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**EXEMPT FROM FEES PER GOV'T CODE 6103
TO THE BENEFIT OF THE CITY OF SAN DIEGO**

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SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN DIEGO

JOSEPH AGLIO; JAMES C. GIACIOLLI , an individual, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED; ROES 1-250,)	CASE NO. 37-2009-00081994-CU-EI-CTL
)	Complaint Filed: March 17, 2009
)	SAC Filed: January 7, 2016
)	
Plaintiffs,)	DEFENDANT CITY OF SAN DIEGO'S ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT
)	
vs.)	
)	
CITY OF SAN DIEGO, a California municipality; and DOES 1 to 50, inclusive,)	Dept: C-66
)	Judge: Hon. Joel M. Pressman
Defendants.)	
)	
)	
)	

Defendant CITY OF SAN DIEGO (the "City"), for itself alone and severing itself from any co-defendants, answers Plaintiffs' Second Amended Complaint as follows:

1. Inasmuch as the Second Amended Complaint is not verified, the City denies each, every and all of the claims including each and every purported cause of action alleged against the City, and including a denial of all sums and amounts alleged, to be alleged, or otherwise.

1 including but, not limited to Plaintiffs' own acts.

2 **SEVENTH AFFIRMATIVE DEFENSE**

3 9. Other parties or entities, unrelated to Defendant, whether or not parties to this
4 action, proximately caused the damages, if any, alleged in the Second Amended Complaint.
5 Should any damages be awarded, they must be apportioned among all such other persons or
6 entities.

7 **EIGHTH AFFIRMATIVE DEFENSE**

8 10. Upon information and belief; Plaintiffs' claims are barred by the applicable
9 statutes of limitations, including but without limitation, Government Code sections 900 et seq.,
10 910 et seq., 945 et seq., 65009, 65901, 65903, and Code of Civil Procedure sections 337, 337.2,
11 338, 339, 339.5, 340, 342, and 343.

12 **NINTH AFFIRMATIVE DEFENSE**

13 11. Plaintiffs knowingly and voluntarily consented to the conduct alleged in the
14 Second Amended Complaint.

15 **TENTH AFFIRMATIVE DEFENSE**

16 12. The termination of the nonconforming use of the Property as a mobilehome park
17 was based on and is consistent with the terms of the 1945 tidelands grant by the State of
18 California to Defendant and State of California Assembly Bill 447, 1981 Statutes, Chapter 1008
19 (the "Kapiloff Legislation") and other applicable laws.

20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 13. The Second Amended Complaint, and each cause of action therein, is barred as a
22 result of Plaintiffs' failure to exhaust its administrative remedies prior to initiating the instant
23 action.

24 **TWELFTH AFFIRMATIVE DEFENSE**

25 14. Defendant did not own or operate the mobilehome park prior to November
26 24,2003 and, as such, did not owe Plaintiffs any duties or obligations as alleged in the Second
27 Amended Complaint.

28 **THIRTEENTH AFFIRMATIVE DEFENSE**

15. Defendant, as a public entity, is not liable for injuries caused to Plaintiffs for

1 enforcing legislation enacted by the State of California requiring that the Property be restored to
2 park and recreational use upon the expiration of the legislation on November 23, 2003.

3 **FOURTEENTH AFFIRMATIVE DEFENSE**

4 16. Defendant has appropriately, completely and fully performed and discharged any
5 and all obligations and legal duties, if any, arising out of the matters alleged in the Second
6 Amended Complaint.

7 **FIFTEENTH AFFIRMATIVE DEFENSE**

8 17. The Second Amended Complaint, and each cause of action therein, is barred by
9 Plaintiffs' unclean hands.

10 **SIXTEENTH AFFIRMATIVE DEFENSE**

11 18. Plaintiffs have unreasonably delayed in the filing of claims and/or this action and
12 therefore are barred by the doctrine of laches from any relief whatsoever.

13 **SEVENTEENTH AFFIRMATIVE DEFENSE**

14 19. Plaintiffs, individually and as a group, have no standing to bring each cause of
15 action alleged herein.

16 **EIGHTEENTH AFFIRMATIVE DEFENSE**

17 20. Plaintiffs have not suffered any damages as a result of any acts or omissions of.
18 Defendant or its agents, and Plaintiffs are thus barred from asserting any cause of action against
19 this Defendant.

20 **NINETEENTH AFFIRMATIVE DEFENSE**

21 21. Plaintiffs' allegations do not set forth any mandatory duty that exists, or applies to
22 or was breached by, Defendant, such that Defendant would be liable to Plaintiffs under
23 Government Code section 815.6 et seq.

24 **TWENTIETH AFFIRMATIVE DEFENSE**

25 22. In the event this Court awards Plaintiffs damages for certain losses alleged, those
26 recovered losses should be off-set by monies received by Plaintiffs or Plaintiffs' members
27 whether from Defendant, co-defendants, or third-parties.

28 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

23. The City and its employees are immune from liability pursuant to Government

1 Code section 815.2.

2 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

3 24. The Mello Act (Government Code sections 65590, *et seq.*), as alleged in the
4 Second Amended Complaint, is not applicable to this Defendant in connection with its
5 possession of the Property.

6 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

7 25. Plaintiffs' claims under the Mobilehome Residency Law (Civil Code sections
8 798, *et seq.*), Government Code sections 7260 *et seq.*, 65863.7 and 65863.8, and Mello Act
9 (Government Code sections 65590, *et seq.*), as alleged in the Second Amended Complaint are
10 barred because under the mandate of the Kapiloff Legislation, Section 55 of the San Diego City
11 Charter, and the City of San Diego Mobilehome Park Discontinuance and Tenant Relocation
12 Regulations (Municipal Code sections 143.0610- 143.0640), the Property is exempt and the City
13 is excused from performance under the statutes.

14 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

15 26. In the event this Court finds Government Code sections 815.6, *et seq.*, as alleged
16 in the Second Amended Complaint, are applicable to this responding Defendant, then Defendant
17 asserts Plaintiffs' cause of action is without merit because the termination of the nonconforming
18 use of the Property as a mobilehome park was based on Defendant's exercise of reasonable
19 diligence.

20 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

21 27. Defendant alleges Government Code sections 7260, *et seq.*, as alleged in the
22 Second Amended Complaint, are not applicable to this responding Defendant in this proceeding.

23 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

24 28. In the event this Court finds that Government Code sections 7260, *et seq.*, as
25 alleged in the Second Amended Complaint are applicable to this responding Defendant, then
26 Defendant asserts Plaintiffs' cause of action is without merit because Plaintiffs, as representative
27 of the occupants of the Property, are not "displaced persons."

28 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

29. Defendant is not liable to Plaintiffs because of the subsequent, superseding, and

1 intervening acts of third parties which directly caused the alleged injuries, losses and damages.

2 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

3 30. Plaintiffs were careless and negligent in and about the matters alleged in the
4 Second Amended Complaint, and said carelessness and negligence on Plaintiffs' own part
5 proximately contributed to the happening of the incident(s) and to the injuries, losses and
6 damages complained of; if any there were, the liability for which must be apportioned, reduced,
7 or barred in accordance with the law of comparative negligence.

8 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

9 31. Plaintiffs are not entitled to recover damages in any sum, or sums, or at all, as
10 Plaintiffs have failed and has refused to mitigate their damages at all times relevant herein.

11 **THIRTIETH AFFIRMATIVE DEFENSE**

12 32. The facts alleged in the Second Amended Complaint do not constitute a taking of
13 property for public use, and therefore no claim for inverse condemnation lies against the City.

14 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

15 33. The Second Amended Complaint fails to state facts sufficient to constitute a basis
16 for an award of prejudgment interest against Defendant.

17 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

18 34. Defendant currently has insufficient information upon which to form a belief as
19 to the existence of additional, as yet unstated, affirmative defenses. Defendant reserves the right
20 to assert additional affirmative defenses in the event discovery discloses the existence of said
21 affirmative defenses.

22 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

23 35. Defendant is entitled to setoff and recoup any damages awarded against any
24 outstanding debts owed them by Plaintiffs, Code of Civil Procedure § 431.70.

25 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

26 36. The Mobilehome Residency Law (Civil Code sections 798, *et seq.*) and/or the
27 application of the Mobilehome Residency Law to this action violates the contract clauses of the
28 U.S. and California Constitutions and/or violates the due process rights of the City of San Diego.

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THIRTY-FIFTH AFFIRMATIVE DEFENSE

37. Plaintiffs' claims alleged in the Second Amended Complaint are barred on the grounds that the claims and obligations asserted by Plaintiffs were discharged by reason of a written or oral accord and satisfaction.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

38. Plaintiffs' tenancies in the park were properly terminated pursuant to Civil Code section 798.56(a) by virtue of notices of termination in compliance with State law.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

39. Plaintiffs' claims are barred by their failure to comply and/or their failure to substantially comply with the administrative claims filing requirements under the Government Claims Act. (Government Code section 810 et seq.)

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

40. The Mobilehome Residency Law (Civil Code section 798 et seq.) does not / did not apply to the City and/or the property at issue, and therefore Plaintiffs are not entitled to any recovery on the claims alleged in the Second Amended Complaint.

THIRTY-NINTH AFFIRMATIVE DEFENSE

41. The claims alleged in the Second Amended Complaint are barred by the doctrine of res judicata.

FORTIETH AFFIRMATIVE DEFENSE

42. To the extent Plaintiffs seek recovery on grounds of the alleged negligence of the City, the recovery is diminished or barred by the comparative negligence of Plaintiffs.

FORTY-FIRST AFFIRMATIVE DEFENSE

43. The City is informed and believes, and thereon alleges that Plaintiffs' Second Amended Complaint, and each cause of action therein, is based because Plaintiffs' damages, if any, were caused by the intervening negligent acts of third parties which were not reasonably foreseeable to the City.

FORTY-SECOND AFFIRMATIVE DEFENSE

44. The City is informed and believes, and thereon alleges that at the times and places mentioned in the Second Amended Complaint, parties other than the City failed to exercise

1 ordinary care on their own behalf, which negligence and carelessness were a substantial factor of
2 some portion, up to and including the whole thereof, of the damages complained of by Plaintiffs
3 in this action. The fault, if any, of the City should be an apportioned amount in direct relation to
4 each co-defendants comparative fault.

5 **FORTY-THIRD AFFIRMATIVE DEFENSE**

6 45. The City is informed and believes, and thereon alleges that at the times and places
7 mentioned in the Second Amended Complaint, the City had no illegal intent whatsoever.

8 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

9 46. The City is informed and believes, and thereon alleges, that by virtue of the
10 allegations contained in the Second Amended Complaint, and by other activity, if there was any
11 wrongdoing, which the City denies, individuals and entities other than the City willfully, or by
12 want of ordinary care, brought about the injuries and losses complained of in the Second
13 Amended Complaint, and as such, the alleged damages claimed by Plaintiffs should be
14 diminished in proportion to the amount of fault attributable to the conduct of such other entities
15 and, or individuals.

16 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

17 47. The City is informed and believes, and thereon alleges, that by virtue of the
18 allegations contained in the Second Amended Complaint, and by other activity, if there was any
19 wrongdoing, which the City denies, individuals and entities other than the City which have not
20 been joined as defendants willfully, or by want of ordinary care, brought about the injuries and
21 losses complained of in the Second Amended Complaint.

22 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

23 48. Plaintiffs knowingly and voluntarily assumed the risk of the conduct, events and
24 matters alleged in the Second Amended Complaint, and the damages, if any, incurred by
25 Plaintiffs, as the proximate result of the risks so assumed.

26 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

27 49. The City is informed and believes, and thereon alleges, that Plaintiffs, by their
28 own acts, omissions and other conduct, are barred from any recovery herein against the City by
the doctrine of implied or actual consent.

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FORTY-EIGHTH AFFIRMATIVE DEFENSE

50. Plaintiffs have waived and or released any claim that they might have against the City.

FORTY-NINTH AFFIRMATIVE DEFENSE

51. The City is informed and believes, and thereon alleges, that Plaintiffs ratified the City's alleged conduct and/or are estopped from complaining with respect thereto.

FIFTIETH AFFIRMATIVE DEFENSE

52. Plaintiffs are the sole proximate cause of any damages they have incurred or will continue to incur, including damages, attorneys' fees, litigation costs and expenses.

FIFTY-FIRST AFFIRMATIVE DEFENSE

53. Plaintiffs had a duty under Civil Code section 798.84 to give to management notice of their intent to sue in writing, signed by the homeowner or homeowners making the allegations, including the basis of the claim, the specific allegations, and the remedies requested at least thirty days prior to commencement of an action. The City is informed and believes, and thereon alleges, that Plaintiffs failed to comply with these requirements. By reason of the foregoing, Plaintiffs are barred in whole or in part from recovering damages in this action.

FIFTY-SECOND AFFIRMATIVE DEFENSE

54. The City is informed and believes, and thereon alleges, that there was a lack of privity between Plaintiffs and the City, thus barring or diminishing Plaintiffs' recovery herein.

FIFTY-THIRD AFFIRMATIVE DEFENSE

55. The City is informed and believes, and thereon alleges, that no relationship existed between the City and Plaintiffs to give rise to damages as a result of the conduct, events and matters alleged in the Second Amended Complaint.

FIFTY-FOURTH AFFIRMATIVE DEFENSE

56. The City is informed and believes, and thereon alleges, that Plaintiffs have not suffered any damages or losses. Although the City denies that Plaintiffs have suffered any damages or losses, if and to the extent such damages may be found, any damages or losses allegedly suffered by Plaintiffs are speculative.

1 **FIFTY-FIFTH AFFIRMATIVE DEFENSE**

2 57. The injuries and damages of which Plaintiffs complain, if any, were proximately
3 caused or contributed by the negligence or wrongful conduct of other persons or entities,
4 including Plaintiffs, and that said conduct was an intervening and superseding cause of the
5 underlying loss, damage or injury of which Plaintiffs complains, thus barring any recovery from
6 the City.

7 **FIFTY-SIXTH AFFIRMATIVE DEFENSE**

8 58. The City denies it is responsible or liable in any way for any of the injuries,
9 damages or loss alleged in the Second Amended Complaint. However, if the City is found to be
10 liable or responsible for any or all of the said alleged injuries, damages or loss, then the City
11 provisionally alleges that its liability or responsibility, if any, is not the sole proximate cause of
12 the events and damages in question, and further that the damages awarded to Plaintiffs, if any,
13 are to be apportioned according to the respective fault and legal responsibility of all parties,
14 persons and entities who contributed and/or caused said events and damages according to proof
15 at the time of trial.

16 **FIFTY-SEVENTH AFFIRMATIVE DEFENSE**

17 59. The City is informed and believes, and thereon alleges, that Plaintiffs are barred
18 from any recovery against the City because the City acted reasonably and in good faith at all
19 times.

20 **FIFTY-EIGHTH AFFIRMATIVE DEFENSE**

21 60. The City is informed and believes, and thereon alleges, that Plaintiffs are barred
22 from any recovery against the City because the City's conduct was justified.

23 **FIFTY-NINTH AFFIRMATIVE DEFENSE**

24 61. The City is informed and believes, and thereon alleges, that Plaintiffs are barred
25 from any recovery against the City because the contracts being sued upon are illegal.

26 **SIXTIETH AFFIRMATIVE DEFENSE**

27 62. The actions taken by the City were based on and consistent with the terms of the
28 1945 grant by the State of California to the City and State of California Assembly Bill 447, 1981
Statutes, Chapter 1008 (the "Kapiloff Legislation") and other applicable laws, and therefore the

1 City is not liable for injuries caused to Plaintiffs, if any, for enforcing legislation enacted by the
2 State of California.

3 **SIXTY-FIRST AFFIRMATIVE DEFENSE**

4 63. The City denies it is responsible or liable in any way for any of the injuries,
5 damages or loss alleged in the Second Amended Complaint. However, if the City is found to be
6 liable or responsible for any or all of the alleged injuries, damages or loss, then the City
7 provisionally alleges that its liability or responsibility, if any, should be diminished by the
8 doctrine of offset, set off or recoupment pursuant to Code Civil Procedure section 431.70,
9 including but not limited to monies received by Plaintiffs from the City, co-defendants or third
10 parties and/or monies owed by Plaintiffs to the City for rent or other charges related to tenancy
11 or occupancy in the park and/or settlement monies paid to Plaintiffs.

12 **SIXTY-SECOND AFFIRMATIVE DEFENSE**

13 64. The Second Amended Complaint fails to state facts sufficient to base any claim
14 for non-economic damages because it fails to allege the portion of such damages, if any, that
15 Plaintiffs attribute to the City as required by California Civil Code section 1431.2.

16 **SIXTY-THIRD AFFIRMATIVE DEFENSE**

17 65. The City is informed and believes, and thereon alleges, that Plaintiffs have waived
18 and/or released any claim that they might have against the City by entering into settlement
19 agreements in full compromise and satisfaction of all claims alleged in the Second Amended
20 Complaint and entered into settlement/release agreements voluntarily and with knowledge of
21 their rights, the De Anza Cover class action, the TRO granted on November 20, 2003, and the
22 homeowners association's legal representation.

23 **SIXTY-FOURTH AFFIRMATIVE DEFENSE**

24 66. The City is informed and believes, and thereon alleges, that Plaintiffs have waived
25 an or released any claim that they might have against the City by entering into a general release
26 in writing, in which Plaintiffs released the City from all liability for any and all claims alleged in
27 the Second Amended Complaint of Plaintiffs against the City.

28 **SIXTY-FIFTH AFFIRMATIVE DEFENSE**

67. The City is informed and believes, and thereon alleges, that Plaintiffs have waived

1 and/or released any claim that they might have against the City by receiving certain sums from
2 Defendants in full settlement of any and all claims which Plaintiffs might have had against the
3 City from all claims whatsoever arising out of the damages alleged in the Second Amended
4 Complaint to have been suffered by Plaintiffs. This sum equals or exceeds in value and amount
5 the damages alleged in the Second Amended Complaint to have been suffered by Plaintiffs.

6 **SIXTY-SIXTH AFFIRMATIVE DEFENSE**

7 68. The Second Amended Complaint and the causes of action therein fail to state
8 facts sufficient to recover attorneys' fees against the City; however, the City alleges fees and
9 costs that it is entitled to recover from Plaintiffs all attorneys' fees and costs, including expert,
10 pursuant to statutory law and by contract pursuant to the LTRAs and settlement agreements
11 signed by Plaintiffs.

12 **SIXTY-SEVENTH AFFIRMATIVE DEFENSE**

13 69. Plaintiffs' Second Amended Complaint and the causes of action alleged therein
14 are barred as against the City because the City duly paid, satisfied and discharged all duties and
15 obligations arising out of any and all agreements, representations or contracts made by or on
16 behalf of this answering Defendant.

17 **SIXTY-EIGHTH AFFIRMATIVE DEFENSE**

18 70. Plaintiffs' Second Amended Complaint and the causes of action alleged therein
19 are barred as against the City because all communications, to the extent made, were made under
20 privilege, absolute or qualified, which bars Plaintiffs from making any recovery with respect to
21 the matters alleged.

22 **SIXTY-NINTH AFFIRMATIVE DEFENSE**

23 71. Plaintiffs' Second Amended Complaint and the causes of action alleged therein
24 are barred as against the City because any acts or omissions alleged were the result of the
25 exercise of discretion vested in a public employee and the City not liable for such acts pursuant
26 to Government Code section 820.2.

27 **SEVENTIETH AFFIRMATIVE DEFENSE**

28 72. The City alleges that its performance of any contract alleged in the Second
Amended Complaint was excused and/or prevented by the action(s) of the other parties or third

1 parties.

2 **SEVENTY-FIRST AFFIRMATIVE DEFENSE**

3 73. The City alleges that the contract(s) alleged in the Second Amended Complaint
4 had already expired by the time of the acts alleged and the City had no continuing duty or
5 obligation to perform under said contracts.

6 **SEVENTY-SECOND AFFIRMATIVE DEFENSE**

7 74. The City alleges that the terms of the alleged contract(s) were sufficiently vague
8 and ambiguous as to render the contracts unenforceable.

9 **SEVENTY-THIRD AFFIRMATIVE DEFENSE**

10 75. The City alleges that as between Plaintiffs and the City and/or other defendants,
11 the equities do not predominate in favor of Plaintiffs, and accordingly Plaintiffs are barred from
12 recovery herein on any and all equitable claims.

13 **SEVENTY-FOURTH AFFIRMATIVE DEFENSE**

14 76. The City alleges that Plaintiffs failed to perform certain conditions precedent to
15 the duty of the City which were imposed on Plaintiffs by contract. The non-performance of said
16 conditions excused the City's obligations under the contract and has given the City the rights of
17 disaffirmance, rescission, and release, and therefore Plaintiffs are barred from recovery herein.

18 **SEVENTY-FIFTH AFFIRMATIVE DEFENSE**

19 77. The City alleges that Plaintiffs cannot assert any of the contractual claims
20 contained in its Second Amended Complaint because Plaintiffs themselves materially breached
21 said contracts.

22 **SEVENTY-SIXTH AFFIRMATIVE DEFENSE**

23 78. The City alleges that the terms of the contracts alleged by Plaintiffs were
24 modified by the parties.

25 **SEVENTY-SEVENTH AFFIRMATIVE DEFENSE**

26 79. Defendant alleges that the purported causes of action are not proper for treatment
27 as a class action because:

- 28 a. There is no ascertainable or identifiable class;
b. There are questions of fact and law peculiar to each member of the

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purported class which predominate over the questions of fact and law, if any, which may be common to members of the purported class;

c. The named plaintiff is not a proper representative of the purported class;

d. The named plaintiff is not interested in the subject matter of the within action;

e. The named plaintiff does not have standing to sue with respect to the subject matter of the within action;

f. A class action is not the best method for resolving the alleged claims set forth in the complaint and will not secure substantial benefit to the court of the parties.

WHEREFORE, the City prays for judgment as follows:

1. That Plaintiffs take nothing by the Second Amended Complaint herein;
2. That all claims against the City be dismissed with prejudice;
3. That the City recover its reasonable attorneys' fees and costs of suit, including expert fees and costs, incurred herein to the extent permitted by law and contract;
4. For such other and further relief as the Court deems just and proper.

January 19, 2016

GORDON & REES LLP

By: 

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Timothy K. Branson
Attorneys For Defendant
CITY OF SAN DIEGO