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F I L E D  
Clerk of the Superior Court

DEC 20 2005

By: D. LIM, Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO

DE ANZA COVE HOMEOWNERS  
ASSOCIATION, INC., a California non-  
profit corporation; et al.,  
  
Plaintiffs,  
  
vs.  
  
CITY OF SAN DIEGO; DE ANZA  
HARBOR RESORT AND GOLF, LLC, a  
California limited liability company; et al.,  
  
Defendants.

Case No.: GIC 821191

ORDER ON MATTERS UNDER  
SUBMISSION

The Court having read and considered defendant City of San Diego's demurrer and motion to strike and defendant Concorida Enterprises, Inc. dba Hawkeye Asset Management's demurrer; the opposition filed thereto; the 3<sup>rd</sup> Amended Complaint on file herein and the arguments presented by Counsel during the November 18, 2005 oral argument hearing, hereby rules as follows:

- a. Defendant City of San Diego's evidentiary objection to plaintiffs' Exhibit 2 is sustained.
- b. The Court takes judicial notice of the Court's prior rulings and plaintiffs'

1 exhibits 1, 3 and 4.

- 2 c. Defendant City of San Diego's demurrer to the 2<sup>nd</sup> cause of action for  
3 violation of the Mello Act is sustained with ten (10) Court days leave to  
4 amend to properly plead a writ of mandate/declaratory relief cause of  
5 action and estoppel.  
6
- 7 d. Defendant City's demurrer to the 3<sup>rd</sup> cause of action for failure to  
8 discharge a mandatory duty is overruled.  
9
- 10 e. Defendant City's demurrer to the 4<sup>th</sup> cause of action for inverse  
11 condemnation is sustained with out leave to amend. This cause of action  
12 is not yet ripe as there has been to "taking" of the plaintiffs' personal  
13 property.  
14
- 15 f. Defendant City's demurrer to the 5<sup>th</sup> cause of action for violation of the  
16 California Relocation Law is sustained without leave to amend as plaintiffs  
17 are not "displaced persons" within the meaning of the CRAL and the  
18 termination of the Master Lease does not give rise to a cause of action  
19 under the CRAL.  
20
- 21 g. Defendant City's demurrer to the 6<sup>th</sup> cause of action for violation of the  
22 California Constitution is sustained without leave to amend. The Court  
23 has already sustained the City's demurrer to this cause action brought by  
24 the plaintiff Homeowners' Association. Further, the individual class  
25 plaintiffs have failed to allege that they are members of a protected class  
26 entitled to strict scrutiny.  
27
- 28 h. Defendant City's demurrer to the 8<sup>th</sup> cause of action for negligent infliction

1 of emotional distress and to the 9<sup>th</sup> cause of action for intentional infliction  
2 of emotional distress is sustained without leave to amend. Not only are  
3 these causes of action precluded under the Government Tort Claims Act,  
4 but plaintiffs have failed to allege the statutory basis for the City's liability  
5 for the negligent and intentional tortuous acts of its agent, Hawkeye Asset  
6 Management.  
7

- 8 i. Defendant City's motion to strike is denied.  
9  
10 j. Defendant Concordia Enterprises, Inc.'s demurrer to the 8<sup>th</sup> cause of  
11 action for negligent infliction of emotional distress and to the 9<sup>th</sup> cause of  
12 action for intentional infliction of emotional distress is sustained without  
13 leave to amend. The Homeowners' Association is not a proper plaintiff  
14 and the emotional distress claims are unique to the individuals and thus  
15 not suitable for a class action.  
16

17 The Court hereby sets a Status Conference in Department 66 on February 2,  
18 2006 at 10:00 a.m.  
19

20 IT IS SO ORDERED.  
21  
22

23 CHARLES R. HAYES

24 Date: DEC 20 2005

25 \_\_\_\_\_  
26 HONORABLE CHARLES R. HAYES,  
27 Judge of the Superior Court  
28

Superior Court of California  
County of San Diego

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**F I L E D**  
Clerk of the Superior Court

DEC 20 2005

By: D. LIM, Deputy

PLAINTIFF(S) DE ANZA COVE HOA INC.

DEFENDANT(S) CITY OF SAN DIEGO, et al.

CLERK'S CERTIFICATE OF SERVICE BY MAIL(CCP 1013a(4))

CASE NUMBER:  
GIC 821191

I, **RAY SORENSEN**, Clerk of the Superior Court of the State of California, for the County of San Diego, do hereby certify that: I am not a party to the cause referred to herein; that on the date shown below, I placed a true copy of the:

**ORDER ON MATTERS UNDER SUBMISSION**

in a separate envelope, addressed to each addressee shown below; each envelope was then sealed and, with postage thereon fully prepaid, was deposited in the United States Postal Service at:

San Diego Vista El Cajon Chula Vista, California.

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**RAY SORENSEN**  
Clerk of the Superior Court

Date: DEC 20 2005 By: DAVID LIM, Deputy