisition, shall make a payment to the owner of real property acquired for public use which is improved with a dwelling actually owned and occupied by the owner....”

79. The CITY has failed to comply with the requirements of Government Code sections 7260 *et seq.* Despite threatening to evict Park residents and thereby displace those residents, and turn the Park into a different use, the CITY has not provided the residents with the payments required by Government Code Section 7260 *et seq.*

80. As a result, Plaintiff has directly and proximately suffered damages in an amount subject to proof. Based on information and belief, the CITY OF SAN DIEGO calculated in 1993 that damages to Park residents were in excess of \$67 million.

Eleventh Cause of Action

Breach of Contract

Third Party Beneficiary Theory

(Against CITY and DOES 1-100)

81. Plaintiff hereby incorporates by reference all preceding and succeeding paragraphs of this Complaint as though fully set forth herein.

82. The CITY and DHRG entered into various agreements between them, including the

1 Master Lease, the Memorandum of Understanding, and various lease options. Plaintiff and Park
2 residents are the intended beneficiaries of these agreements which provide for relocation and
3 compensation benefits for Park residents and/or an extension of the lease beyond November 23,
4 2003.

5 83. Based on information and belief, CITY breached these agreements, breached the
6 implied covenant of good faith and fair dealing, and, in so doing, denied Plaintiff and the Park
7 residents from the intended benefits of such agreements by failing and refusing to provide any lease
8 extensions, relocation benefits, or other lawful and adequate compensation.

9 84. Plaintiff and Park residents have suffered consequential, general, special, and
10 incidental damages, according to proof at trial. Moreover, Plaintiff seeks its attorneys' fees and
11 costs, prejudgment interest, and any other relief that the court deems proper as allowed by law.

12 13 **Prayer**

14 Plaintiff prays for judgment against Defendants, and each of them, as follows:

15 85. For an injunction ordering the CITY and DOES 1-100 to:

- 16 • stop any attempt to institute any Unlawful Detainer or other eviction proceeding or process
17 against the owners or residents of the Park, located at 2727 De Anza Road, San Diego,
18 California, until the time that the factual and legal issues alleged herein reach a final judicial
19 determination;
- 20 • stop any attempt to cease, discontinue, or decrease the level of any services, maintenance,
21 common area access, and security provided to owners and residents of the Park;
- 22 • comply in full with the provisions of the Mello Act pursuant to Government Code § 65590
23 and the Mobilehome Residency Law, including but not limited to preparation of a Tenant
24 Impact Report and all other aspects of Government Code § 65863.7;
- 25 • extend the tenancy for the mobilehome owners and residents at the Park at least until the
26 year 2017—the year that the CITY's lease on the neighboring "Campland" property
27 expires—or, alternatively, not less than 5 years from the date of this filing; and/or
- 28 • specifically provide Plaintiff the relocation benefits set forth under the provisions of the

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LTRA, including but not limited to articles 19 and 20, at Plaintiff's election.

86. For statutory penalties under Civil Code section 798.86 of \$2,000 for *each* separate violation of the Mobilehome Residency Law committed by Defendants for *each* of the up to 509 mobilehome lots in the Park.

87. For declaratory relief that the provisions of the Mobilehome Residency Law cannot be waived by contract and that any such purported waiver language contained in any agreement with residents is null and voidable by individual residents as against public policy.

88. For a writ of mandate so that Defendants must comply with the provisions of the Mello Act, including but not limited to: providing replacement dwelling units within the coastal zone in the CITY of San Diego or County of San Diego, or within three miles of the coastal zone in the CITY of San Diego or County of San Diego, or providing a fee payment procedure in lieu of providing replacement dwellings.

89. For declaratory relief that the CITY's October 2003 settlement agreement—in whole—is now voidable at the sole election of any resident and/or homeowner who signed the agreement at any time between October 2003 and January 2004.

90. For restitution and disgorgement of all profits earned by Defendants CITY OF SAN DIEGO and DOES 1-100, from the operation of the De Anza Harbor Resort mobilehome park from 1999 until a final judicial decision is reached herein;

91. For consequential, special, general, and incidental damages, according to proof;

92. For exemplary and punitive damages in an amount as may be proven that would be sufficient to punish and deter similar egregious conduct;

93. For attorneys' fees and costs incurred herein;

94. For fees and costs of suit incurred herein;

95. For prejudgment interest on all applicable monetary damages at the maximum legally permissible rate; and

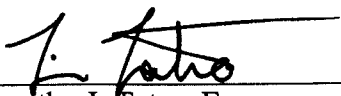
96. For such other and further relief as the court may deem just and proper.

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DATE: January 20, 2004

Respectfully Submitted,

TATRO & ZAMOYSKI, LLP

By: 
Timothy J. Tatro, Esq.
Peter A. Zamoyski, Esq.
Attorneys for Plaintiff DE ANZA COVE
HOMEOWNERS ASSOCIATION, INC.