

1 Timothy J. Tatro, Cal. State Bar No. 175633
Peter A. Zamoyski, Cal. State Bar No. 185579
2 TATRO & ZAMOYSKI, LLP
12264 El Camino Real, Suite 400
3 San Diego, CA 92130-3063
TEL: (858) 244-5032
4 FAX: (858) 847-0032

5 Everett L. DeLano III, Cal. State Bar No. 162608
LAW OFFICES OF EVERETT L. DELANO III
6 220 West Grand Ave.
Escondido, Ca 92025
7 TEL: (760) 510-1562

8 Attorneys for Plaintiff
DE ANZA COVE HOMEOWNERS
9 ASSOCIATION, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN DIEGO**

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

14 Plaintiff,

15 v.

16 CITY OF SAN DIEGO;
DE ANZA HARBOR RESORT AND GOLF,
17 LLC, a California limited liability company;
and DOES 1-100, inclusive,

18 Defendants.
19

Case No. GIC 821191

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION**

DATE: December 12, 2003

TIME: 2:00 p.m.

DEPT: 66

I/C JUDGE: Hon. Charles Hayes

(Telephone Ruling-No Appearance Required)

Complaint filed: Nov. 17, 2003

Trial Set: None set

20
21 ////

22 ////

23 ////

24 ////

25 ////

26 ////

27 ////

28 ////

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Issue 1

I. Introduction..... 1

II. Case History..... 4

III. Relevant Legislative History..... 6

A. Mobilehome Parks6

B. The Kapiloff Bill.....8

C. Protection of Low-Income Housing.....8

D. Local Laws9

E. The City’s Ultimatum10

IV. Argument 11

A. A Preliminary Injunction is appropriate because the CITY has vowed to evict residents immediately12

1. Throwing residents out of their homes will cause great irreparable harm to nearly 1,200 residents and to the local housing market. 12

a. Even if residents had the financial resources, no other mobilehome spaces are available12

b. Park residents will be forced to demolish their homes at their own expense13

c. Park residents cannot afford to buy or rent new homes.....13

d. Even if residents *had* sufficient funds, there are not enough accessible apartment and condominium units to accommodate the sudden influx of nearly 1,200 people15

e. Even having unlawful detainer actions filed against them will cause great harm to residents even if the evictions are enjoined.15

2. Allowing the CITY to evict residents now will render the judgment on the underlying case ineffectual because all of the homes at issue will be gone by then. 16

3. Issuing a Preliminary Injunction will prevent the immediate filing of more than 500 separate unlawful detainer actions, stemming the drain on public resources and protecting against inconsistent results. 16

1 B. Given the degree of harm residents will immediately suffer, Plaintiff need only show a
2 reasonable likelihood of prevailing on the merits to justify issuance of a TRO.....17

3 C. Plaintiff is reasonably likely to demonstrate that the CITY cannot exempt itself from
4 State mandates requiring a Tenant Impact Report, a feasibility study, a transition
5 plan crafted with resident participation, proper notice and adequate relocation
6 assistance for all residents.....17

7 1. The CITY has violated no less than 4 provisions of the Mobilehome Tenancy Law..... 17

8 2. The CITY has violated the Mello Act by failing to address whether
9 adequate replacement housing is even available 17

10 3. State mandates preempt any inconsistent local ordinance related to issues of
11 statewide importance, like affordable housing. 20

12 4. Statutory protections cannot be waived by contract. 21

13 5. The State Legislature is concerned with the consequences, not the cause,
14 of mobilehome park closures. 21

15 D. As the CITY will suffer no foreseeable harm from the injunction, the equities lean
16 even more heavily towards protecting the residents from the obvious harm that
17 will result upon commencement of eviction proceedings.....22

18 E. If the Preliminary Injunction issues, the undertaking, if any, should be minimal
19 because there is no financial harm to the CITY in allowing residents to remain
20 and pay rent for the remainder of the lawsuit.23

21 V. Conclusion 25

22

23

24

25

26

27

28

TABLE OF AUTHORITIES

CASES

Abba Rubber Co. v. Seaquist (1991) 235 Cal. App. 3d 1 23

Buena Vista Gardens Apartments Assn. v. City of San Diego Planning Department
(1985) 175 Cal. App. 3d 289 21

Common Cause v. Board of Supervisors (1989) 49 Cal. 3d 432 17

Keh v. Walters (1997) 55 Cal. App. 4th 1522..... 22

King v. Meese (1987) 43 Cal. 3d 1217 17

Sherwin-Williams Co. v. City of Los Angeles (1993) 4 Cal. 4th 893..... 20

Venice Town Council, Inc. v. City of Los Angeles (1996) 47 Cal. App. 4th 1547..... 9

STATUTES

California Civil Code §§ 798 3

California Civil Code § 798.55(a) 10

California Civil Code § 798.77 25

California Civil Code section 798.56..... 21

California Code of Civil Procedure § 526 16

California Civil Procedure § 526(a)(2) 20

California Code of Civil Procedure § 529(a)..... 27

California Code of Civil Procedure § 562(a)(3) 20

California Code of Civil Procedure § 562(a)(6) 20

Government Code § 65863.7 passim

Government Code § 67863.8 3

Government Code § 64863.7 11, 12

Government Code § 65590 6, 13, 22, 23

Public Resources Code § 30101 13

San Diego Municipal Code § 143.0610 14

San Diego Municipal Code § 143.0615 14, 24, 25

OTHER AUTHORITIES

Affordable Housing Task Force, *Executive Summary*, April 2003, p.1 23

City Council Minutes dated August 6, 2002, adopting Resolution R-296982 23

City Resolution Number 2004-528 9, 14, 23

Kapiloff Bill, A.B. 447 passim

1 **Issue**

2 Under California law, the City of San Diego is under an unwaivable statutory duty to
3 prepare a Tenant Impact Report and comply with other provisions of the Mobilehome Residency
4 Law (Civil Code §§ 798 *et seq.*, Gov't Code §§ 65863.7, 67863.8) and the Mello Act (Gov't Code
5 § 65590) before it can close a mobilehome park, destroy hundreds of homes, and evict Park tenants.
6 Here, the City has not prepared a Tenant Impact Report or addressed the lack of alternate housing,
7 yet, is threatening to evict nearly 1,200 residents—most of whom are elderly or disabled—by
8 December 2, 2003. Should the Court grant a Preliminary Injunction to prevent any evictions and to
9 continue vital services until the factual and legal issues in this case are resolved?
10

11 **I.**

12 **Introduction**

13 Plaintiff DE ANZA COVE HOMEOWNERS ASSOCIATION, INC. (“HOA”), represents
14 the interests of nearly 1,200 residents of the De Anza Harbor Resort mobilehome park (“Park”).
15 The City of San Diego (“CITY”) is threatening to evict these residents immediately: “eviction
16 proceedings will be commenced against you and all other occupants of your mobilehome beginning
17 November 24, 2003.” (See De Anza Harbor Resort Resident Settlement Package, ¶5, attached as
18 Exhibit 1 to the Declaration of James Lewan (“Lewan Decl.”), filed herewith.) On Tuesday,
19 November 18, 2003, the City Council adopted a Resolution authorizing this mass eviction of nearly
20 1,200 Park residents.

21 The CITY agreed to temporarily stay evictions until December 2, 2003, if “qualified”
22 residents fill out a questionnaire related to the transition plan. As to those who do not qualify,
23 which includes several hundred renters and owners with liens against their homes, the CITY would
24 have already begun eviction proceedings on Monday, November 24, 2003—if not for the TRO in
25 effect.

26 The gravamen of this motion is that the CITY failed to comply with State laws governing
27 the closure of mobilehome parks and the requisite relocation process designed to protect
28 homeowners from the very hardships that Park residents now face.

1 The vast majority of Park residents are elderly, many are infirm or disabled, and most live
2 on a limited, fixed income, such as Social Security disability benefits. Many have lived in the Park
3 for decades, finding strength in a community that revolves around many social and other activities,
4 including Sunday gatherings at the Park church. Since the CITY threatened them with eviction on
5 October 22, 2003, however, the residents are terrified that they are going to lose their homes and,
6 without any financial assistance, will have nowhere to go. Moreover, the CITY refuses to
7 guarantee that vital services will continue to be provided through year-end and has threatened to
8 close down all common areas.

9 Plaintiff's experts have canvassed the local area, as well as regions as far north as Oregon,
10 looking for vacant spaces in other mobilehome parks. They found only one open space for lease.
11 The local real estate market is equally grim: in the nine communities surrounding De Anza Point,
12 there are only 130 available units with ground floor or elevator access, corresponding to a vacancy
13 rate of only 1.1%. Yet, there are nearly 1,200 residents facing eviction.

14 Moreover, even if there were sufficient vacancies at other mobilehome parks, most of the
15 homes located at the Park are simply too old to be moved. Most mobilehome parks will not accept
16 homes that are more than 5-10 years old, even assuming residents had the means to retrofit them for
17 safe transport. So, effectively, the CITY is forcing the residents to abandon and demolish their
18 homes without regard for the utter scarcity of alternate housing or the drastic financial hardship
19 imposed on the residents—and without regard to the law.

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

23 Pursuant to these public policies, State law mandates that, **prior to closing the park or**
24 **ceasing use of the land as a mobilehome park**, the CITY must prepare a Tenant Impact Report
25 (“Impact Report”), must hold open session hearings at the residents’ request to discuss the findings
26 of the Impact Report, must provide the Impact Report to the residents in advance of any such
27 hearings, and must take affirmative steps to mitigate the harm resulting from park closure, taking
28 into account the availability of alternate housing and relocation costs. Moreover, the Legislature

1 expressly made these provisions applicable to charter cities, like San Diego. Gov't Code
2 § 65863.7(a)-(i).

3 Furthermore, because Park homes are located in a coastal zone, the City must also comply
4 with special low income housing initiatives that require replacement housing and/or feasibility
5 studies to determine the availability of affordable housing in the area. Gov't Code § 65590,
6 referred to herein as the "Mello Act."

7 In this case, the CITY has violated every one of these State mandates, choosing instead to
8 rely on tortured semantics and a local ordinance that it passed in an attempt to exempt itself from
9 these requirements. While the CITY can legitimately pass local ordinances that are even more
10 protective of resident rights, the CITY cannot undercut the protections established by the State.
11 Therefore, the CITY cannot initiate unlawful detainer actions, nor close the Park, if at all, before
12 completing the Tenant Impact Report, public review process, feasibility studies, and adequately
13 mitigating the negative impact on Park residents and the local housing market.

14 Plaintiff's Complaint seeks, among other things, the CITY's compliance with the State's
15 mandates and the costs of obtaining adequate replacement housing for the residents. However,
16 Plaintiff anticipates that this litigation, designated as "complex," will take at least one year to
17 complete.

18 As such, prevailing at trial and receiving compensation twelve to eighteen months from now
19 will mean very little to those who are evicted and left homeless in the interim. They really have no
20 where else to go. Thus, the harm—resulting from **the immediate eviction of hundreds and**
21 **hundreds of residents before the holidays** and before any discovery is taken—will be swift and
22 irreparable. The desperate situation of many of these residents—including some who have
23 considered suicide rather than homelessness—is detailed below and in their accompanying
24 declarations.

25 For these reasons, the Court should issue a Preliminary Injunction to prevent any evictions,
26 reduction in services, or closure of common areas until the applicability of the Mobilehome
27 Residency Law and the Mello Act—and the CITY's violations of both—and the other
28 corresponding issues have been fully litigated.

1 **II.**

2 **Case History**

3 The history of De Anza Park and the plight of its residents spans more than two decades of
4 written agreements, legislative efforts, and political scandals.

5 The Park was established by six land grants from the State to the City between 1939 and
6 1963. Each grant obligated the City to act as trustee of the Park's tidelands with the goal of
7 providing public access and recreational use of the land. In 1953, the City entered a 50-year lease
8 with the predecessor of defendant DE ANZA HARBOR RESORT AND GOLF, LLC ("DHRG") to
9 develop a trailer park and passed Resolution No. 102320 which permitted **384 permanent** and 280
10 transient units at the Park. (See Resolution No. 102320, attached as Exhibit 2 to Lewan Decl.) In
11 1962, the City dedicated part of the De Anza property to park use.

12 Over time, mobile homes became larger, more elaborate, and less mobile. The City began
13 issuing individual permits for permanent improvements and allowed the Park to balloon to 509
14 homes, making millions of dollars as a percentage of Park revenues and property taxes. The elderly
15 began to flock to the Park as an ideal retirement location. Out of this densely-packed collection of
16 over 500 homes emerged a tightly-knit community that unites retirees, the disabled, American
17 veterans, and single parent families, all clinging to one of the last locales of affordable housing.

18 Concerned with the threats to destroy the Park community, several years of public hearings
19 and negotiations culminated in a legislative effort in 1981. Known as the "Kapiloff Bill," A.B. 447
20 was enacted to legitimize and protect the permanent tenancy of Park residents through the balance
21 of the City's 50-year lease.

22 Beginning in 1989, the CITY entered into a series of agreements with DHRG to consider
23 redeveloping the Park for other uses, including a large, 600-room hotel. About this time, De Anza
24 also entered into a Long Term Rental Agreement ("LTRA") with the vast majority of new and
25 existing Park residents after several years of escalating rents. Among other things, the LTRA
26 promised rent control and also offered substantial relocation benefits if the CITY approved
27 DHRG's hotel development proposal.

28 In 1999, the CITY signed a Memorandum of Understanding with DHRG in which the CITY

1 agreed to negotiate exclusively with DHRG to develop a hotel project at the Park. (See
2 Memorandum of Understanding, attached as Exhibit 3 to Lewan Decl.) Of import to this Motion,
3 the CITY claimed that the Memorandum of Understanding precluded the CITY from negotiating
4 with Park residents from 1999 until May 2003 when the Memorandum of Understanding expired.
5 (See Lewan Decl., ¶2.)

6 On May 7, 2003, DHRG notified the CITY that it had abandoned its efforts to develop a
7 hotel and conveyed this information to Park residents; the Memorandum of Understanding expired
8 on May 23, 2003.

9 With the expiration of the Memorandum of Understanding, Residents viewed this as a long-
10 sought opportunity to finally speak with the CITY regarding the future of the Park and the CITY's
11 relocation plans. However, the CITY continued to keep residents at bay after May 2003 by
12 conducting its City Council hearings in closed session and telling Plaintiff that those closed
13 sessions must be kept confidential. (See Lewan Decl., ¶3.) The HOA submitted various proposals
14 designed to fund a relocation plan and provide CITY revenue, but the CITY rejected them all. (See
15 Lewan Decl., ¶3.)

16 Ultimately, with time running out, the CITY appeared at a resident meeting on or about
17 October 22, 2003, to finally discuss with the residents its long-awaited "Transition Plan."
18 Presenting the "plan" was the City's Director of Real Estate Assets, flanked by four armed
19 policemen. The CITY's message was direct: sign our agreement, waive all your rights, take-it-or-
20 leave-it, or we will throw you out on November 24, 2003. The actual written Transition Plan was
21 sent to residents in the following days, accompanied by a cover letter threatening to evict the
22 residents if they did not sign the proposed agreement by November 21, 2003. (Lewan Decl., ¶4.)

23 Shocked at the news and offended by the CITY's aggressive position after years of ignoring
24 resident concerns, Park residents conveyed to Plaintiff the need for immediate civil action.

25 On November 18, 2003, the City Council convened to pass Resolution Number 2004-528,
26 authorizing the eviction of all Park residents who did not qualify for, or consent to, the CITY's
27 unilateral transition plan. The CITY also extended to December 1, 2003, the deadline for
28 "qualified" residents to complete preliminary settlement documents or face immediate eviction. As

1 to the remainder of the residents, the CITY threatened to initiate eviction proceedings beginning
2 Monday, November 24, 2003.

3 In the last two weeks, residents have been told by CITY and DHRG representatives that
4 services may be terminated and common areas will likely be shut down. (Lewan Decl., ¶5.) These
5 tactics convey to residents that their community is closing down around them and they are afraid.

6 On November 20, 2003, this Court issued a Temporary Restraining Order, **enjoining any**
7 **eviction proceedings, any diminishment in services, and any closure of any of the common**
8 **areas.** The CITY was also ordered to show cause why a preliminary injunction should not issue for
9 the balance of the litigation.

11 III.

12 Relevant Legislative History

13 A. Mobilehome Parks

14 In the late 1970s, the California Legislature embarked upon a massive policy initiative to
15 protect mobilehome residents from eviction. The Mobilehome Residency Law (“MRL”), enacted
16 in 1978, codified a range of procedural safeguards for mobilehome residents. In no uncertain
17 terms, the Legislature declared that:

18 the high cost of moving mobilehomes, the potential for damage resulting therefrom,
19 the requirements relating to the installation of mobilehomes, and the costs of
20 landscaping and lot preparation, [make it necessary] that the owners of mobilehomes
occupied within mobilehome parks be provided with the unique protection from
actual or constructive eviction afforded by the provisions of this chapter.

21 Civ. Code § 798.55(a).

22 A companion statute, Government Code section 65863.7, was signed by the Governor in
23 September 1980. As initially enacted, this statute required that an entity seeking to change the use
24 of a mobilehome park had to:

- 25 • File a Tenant Impact Report with the City, taking into account “the availability of adequate
26 replacement space in mobilehome parks”; and
- 27 • Provide the Impact Report to each resident at least 15 days prior to the public hearing on the
Impact Report.

28 (See Gov’t Code § 64863.7, Stats. 1980, ch. 879, p. 2760, §2, attached as Exhibit 1 to Tatro Decl.)

1 **Thus, completing, distributing, and subjecting the Impact Report to a public review**
2 **process are all mandatory.** Moreover, the City’s legislative body or advisory agency is required
3 to review the Impact Report and has the power to condition approval for the change of use upon the
4 petitioner taking steps to mitigate the harm caused to displaced residents. (*Ibid.*)

5 Five years later, the Legislature *expanded* the reach of this statute, as it now reads, by
6 requiring a Tenant Impact Report in the event of a change of use *or* **“prior to closure of a**
7 **mobilehome park or cessation of use of the land as a mobilehome park.”** Gov’t Code
8 § 64863.7(a) (emphasis added).

9 In 1986, the Legislature expanded the statute’s reach even further, adding subdivision (h)
10 which states in whole: **“This section is applicable to charter cities.”** Passed as an urgency
11 statute critical to public health, peace, and safety, the express reason for this short amendment was
12 to mitigate the harm caused by charter cities that are home to many of the last remaining
13 mobilehome parks:

14 It is anticipated that there will be many mobilehome park closures in charter cities in
15 the near future and thousands of mobilehome owners will be displaced. This act
16 will provide some remedy for the situation, and it is necessary that this act take
effect immediately.

17 (*See* Gov’t Code § 64863.7, Stats. 1986, ch, 190, p. 1058, §4, attached as Exhibit 2 to Tatro Decl.)

18 Finally, in 1988, the Legislature added subdivision (i) to close the loopholes and encompass
19 virtually any action or inaction, decision or ordinance by any local governmental entity that *results*
20 *in* park closure, cessation of use of the land as a mobilehome park, or change of use:

21 This section is applicable when the closure, cessation, or change of use is the result
22 of a decision by a local governmental entity or planning agency not to renew a
23 conditional use permit or zoning variance under which the mobilehome park has
24 operated, or as a result of any other zoning or planning decision, action, or inaction.
25 In this case, the local governmental agency is the person proposing the change in use
for the purposes of preparing the impact report required by this section and **is**
required to take steps to mitigate the adverse impact of the change as may be
required in subdivision (e).

26 Gov’t Code § 64863.7(i) (emphasis added).

27 Subdivision (i) is significant in two respects. It places the burden of preparing the Impact
28 Report on the local governmental entity and makes mitigation measures obligatory on that entity—

1 not discretionary.

2 Thus, every time the Legislature went back to this statute, it acted to broaden its reach and
3 encompass all of the potential mechanisms that could result in the displacement of residents. As a
4 public welfare measure, the focus of this initiative is on the *result* of park closure, the dire impact
5 on displaced residents, and that which needs to be done to mitigate the adverse consequences to
6 those who would lose their homes.

7
8 **B. The Kapiloff Bill**

9 Passed in 1981, the Kapiloff Bill immediately recognized the hardships that would be
10 imposed on Park residents if the Park were closed. The Kapiloff Bill prohibited the CITY from
11 transitioning the Park to any other use until after the termination of the CITY’s Master Lease with
12 DHRG. The Bill also allowed the CITY to renegotiate its existing lease on the Park as long as fair
13 rental value was obtained. (*See* Kapiloff Bill – A.B. 447, Section 3, sub (b), (c) and (e), attached as
14 Exhibit 3 to Tatro Decl.) But **nothing** in the Kapiloff Bill mandated the immediate eviction of all
15 residents. And **nothing** in the Kapiloff Bill exempted the CITY or DHRG from the mandates of
16 other State laws—including the Mobilehome Residency Law.

17 In the wake of this Bill, the CITY quickly passed a resolution in January 1982, adopting the
18 State’s findings and authorizing the City Manager to amend the Master Lease with DHRG. The
19 CITY required notice to all tenants that, by purported reason of the Kapiloff Bill, no relocation
20 benefits would be provided at lease termination or stemming from any action or inaction by DHRG
21 or the CITY under the Master Lease. Significantly, these provisions are contained **nowhere** in the
22 language of the Kapiloff Bill. (*See* A.B. 447 attached as Exhibit 4 to Tatro Decl.)

23
24 **C. Protection of Low-Income Housing**

25 During the same time frame, the State Legislature pushed through various measures to
26 ensure the availability of affordable housing, particularly in coastal zones. In 1981, the Legislature
27 enacted Government Code § 65590, which came to be known as the “Mello Act,” named after its
28 sponsor. The Act’s purpose “is to preserve residential housing units occupied by low or moderate

1 income persons or families in the coastal zone.” *Venice Town Council, Inc. v. City of Los Angeles*
2 (1996) 47 Cal.App.4th 1547, 1552-1553. To remove all doubt as to its state-wide reach, the Act
3 mandates compliance by all local governments having coastal zones. Gov’t Code § 65590(a). The
4 Park sits within a coastal zone.

5 The Mello Act prohibits local government from allowing the demolition or conversion of
6 coastal housing without providing replacement dwellings within three miles of the coastal zone.
7 Gov’t Code § 65590(b). There is an exception if the new, non-residential use is “coastal-
8 dependent,” meaning a development or use “which requires a site on, or adjacent to, the sea to be
9 able to function at all.” Gov’t Code § 65590(b)(2) and Public Resources Code § 30101. In other
10 words, if the new land use will only function if is it next to the ocean—a marine park, for
11 example—then the need for replacement dwellings can be determined only after the CITY has
12 completed a feasibility analysis. That analysis must take into account “economic, environmental,
13 social, and technical factors” to determine whether adequate replacement housing can be
14 “accomplished in a successful manner within a reasonable period of time.” Gov’t Code §
15 65590(g)(3). **Thus, the feasibility study is meant to address the adverse consequences of the**
16 **CITY’s deliberate destruction of affordable housing. Such a study was never done in this**
17 **case.**

18

19 **D. Local Laws**

20 Between 1991 and 1997, the CITY passed a series of local regulations purportedly designed
21 to extend even greater protection to mobilehome residents. However, after much discussion
22 between various intra-municipal agencies, **the CITY decided to exempt only De Anza Harbor**
23 **Resort Mobilehome Park** from these local regulations “because of the unique conditions
24 applicable” to the Park. San Diego Municipal Code § 143.0615(b), attached as Exhibit 8 to Tatro
25 Decl. Instead, these local regulations indicate that the CITY will “deal with any discontinuance
26 and relocation issues involved with De Anza Mobilehome Park by separate ordinance or
27 resolution.” *Ibid.*

28 It is telling to note that, as to all mobilehome parks other than De Anza, the CITY’s stated

1 purpose in passing these regulations was “**to benefit the general public by minimizing the**
2 **adverse impact on the housing supply and on displaced persons** by providing certain rights and
3 benefits to tenants and **by requiring tenant relocation assistance whenever an existing**
4 **mobilehome park or portion thereof is converted to another use.”** San Diego Municipal Code
5 § 143.0610 (emphasis added).

6 Only days ago, the CITY adopted Resolution Number 2004-528. (Resolution Number
7 2004-528, attached as Exhibit 4 to Tatro Decl.) This Resolution is presumably the “separate
8 ordinance or resolution” referred to years earlier in Municipal Code section 143.0615(b), above.

9 In relevant part, this Resolution declares:

- 10 • That the discontinuance of the De Anza Mobilehome Park is caused by expiration of the
11 Master Lease, the expiration of the Kapiloff Bill, and the expiration of the Long Term
12 Rental Agreements between tenants and DHRG (Lessee) and is not a closure, change of use,
13 or taking of property;
- 14 • That neither the CITY nor DHRG is required to comply with any procedural or financial
15 mobilehome park closure legal requirements or obligations or any other provisions of law;
16 and
- 17 • That the discontinuance of Park use is not a conversion or demolition by the CITY or
18 DHRG and that neither of them shall be required to provide any low-income replacement
19 housing.

20 (Resolution 2004-528, Exhibit 4 to Tatro Decl.)

21 **E. The City’s Ultimatum**

22 Borne out of secret Council meetings and devoid of *any* public review or comment, the
23 CITY’s Transition Plan (“Plan”) promises residents the “opportunity” to continue living at De
24 Anza for an additional 1-5 years based on a lottery system and offers each household \$4,000-
25 \$8,000. In exchange, however, residents must:

- 26 • agree to a stipulated judgment indicating that they are, in effect, trespassing;
- 27 • agree that the Mobilehome Residency Law—and all other applicable State laws—do not
28 apply;
- agree to bear the cost of removing their homes from the Park (which includes demolition);
- agree to remove all hardscape, trees and other landscaping at the residents’ expense;

////

- 1 • agree to waive all statutory and contractual rights and claims against the CITY and DHRG, including any right to relocation assistance or replacement housing; and
- 2 • agree to waive their right to participate in this litigation and, thus, not to challenge the
- 3 legality of the actions taken by the CITY or DHRG.

4 This Plan, the CITY's first attempt after nearly 50 years, was explained to Park residents at
5 a meeting about 4 weeks before lease termination. The CITY offered no opportunity to negotiate
6 any terms of the Plan and presented it strictly on a "take-it-or-leave-it" basis—sign it or we will
7 throw you out before the holidays. It contains no feasibility analysis, no Tenant Impact Report, no
8 discussion of the current housing crisis, and no mention of any efforts by the CITY to help with
9 relocation in the future once the residents have waived all of their rights.

10 Moreover, the Plan forces residents to waive legal rights that the Legislature has declared
11 unwaivable. Any agreement that purports to waive the protections of the Mobilehome Residency
12 Law is "deemed contrary to public policy and shall be void and unenforceable." Civ. Code
13 § 798.77.

14 Of even greater importance to this Motion is the fact that **the CITY's Plan does not even**
15 **apply to residents** of the Park **who are renting** their homes, non-resident homeowners, **or** any
16 homeowners **who have loans** against their home unless they are willing to indemnify the CITY.
17 (Tatro Decl., ¶11.) Thus, as to these "unqualified" residents, believed to number 300-400, the
18 CITY offers no relief whatsoever—only eviction.

19
20 **IV.**

21 **Argument**

22 Park residents need extraordinary relief right now. The CITY's threat to throw them out of
23 their homes is unlawful because the CITY has, at a minimum, failed to comply with State-
24 mandated pre-closure requirements, including the preparation, distribution and public review of a
25 Tenant Impact Report. Moreover, the CITY has failed to evaluate how the Park closure will affect
26 the current housing crisis and whether adequate replacement housing is even available. Plaintiff
27 has shown that it has a reasonable probability of prevailing and has evidenced the great and
28 immediate harm that Park residents will suffer if evicted. The Court must enjoin the CITY from

1 closing the park and evicting residents during the litigation of this matter. The Court must further
2 enjoin the CITY from terminating or diminishing Park services and closing any common areas that
3 residents depend upon while this litigation is pending.

4
5 **A. A Preliminary Injunction is appropriate because the CITY has vowed**
6 **to evict residents immediately.**

7 The CITY has made it clear that it intends to immediately evict all non-settling and
8 “unqualified” residents. (*See* Settlement Package, p.1, attached as Exhibit 1 to Lewan Decl.) In
9 fact, the issuance of the Temporary Restraining Order is the only thing that prevented the CITY
10 from filing unlawful detainer actions already. Once the evictions begin, hundreds of residents,
11 many of them elderly and disabled, will be homeless. No less than three grounds compel the
12 issuance of a Preliminary Injunction in this instance under California Code of Civil Procedure
13 section 526.

14
15 **1. Throwing residents out of their homes will cause great irreparable harm**
16 **to nearly 1,200 residents and to the local housing market.**

17 The CITY has demanded that residents vacate the Park and remove their homes by
18 November 23, 2003, or agree to a transition plan that will leave them severely in debt, homeless,
19 and without legal recourse.

20
21 **a. Even if residents had the financial resources, no other**
22 **mobilehome spaces are available.**

23 Even assuming residents did not face financial hardship, they would be unable to find
24 alternate mobilehome space, much less “comparable” mobilehome space. Plaintiff’s mobilehome
25 expert is Charles Green from Green & Sons, a well-known and reputable mobilehome services
26 company. At Plaintiff’s request, Mr. Green recently contacted nearly 30 different mobilehome
27 parks in El Cajon, Chula Vista, Oceanside, Borrego Springs, Fallbrook, Kearny Mesa, Lakeside,
28 Santee, San Diego, Encinitas, and Vista, seeking vacant space for lease. **Not one park had a**

1 **single space available.** (See Declaration of Charles Green (“Green Decl.”), ¶7, filed herewith.)

2 Mr. Green then contacted various mobilehome parks outside San Diego County, including
3 parks in Ventura, Oxnard, Vacaville, Oroville, Hemet, Hayward, Broderick (West Sacramento),
4 and even two parks in the state of Oregon. Out of all of these locations, encompassing thousands of
5 mobilehome units, there was only **one vacant space** for rent—in Hemet. (Green Decl., ¶8.)

6
7 **b. Park residents will be forced to demolish their homes
at their own expense.**

8 The vast majority of the homes at the Park cannot be moved. Those located closest to the
9 waterfront have been exposed to saltwater in the air and in the soil. As a result, the steel
10 undercarriage has been corroded to the point that transport would cause extensive structural
11 damage. (Green Decl., ¶11.) Moreover, most mobilehome parks prohibit homes that are more than
12 5-10 years old. As the majority of the homes at the Park date back more than 10 years—many as
13 much as 30+ years—there is no park to move them to, even assuming they could be safely
14 transported without structural damage. (Green Decl., ¶12.) Furthermore, even if the homes could
15 be safely moved and another park would accept them, it would cost at least \$6,000 - \$18,000 just to
16 transport each one within 100 miles of San Diego. (Green Decl., ¶9.)

17 For these reasons, demanding that residents “remove” their homes essentially means
18 demolishing them. The cost of demolition and disposal will range between \$8,000 and \$20,000 per
19 home, depending on the size. (Green Decl., ¶11.) **To date, the CITY has offered residents no
20 more than \$8,000 per home, and only if residents waive all statutory rights to compensation
21 and relocation, and only as to those residents that “qualify” for the Plan.** That amount will not
22 even cover the demolition costs in most cases and contributes nothing to the substantial relocation
23 costs that will have to be borne by residents.

24
25 **c. Park residents cannot afford to buy or rent new homes.**

26 The majority of Park residents are seniors, living on limited, fixed incomes. Most have
27 poured their retirement savings into paying off their homes. Many are either disabled or care for a
28 disabled family member. Once their homes are destroyed, they will lose all of their accumulated

1 equity. Even if other mobilehomes or rental units with handicap access were available, most
2 residents could not afford them.

3 The following demonstrates the dramatic impact that the CITY's threatened eviction has
4 had on Park residents:

- 5 • Nancy Jo Gloudeman is 63-years-old and permanently disabled from a stroke she suffered
6 in March 2000. She lives on Social Security Disability benefits and cannot relocate her
7 mobilehome because it is too old to move. If she is evicted, she has no where else to go and
8 concedes that she had considered suicide. "If evicted, I believe I might as well die because
9 it would be easier." (Declaration of Nancy Jo Gloudeman filed herewith.)
- 10 • Rene Anthony is a 43-year-old single mother whose 14-year-old daughter is a quadriplegic
11 who needs special care. "For 10 months we searched for apartment compatible to wheel-
12 chair use. We found none." She owes \$37,000 on her home and, therefore, does not qualify
13 for the CITY's Plan and faces immediate eviction. (Declaration of Rene Anthony filed
14 herewith.)
- 15 • Pat Stevens is a 60-year-old disabled woman who has lived at the Park for 13 years. Due to
16 the stress of the CITY's threats of eviction, her weight has dropped to only 85 lbs. Having
17 been previously homeless for much of her life, she feels that there is nowhere for her to turn
18 if she is forced to leave her home at the Park. "I see only two options if I am evicted:
19 homelessness or death. I am too old and too weak to choose homelessness." (Declaration
20 of Pat Stevens filed herewith.)
- 21 • Helen Smithwick is an 89-year-old widow who has lived at the Park since 1957. Since
22 being threatened with eviction by the CITY, she has been "extremely depressed and cries
23 often." If evicted, she does not have "any other family to turn to and has no other place to
24 live." (Declaration of Helen Smithwick filed herewith.)

25 This is just a sampling of the personal hardships created by the CITY's actions and threats
26 in this case. There are many more, and Plaintiff has filed additional declarations with this Motion
27 for the Court's review. (See Declarations of Park residents: Bob Ruffato, Randy Epstein, and Frank
28 Pelcher, filed herewith.)

1 The CITY could not be throwing these residents into a more hostile housing market. And
2 given the recent wildfires that destroyed more than 2,400 homes within the County, local charities
3 and shelters are swamped already. Where are Park residents going to go? And how does flooding
4 the low-income housing market with nearly 1,200 displaced tenants aggravate the already critical
5 housing shortage highlighted by the CITY's own Task Force? No one knows. That is the point
6 behind doing a Tenant Impact Report.

7
8 **d. Even if residents had sufficient funds, there are not enough**
9 **accessible apartment and condominium units to accommodate**
10 **the sudden influx of nearly 1,200 people.**

11 The local rental market is very limited, especially for the elderly. Plaintiff's real estate
12 expert, Gary London, surveyed the surrounding communities near De Anza Park and determined
13 that only 1.1% of all rentals were vacant and accessible by ground floor or elevator access.
14 (Declaration of Gary London, ¶10, filed herewith.) Even if all of those available units were
15 reserved for displaced Park residents, nearly 400 resident families would still be left homeless.
16 (*Ibid.*) Limited by cost and the need for handicap access, Park residents cannot find adequate
17 alternate housing. Again, **these limitations and the resulting hardship on residents have to be**
18 **addressed in the Tenant Impact Report, the absence of which explains the complete lack of**
19 **public participation and the lack of any reasonable mitigation efforts by the CITY.**

20 **e. Even having unlawful detainer actions filed against them will**
21 **cause great harm to residents even if the evictions are enjoined.**

22 Immediate harm attaches the moment the CITY files unlawful detainer actions against the
23 residents. Although the CITY is a seasoned litigant, the residents are not and being sued will cause
24 them great stress, particularly given their age and health concerns. Most will not even know that
25 they need to file responsive papers or face a default judgment. Others will be forced to choose
26 between hiring a lawyer and using their limited funds to try to find a new home. The unlawful
27 detainer action will show up on all rental applications thereafter, making it even more difficult for
28 residents to find replacement housing. Such lawsuits are often reported adversely to credit bureaus,
regardless of the final outcome. Thus, the Preliminary Injunction should enjoin the CITY from

1 even filing Unlawful Detainer actions against any Park residents.

2 Given the residents' immediate loss and destruction of their homes, the financial enormity
3 of finding replacement housing, and the critical shortage of affordable housing, Plaintiff
4 demonstrates great and irreparable harm justifying issuance of a Preliminary Injunction under
5 California Civil Procedure section 526 (a)(2).

6
7 **2. Allowing the CITY to evict residents now will render the judgment on**
8 **the underlying case ineffectual because all of the homes at issue will be**
9 **gone by then.**

10 The gravamen of Plaintiff's Complaint is that the CITY has failed to carry out its pre-
11 closure obligations as mandated by State law. The contested issue is not whether the CITY has
12 done enough, but whether the CITY is obligated to act at all. Even if a judgment is rendered in
13 Plaintiff's favor 12-18 months from now—recognizing that the CITY *did* have affirmative
14 obligations to complete a Tenant Impact Report and adequately relocate all residents—it would
15 much be too late. The hardships created by such a sudden and massive displacement of residents
16 will already have been realized. Doing an Impact Report to learn how to help mitigate those
17 hardships 1-2 years after the fact would be largely academic at that point. Thus, a Preliminary
18 Injunction is justified under California Code of Civil Procedure section 562(a)(3) as well.

19 **3. Issuing a Preliminary Injunction will prevent the immediate filing of**
20 **more than 500 separate unlawful detainer actions, stem the drain on**
21 **public resources, and protect against inconsistent results.**

22 The Court should issue a Preliminary Injunction where doing so will prevent a “multiplicity
23 of judicial proceedings.” Civ. Proc. Code § 562(a)(6). The CITY is prepared to blitz the
24 courthouse with up to 500 unlawful detainer actions if the TRO is lifted. Each action will be
25 subject to individual affirmative defenses and each tenant/defendant will have the right to a trial.
26 Given the considerable resources that such a caseload will consume, it certainly makes more sense
27 to determine, as a threshold issue, whether the CITY even has the authority to evict Park residents
28 before it has complied with all of the statutory requirements discussed in this Motion. Otherwise,
the logistical nightmare of tracking the outcome of 500 different cases will be matched in absurdity

1 only by the magnitude of resources needlessly wasted if it turns out, in hindsight, that the CITY
2 never had the authority to evict Park residents in the first place.

3
4 **B. Given the degree of harm residents will immediately suffer, Plaintiff need only
5 show a reasonable likelihood of prevailing on the merits to justify issuance of a
6 TRO.**

7 In weighing its decision, the Court should balance, on a sliding scale, the degree of harm
8 with the likelihood of prevailing. The greater the Plaintiff's showing on one, the less that is needed
9 on the other to justify injunctive relief. *King v. Meese* (1987) 43 Cal.3d 1217, 1227-1228; *Common
Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 441-442.

10 Plaintiff has already demonstrated in detail that eviction and park closure will immediately
11 and irreparably harm nearly 1,200 residents, leaving most of them homeless and destitute, and with
12 no reasonable hope of relocation given the utter lack of any mobilehome park vacancies and the
13 prohibitive cost of new housing. Given the sheer magnitude of this harm, Plaintiff carries an even
14 lighter burden of demonstrating a reasonable likelihood of success.

15
16 **C. Plaintiff is reasonably likely to demonstrate that the CITY cannot exempt itself
17 from State mandates requiring a Tenant Impact Report, a feasibility study, a
18 transition plan crafted with resident participation, proper notice, and adequate
19 relocation assistance for all residents.**

20 While one cause of action would suffice, Plaintiff is likely to prevail on at least two causes
21 of action that justify injunctive relief.

22 **1. The CITY has violated no less than 4 separate provisions
23 of the Mobilehome Tenancy Law.**

24 Under the Mobilehome Residency Law (provisions of Government Code section 65863.7
25 (pre-closure requirements) and California Civil Code section 798.56 (notice)), the City has failed to
26 comply with the most basic, pre-closure requirements:

- 27
- No Tenant Impact Report was done (Gov't Code § 65863.7(a));
 - No Tenant Impact Report was served on the residents with the 6 or 12-month notices (Civil

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Code § 798.56(h) and Gov't Code § 65863.7(c));

- No review hearing was held to allow for public comment on the Impact Report (Gov't Code § 65863.7(d)); and
- No mitigation measures were ever considered or discussed (Gov't Code § 65863.7(e), (i)).

These facts are largely undisputed because the CITY's defense is that it knowingly decided not to comply with these provisions under the belief that these State laws do not apply.

2. The CITY has violated the Mello Act by failing to address whether adequate replacement housing is even available.

The CITY is threatening to eradicate affordable housing in a coastal area. The deliberate destruction of low-income housing in a coastal zone places the CITY's actions squarely within the provisions of the Mello Act. Gov't Code § 65590. Not surprisingly, the CITY also violated at least 4 separate provisions of this State law as follows:

- No threshold determination was made regarding what percentage of the residential units to be demolished have been occupied by low or moderate income persons; (Gov't Code § 65590(b))
- No factual findings were made to determine whether the proposed new use for the Park (e.g. a hotel) is "coastal dependent"; (Gov't Code § 65590(b)(2))
- No feasibility analysis was completed to evaluate the adequacy of low-income replacement housing in the immediate area; (Gov't Code § 65590(b)) and
- No attempt was ever made to reconcile the displacement of over 1,100 residents with the State of Emergency recently declared by the San Diego Housing Commission.

These requirements must be followed by the CITY prior to taking actions that will result in the destruction of so many affordable homes.

The conversion or demolition of existing residential dwelling units occupied by persons and families of low or moderate income . . . **shall not be authorized unless provision has been made for the replacement of those dwelling units** for persons and families of low or moderate income.

Gov't Code § 65590(b) (emphasis added).

No replacement units have been provided; no feasibility analysis was even conducted to determine if adequate replacement housing *could be* provided "in a successful manner within a

1 reasonable period of time, taking into account economic, environmental, social, and technical
2 factors.” Gov’t Code § 65590(g)(3). And the CITY never attempted to determine if there was
3 adequate replacement housing available within 3 miles of the coastal zone as required by the Mello
4 Act. Gov’t Code § 65590(b).

5 Had the CITY engaged in this required analysis, it would have been confronted with a
6 staggering reality, one that it had to publicly recognize only a few months ago: “San Diego has
7 become one of the most unaffordable cities in America.” Affordable Housing Task Force,
8 *Executive Summary*, April 2003, p.1, attached as Exhibit 5 to Tatro Decl. Declaring a recent
9 housing emergency, the CITY’s own Task Force reached some sobering conclusions:

- 10 • While 38% of the City’s households earn less than 80% of the average median income, only
11 16% of the housing units built were affordable for this income level;
- 12 • Between 2000 and 2002, the median price of an existing single family home in San Diego
13 increased 35% compared to the average U.S. increase of just 14%;
- 14 • “Most housing experts attribute this price escalation in San Diego to a shortage of supply in
15 the face of increasing demand.”
- 16 • “Only 17 percent of San Diegans can afford to purchase a home here, down from 20 percent
a year ago;” and
- The average apartment rent in San Diego is \$1,158.

17 (See Affordable Housing Task Force, *Executive Summary*, pp. 1-2, Exhibit 5 to Tatro Decl.; see
18 also City Council Minutes dated August 6, 2002, adopting Resolution R-296982: **‘Declaring a
19 State of Emergency Due to Severe Shortage of Affordable Housing in the City of San Diego,’**
20 attached as Exhibit 9 to Tatro Decl.)

21 Against this critical shortage of low-income housing, the CITY would have a difficult time
22 justifying the deliberate destruction of over 500 homes without providing replacement housing,
23 *even if it had taken the time to conduct the feasibility analysis.*

24 In the wake of this laundry list of inaction, representing years of wasted opportunity, the
25 City now brandishes Resolution Number 2004-528, discussed in Section III, D, above. This
26 conclusory Resolution is little more than a rear-guard attempt to insulate the City from liability by
27 *fiat*, declaring that the CITY is not closing the park, is not destroying low-income coastal housing,
28 and is not liable for relocation costs. (See Resolution 2004-528 attached as Exhibit 4 to Tatro

1 Decl.)

2 Over the years, the CITY has relied upon the contention that the Park is closing by the
3 expiration of the lease and by the expiration of the Kapiloff Bill. Yet nothing in the Kapiloff Bill
4 relieves the CITY's obligations under other State mandates, such as those described above.
5 Moreover, the CITY cannot use local ordinances to attempt an end-run around State mandates.

6
7 **3. State mandates preempt any inconsistent local ordinance related to**
8 **issues of statewide importance, like affordable housing.**

9 San Diego Municipal Code § 143.0615, which exempted De Anza mobilehome park from
10 the CITY's park closure requirements, will not likely survive judicial scrutiny. The ordinance
11 expressly treats the subject Park differently than all other mobilehome parks and, in doing so,
12 extends much greater protection to tenants of other parks than to De Anza tenants. This disparate
13 treatment raises obvious equal protection and due process concerns.

14 Beyond that, the CITY appears to have erroneously bootstrapped its local exemption that it
15 passed for itself into a belief that it is thereby exempted from all State laws as to *any* issues dealing
16 with the Park. To the extent the CITY's failure to comply with State law is grounded in the
17 passage of this local ordinance, the local ordinance must give way. It is axiomatic that cities and
18 counties may not make and enforce laws conflicting with general state laws. *Sherwin-Williams Co.*
19 *v. City of Los Angeles* (1993) 4 Cal.4th 893, 897. This is particularly true with matters of statewide
20 concern. *Buena Vista Gardens Apartments Assn. v. City of San Diego Planning Department* (1985)
21 175 Cal.App.3d 289, 306. **"The Legislature has expressly declared housing to be a matter of**
22 **statewide concern."** *Ibid.* (emphasis added). "The judiciary has likewise found the need to
23 provide adequate housing to be a matter of statewide concern." *Ibid.*

24 Aware of the tendency for charter cities to blunt state regulation through local ordinances,
25 the Legislature passed the original version of Government Code § 65863.7 with the following
26 warning at the end of the Bill:

27 This section establishes the **minimum standard for local regulation** of conversions
28 of mobilehome parks into other uses and shall not prevent a local agency from
enacting more stringent measures.

1 Gov't Code § 65863.7, (emphasis added), Stats. 1980, ch. 879, p. 2760, §2, attached as Exhibit 1 to
2 Tatro Decl.

3 Thus, the California Legislature, in its collective wisdom, did not want the City of San
4 Diego trying to lower these standards by passing a local ordinance like San Diego Municipal Code
5 § 143.0615(b) (exempting only the De Anza mobilehome park).

6
7 **4. Statutory protections cannot be waived by contract.**

8 Any attempt by the CITY to use transition plans, settlement agreements, lease contracts,
9 acknowledgements or any other written agreements to eviscerate its statutory obligations under the
10 Mobile Residency Law renders any such provision **unenforceable**:

11 No rental or sale agreement shall contain a provision by which the purchaser or homeowner
12 waives his or her rights under this chapter. Any such waiver shall be deemed contrary to
13 public policy and **shall be void and unenforceable.**

14 Civil Code § 798.77 (emphasis added).

15 **In this manner, the State Legislature does not even allow a mobilehome resident to**
16 **“waive” any of the protections discussed herein.** Intuitively, this makes sense because the
17 residents are typically confronted with pre-printed lease agreements drafted by a party with
18 superior bargaining power and offered on a “take-it-or-leave-it” basis. To allow the CITY, either
19 directly or through its agents, employees, or DHRG, to subvert these statutes through clever
20 contract provisions would violate public policy.

21
22 **5. The State Legislature is concerned with the consequences, not the cause,**
23 **of mobilehome park closures.**

24 **Regardless of the cause, the result is that the Park is closing and will no longer be used**
25 **as a mobilehome park.** CITY will contend that *it* is not closing the Park or changing the use of
26 the Park, but is merely following the Kapiloff Bill and “transitioning” the Park to recreational use
27 once the residents’ leasehold expires. However, such tortured logic does not escape the provisions
28 of Government Code section 65863.7 or the Mello Act.

1 In fact, the Legislature amended Government Code § 65863.7 in 1985 to close the precise
2 loophole that the CITY envisions exploiting here:

3 As explained by the author of the bill, ‘some park owners have gotten around the
4 law by simply closing the park, forcing long-term residents to move out, and
5 letting the land sit idle until it can be developed into another commercial or
6 lucrative venture.’ [Statement by Senator Bill Craven on the passage of Senate
7 Bill No. 316, October 2, 1985] Senate Bill No. 316 [which added park closure
8 and cessation of use language] was therefore intended to ‘close a loophole in the
9 law that would permit a mobilehome park to close, move out its tenants and later
10 convert to another use without having to meet the requirements of law or local
11 ordinance to assist their tenants [to] relocate. [Citation omitted.]

12 *Keh v. Walters* (1997) 55 Cal.App.4th 1522, 1539.

13 Again, this section focuses on the *consequences* of what the CITY is threatening, not the
14 reasons for the CITY’s actions. “The purposes of Government Code § 65863.7 are to ensure that
15 the local legislative body reviews the impact on the mobilehome park tenants of a change of use of
16 the property, **that mitigation measures are considered** and that the **tenants are involved in the**
17 **process**. Since these protections are dependent upon a meaningful review of the impact report, the
18 language of the statute makes this review **mandatory**.” *Keh*, 55 Cal.App.4th at 1535-1536
19 (emphasis added).

20 Here, no Impact Report was ever done. Park residents were never involved in the
21 conception of the transition plan. Mitigation measures were never considered. And the CITY
22 thwarted the entire review process—all in total disregard of State laws that apply to the closure and
23 change of use of every other mobilehome park in California.

24 **D. As the CITY will suffer no foreseeable harm from the injunction, the equities lean
25 even more heavily towards protecting the residents from the obvious harm that will
26 result upon commencement of eviction proceedings.**

27 While eviction proceedings will cause immediate harm to residents, injunctive relief will
28 cause no foreseeable harm to the CITY. In fact, the injunction actually saves the CITY money that
it would otherwise lose. First, without the injunction, the CITY would commence several hundred,
costly unlawful detainer actions prosecuted by Ms. Anna Roppo, a partner at a large, high-end law
firm. With the injunction, the CITY saves substantial legal fees of several hundred-thousand

1 dollars that it would otherwise spend prosecuting these lawsuits.

2 Second, while the injunction is in effect, residents will continue to pay “rent” to a trust
3 account that the CITY would otherwise lose if it evicted these residents. Even assuming a low
4 average rent of \$500 per month per home, that amounts to a savings of over \$225,000 per month—
5 assuming that at least 450 out of 509 homes remain occupied. Over the course of 1-2 years—the
6 likely duration of this case—the CITY would gain an additional \$2.7 to \$5.4 million by having the
7 injunction in place. (Tatro Decl., ¶12.)

8 And third, the CITY has already stated that it *has* no current plans for the Park, so the
9 injunction will not cause any harm to the redevelopment process which is still being “studied.”
10 Indeed, under the terms of the CITY’s settlement proposal, some residents can stay until 2008,
11 indicating that the CITY has no immediate plans for the Park.

12 Thus, the injunction actually amounts to a net gain for the CITY.

13
14 **E. If the Preliminary Injunction issues, the undertaking, if any, should be minimal**
15 **because there is no financial harm to the CITY in allowing residents to remain and**
16 **pay rent for the remainder of the lawsuit.**

17 Once a Motion for Preliminary Injunction is granted, the moving party typically must post a
18 bond, a deposit, or an undertaking. Civ. Proc. Code § 529(a). This bonding requirement is
19 designed to cover any damages to the enjoined party caused by issuance of the injunction. “It is the
20 trial court’s function to estimate the harmful effect which the injunction is likely to have on the
21 restrained party, and to set the undertaking at that sum.” *Abba Rubber Co. v. Seaquist* (1991)
22 235 Cal.App.3d 1, 14.

23 In this instance, however, the injunction will cause no harm to the CITY, financial or
24 otherwise, as discussed above. As the Court has discretion in setting the amount of the bond, all of
25 these factors weigh heavily in favor of a minimal surety. This is particularly true where, as here, a
26 more substantial bonding requirement could compromise the Plaintiff’s ability to fund the litigation
27 itself. As a provisional injunction lies in equity, the Court can take into account the fairness of
28 imposing a minimal bond where there is no apparent harm and, in fact, where there is a net gain for

1 the enjoined party.

2 In the alternative, Plaintiff requests that the Court consider as a “deposit” all “rent” which
3 will be paid to an account to be held in trust in lieu of an undertaking. This alternative would seem
4 to appeal to the CITY, as the idea of a court-supervised account to hold accrued rents was
5 suggested in their Memorandum of Points and Authorities in support of the CITY’s Application for
6 Dissolution of the Temporary Restraining Order, at page 17.

7
8 **F. The CITY’s proposed transition plan would leave residents with no home, no equity,
9 no relocation assistance, no legal recourse, and a large debt.**

10 While the CITY claims its Plan mitigates any harm to settling residents, the final result for
11 participating residents is very harsh. A simple hypothetical illustrates the point.

12 Assume resident “Adelyne” owns her 1973 home which secures a mortgage debt of
13 \$30,000. Under the CITY’s Plan, Adelyne elects to remain until 2005 and receives \$8,000—the
14 maximum cash benefit offered. At the end of this occupancy period, Adelyne is required to move
15 her home. She cannot. It is too old to move without causing structural damage, there are no
16 vacancies available in any surrounding mobilehome parks, and most of those parks will not accept
17 a home built in 1973 anyway. (Green Decl., ¶¶ 7, 8, 10, 12, and 13.)

18 So Adelyne must pay a demolition company to destroy her home. This will cost her \$8,000
19 to \$12,000. (Green Decl., ¶11.) At this point, her cash benefit from the CITY has been exhausted
20 and may not even be sufficient to cover the total demolition and removal costs.

21 Next, under the agreement, the CITY requires Adelyne to remove all of the hardscape,
22 driveway, trees and other landscaping around her home—essentially returning the space to nothing
23 more than a dirt lot. Moreover, all of the debris must be hauled away. All of this will cost Adelyne
24 an additional sum estimated at between \$1,000 and \$5,000, depending on the nature and acreage of
25 these improvements.

26 Now that Adelyne’s home has been destroyed, there no longer exists any collateral for her
27 mortgage loan. As most mortgage lenders do, Adelyne’s bank reserves the right to accelerate her
28 loan in the event the collateral is lost. Thus, the bank now demands immediate payment of the

1 \$30,000 note in full.

2 Adelyne reviews her homeowner’s insurance policy, desperately hoping that she can recoup
3 some of her lost equity, but since the loss of her home was not accidental, there is no coverage.

4 So now Adelyne must leave the Park and find another place to live in a housing market that,
5 by 2005, will be even more expensive. Her efforts to find new housing will be further hampered by
6 the fact that she has no equity to pour into another home and owes several thousand dollars to the
7 demolition company, plus \$30,000 to her bank.

8 Worst of all, Andelyne has no right to seek judicial relief because she was forced to waive
9 her legal rights in order to “qualify” for the CITY’s transition plan. This is not a good deal. The
10 CITY’s Plan does not begin to address the lack of alternate housing available or provide nearly
11 sufficient relocation assistance, both of which would be addressed by the requisite Tenant Impact
12 Report.

13
14 **V.**

15 **Conclusion**

16 Plaintiff has presented ample evidence to demonstrate a likelihood of prevailing on the
17 merits given the CITY’s complete failure to prepare a Tenant Impact Report, failure to conduct a
18 feasibility analysis to determine whether adequate replacement housing is even available, and
19 failure to involve Park residents in a public review process. Moreover, the harm threatened by the
20 CITY will be swift and irreparable: the mass eviction of nearly 1,200 residents with no adequate
21 relocation plan. Most of these residents—especially the elderly, the sick, and the disabled—will
22 not be able to find affordable housing.

23 Equity demands that the *status quo* be protected until the CITY’s statutory obligations, and
24 all of the attendant legal and factual issues, are finally adjudicated. Therefore, Plaintiff’s Motion
25 for Preliminary Injunction should be granted.

26 /////

27 /////

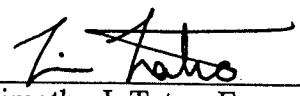
28 /////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATE: November 25, 2003

Respectfully Submitted,

TATRO & ZAMOYSKI, LLP



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