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Attorneys for Plaintiffs

F-16 JAN 7 7 00 AM '16
Clerk of the Superior Court

JAN 07 2016

By: _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

BY FAX

JOSEPH AGLIO, an individual, *et al.* (see
Ex. 2 for individual parties);
JAMES C. GIACIOLLI, an individual, ON
BEHALF OF HIMSELF AND ALL
OTHERS SIMILARLY SITUATED;
ROES 1-250,

Plaintiffs,

v.

CITY OF SAN DIEGO, a California
municipality; and
DOES 1-50, inclusive,

Defendants.

Case No. 37-2009-00081994-CU-EI-CTL

CLASS ACTION

**PLAINTIFFS' SECOND AMENDED
COMPLAINT FOR DAMAGES,
RESCISSION, DECLARATORY RELIEF,
AND INJUNCTIVE RELIEF FOR:**

- (1) ACTION FOR RESCISSION;
- (2) ECONOMIC DURESS;
- (3) NEGLIGENT MISREPRESENTATION;
- (4) FRAUD;
- (5) UNJUST ENRICHMENT;
- (6) FINANCIAL ABUSE (ELDER ABUSE);
- (7) VIOLATIONS OF THE MOBILEHOME RESIDENCY LAW;
- (8) VIOLATION OF THE MELLO ACT;
- (9) FAILURE TO DISCHARGE A MANDATORY DUTY;
- (10) INVERSE CONDEMNATION;
- (11) VIOLATION OF THE CALIFORNIA RELOCATION ASSISTANCE LAW;
- (12) VIOLATION OF THE CALIFORNIA CONSTITUTION; and
- (13) DECLARATORY RELIEF.

[REQUEST FOR JURY TRIAL]

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1 Plaintiffs and ROES 1-250, inclusive, (collectively “Plaintiffs”) allege on information and belief
2 against Defendants CITY OF SAN DIEGO and DOES 1-50, inclusive, and each of them, as follows:

3 **Nature of Action**

4 1. This action is brought on behalf of certain homeowners and residents of the mobilehome
5 park located at 2727 De Anza Road, San Diego, California (the “Park”), which was formerly known
6 as the De Anza Harbor Resort mobilehome park. On or around October 22, 2003, Defendant City of
7 San Diego (“CITY”) announced to homeowners and residents of the Park that it intended to close the
8 Park as of November 23, 2003. The CITY threatened imminent eviction against homeowners and
9 residents who wouldn’t waive all of their rights via the CITY’s settlement/rental agreements, which
10 the CITY called its “Transition Plan.”

11 2. This case is distinct from the original *De Anza Cove Class Action* litigation (San Diego
12 Superior Court case number GIC 821191) because the homeowners and residents herein allegedly
13 entered into rental/settlement agreements with the CITY, and/or were evicted on or before
14 September 4, 2007, and/or currently are homeowners or reside at the Park, but did not reside in the
15 Park on October 22, 2003—which, according to the trial court presiding over the *De Anza Class*
16 *Action*, excluded them from the definition of the class members in that action. These
17 rental/settlement agreements and many of the evictions were obtained under duress and dubious
18 circumstances—for example, through material misrepresentations of law and fact made by the CITY
19 and its prior management company to the homeowners and residents outside the presence of their
20 counsel. Accordingly, in addition to the same relocation issues addressed in the *De Anza Cove Class*
21 *Action*, a focal point of this lawsuit—referred to as “the Aglio case”—will be the legal validity and
22 enforceability of the CITY’s purported rental/settlement agreements.

23 3. Plaintiffs seek rescission of the CITY’s settlement/rental agreements, statutory and tort
24 damages, relocation benefits, permanent injunctive relief, declaratory relief, mitigation, and other
25 remedies under California’s Mobilehome Residency Law, the Mello Act, the California Relocation
26 Assistance Law, and other causes of action. Before the CITY can take any further steps to close the
27 Park, it must, among other things, provide full mitigation and relocation assistance, and ensure
28 adequate low-income replacement housing is available, as required by the state and local mandates.

1 **Jurisdiction and Venue**

2 4. This court has jurisdiction over this litigation, and venue is proper, because Plaintiffs—at
3 all relevant times herein—resided, or owned homes in the Park, in the City of San Diego, County of
4 San Diego, California; the harm and breaches by Defendants occurred in the City of San Diego,
5 County of San Diego, California; the violations of state and other laws occurred in the City of San
6 Diego, County of San Diego, California; and Defendant CITY OF SAN DIEGO is a municipal entity
7 operating in the County of San Diego, California. The relief requested is within the jurisdiction of
8 the Court and damages exceed the minimum jurisdictional requirement.
9

10 **Parties**

11 5. Plaintiffs are or were, at all relevant times herein, individual homeowners and/or residents
12 at the Park.

13 6. Defendant CITY OF SAN DIEGO (“CITY”) is a California municipality chartered pursuant
14 to the Constitution and laws of the State of California and located in the County of San Diego, and
15 was so at all relevant times herein.

16 7. Plaintiffs do not know the true names or capacities of Defendants sued herein as DOES 1
17 through 50, inclusive, and therefore sue these Defendants as DOES until their identities and
18 involvement can be determined. Plaintiffs will amend this Complaint to allege their true names and
19 capacities when ascertained. Plaintiffs are informed and believe and thereon allege that each of the
20 fictitiously named Defendants is in some manner responsible for the damages to Plaintiffs alleged
21 herein.

22 8. Plaintiffs are informed and believe and thereon allege that at all relevant times CITY, and
23 DOES 1 through 50, and each of them, were acting in their capacity as agents, servants, independent
24 contractors, joint venturers, partners, alter egos, assigns, successors in interest and/or employees of
25 their co-defendants, and at all times relevant hereto were acting within the full course and scope of
26 their authority as such agents, servants, assigns, independent contractors, joint venturers, partners,
27 alter egos, successors in interest and/or employees with the express, implied, and/or apparent consent,
28 knowledge, permission and ratification of their co-defendants, and each of them, and are in some

1 way liable to Plaintiffs on the facts alleged herein, and proximately caused injuries and damages
2 thereby as herein alleged.

3 4 **Factual Allegations**

5 **Historical Background:**

6 **The CITY nurtures the growth of De Anza Cove by authorizing permanent construction.**

7 9. In 1953, the CITY entered into a 50-year lease to develop a mobilehome park and the CITY
8 authorized construction of 384 permanent units, 126 vacation units, and 12 transient units, with “160
9 permanent units to be constructed by 6/15/63.” The CITY reviewed and approved permits for
10 carports, decks, room additions, and other permanent structures.

11 12 **In the 1960’s, the CITY re-zones De Anza Cove to parkland.**

13 10. In 1962, the CITY re-zoned a large part of Mission Bay—including De Anza Cove—to
14 “park and recreational” use, notwithstanding the land’s pre-existing use as a mobilehome park. The
15 CITY’s land-use designation, which did not allow for permanent residential use, meant that the CITY
16 Charter would now require a two-thirds vote of the electorate to allow residential use beyond 2003—
17 creating a huge problem for the CITY, and ultimately, De Anza Cove residents in the future.

18 19 **The CITY requires its lessee to propose a redevelopment plan to change the use of the land.**

20 11. When the CITY’s lessee requested assignment in 1969 to its new entity, De Anza Harbor
21 Resort & Golf, LLC (DHRG), the CITY insisted that DHRG propose a plan to redevelop De Anza
22 Cove for “new uses” within one year. This led to the adoption of the Ninth Amendment to the Master
23 Lease. The CITY subjected DHRG to a substantial financial penalty if it failed to promptly submit
24 a redevelopment plan: “In the event only that [DHRG] fails to submit a plan for redevelopment to
25 the CITY Manager within one year . . . then the rental requirement of 5% of gross income from trailer
26 park rentals . . . shall be increased to 20% of said gross income immediately and automatically.”

27 12. The CITY’s contractual requirement to kick-start the redevelopment process highlighted its
28 agenda—begun more than 30 years ago—to close the De Anza Cove mobilehome park.

1 **The early 1980's and the Kapiloff Bill era.**

2 13. After months of consideration and staff reports, the CITY Council passed a resolution in
3 June 1981 to plan redevelopment of the mobilehome park—even though the lease wasn't scheduled
4 to expire for over 20 more years. The Council directed the CITY Manager to negotiate a lease
5 amendment with DHRG—an amendment that would see the CITY's current rental revenue increase
6 dramatically: to double within six months, triple in less than four years, and quadruple in less than
7 seven years.

8 14. The CITY's redevelopment plans caused the State Legislature to draft legislation that
9 became known as the Kapiloff Bill. Under the Kapiloff Bill, the Legislature wanted to protect the
10 Park's homeowners and residents and ensure that they could remain at De Anza Cove at least until
11 the lease was set to expire in 2003. The Kapiloff Bill also required that residents be treated fairly
12 and in accordance with the law. It was not a Bill designed to give the CITY a free pass around the
13 State's relocation requirements. As former state assemblyman Kapiloff declared under penalty of
14 perjury, "[W]e never agreed that the Kapiloff Bill would take the place of any other benefits or
15 protections to which De Anza Park residents may be entitled under any other state law. Indeed, the
16 Kapiloff Bill does not contain any language requiring, nor did we ever agree that, residents must
17 waive any of their statutory rights under the law."

18 15. The CITY considered what would happen at the end of 2003 with regard to the residents'
19 relocation benefits. In Report No. 81-160, the CITY Manager detailed that "if displacement were to
20 occur at the end of the lease in 2003, the relocation costs could be on the order of \$7 million." The
21 CITY's anticipated amount of relocation costs owed to residents was less than the projected revenues
22 generated, even if the property remained a mobilehome park through 2003—and even before the
23 CITY's decision to double, triple, and then quadruple its rental revenue from the property. The CITY
24 knew that "if the State reclaimed the land, the CITY would not only lose control over the land, but it
25 would lose the valuable revenue stream from rents that it was then enjoying and would continue to
26 enjoy for the next 20 years" and it "would lose the right to develop the land for a potentially more
27 lucrative use in the future."

28 16. On January 25, 1982—facing the prospect of losing land use authority, untold millions from

1 development after November 2003, upwards of an anticipated \$50 million from rental revenue
2 through 2003, and costing only \$7 million for relocation benefits (at that time)—the CITY Council
3 voted to ratify the Kapiloff Bill. Although the CITY asserted in the *De Anza Cove* litigation that De
4 Anza Cove was not a mobilehome park and that the CITY had not made any “planning decision,
5 action, or inaction” with regard to the Park, the Kapiloff Bill itself required the CITY’s unequivocal
6 action: if the CITY didn’t expressly ratify the Bill, it would have automatically become inoperative.

7 17. Nowhere in the Kapiloff Bill is there any language purporting to exempt the CITY from any
8 State law. The Kapiloff Bill itself—rather than exempting the CITY from any State laws—delineates
9 that it “is not intended to affect the rights and obligations of landlord and tenant under the terms of
10 existing leases.” And the Bill itself plainly states that it cannot become law without the CITY’s
11 express approval: “If by February 1, 1982, the CITY of San Diego fails to concur in the findings and
12 determinations set forth [herein], the provisions of this act shall be inoperative.”

13 18. Assemblyman Kapiloff—who authored the Bill—testified that if the Legislature had wanted
14 to exempt De Anza Cove or the CITY from the MRL’s mandates, “we would have specifically
15 written that into the Kapiloff Bill. We did not.”
16

17 **Homeowners foot the bill for the CITY’s negotiated rent hikes.**

18 19. In accordance with the CITY’s decision to quadruple its own rental revenues from the park,
19 DHRG turned around and raised the rent it charged residents—creating a virtual pass-through.
20 Residents petitioned the CITY for relief, but the CITY claimed it could not interfere with the
21 relationship between the residents and DHRG.

22 20. Facing severe rent increases, Park residents were persuaded to enter into long-term rental
23 agreements (“LTRAs”) with DHRG. Among other things, the LTRAs attempted to limit relocation
24 benefits and DHRG agreed to pay those benefits *only if* the CITY approved DHRG’s hotel
25 development plan. But, significantly, the LTRAs expressly state that they are governed by the
26 Mobilehome Residency Law: “This Agreement is subject to the Mobilehome Residency Law, as
27 amended from time to time (currently Civil Code section 798, et. seq.).” The LTRAs also state that
28 any of its provisions that conflict with State law are invalid. While the LTRAs provided some

1 protection from the escalating rents, they also obligated each homeowner to continue paying rent on
2 their space until November 2003—even if they moved their homes out of the Park. Most residents,
3 limited by fixed incomes and meager retirement benefits, could not afford to pay rent simultaneously
4 at two places and, therefore, were economically bound to finish out their lease term at De Anza Cove.
5

6 **The CITY demands that San Diego’s mobilehome park owners provide relocation assistance.**

7 21. The San Diego Housing Commission took steps to strengthen the CITY’s 1980 ordinance
8 that regulated mobilehome park closures. This ordinance, referred to as the Mobilehome Park
9 Overlay Zone, mandated a relocation plan that evaluated the impact of displacement on all residents
10 and placed substantial relocation burdens on any entity seeking to discontinue use of any mobilehome
11 park. (S.D. Muni. Code § 143.0615.) The CITY’s Housing Commission noted at that time that
12 “residents of mobile home parks, whether or not they reside in a park in the overlay zone, are entitled
13 to relocation assistance from the park owner under the State Mobile Home Residency law.”

14 22. In the early 1990’s, the CITY estimated its potential cost of relocating the 500 families from
15 De Anza Cove when it closed the park under the CITY’s own mobilehome ordinance. The CITY
16 estimated that its most likely relocation benefits scenario would be to owe the Park’s homeowners
17 and residents \$67 million upon closing the Park. Then, in response, the CITY passed a sole exception
18 to its mobilehome park closure ordinance—it exempted De Anza Cove from its ordinance and denied
19 Park residents the very protections the Housing Commission provided to everyone else. Ironically,
20 the stated purpose of the CITY’s mobilehome closure ordinance is: “to benefit the general public by
21 minimizing the adverse impact on the housing supply and on displaced persons by providing certain
22 rights and benefits to tenants and by requiring tenant relocation assistance whenever an existing
23 mobilehome park or portion thereof is converted to another use.” (S.D. Muni. Code § 143.0610.)
24 Acting on the CITY attorney’s directions, the CITY council—sitting in place of the CITY’s Housing
25 Commission that had reached the opposite conclusion—changed its Housing Commission Policy to
26 exclude the loss of the fair market value of the homes as one of the compensable relocation benefits
27 under the CITY’s overlay zone.

28 ///

1 **The CITY considers several plans for a mammoth hotel resort.**

2 23. In June 1991, the CITY considered a plan to develop an 800-room hotel complex at De Anza
3 Cove. This proposal was significant because, if the plan was approved, it promised to shift from the
4 CITY to DHRG the financial commitment of relocating more than 500 families—a commitment then
5 estimated at about \$25 million. Pursuant to the contractual obligations imposed by the CITY under
6 the Master Lease, DHRG continued to present various redevelopment plans throughout the 1990's.

7
8 **The CITY contractually agrees not to recognize residents' claims.**

9 24. In 1997, with six years remaining on the Master Lease, the CITY entered into an option
10 agreement where DHRG agreed to pay residents limited relocation benefits—as set forth in the
11 LTRAs—but only if the CITY agreed not to support or validate “the residents’ claims for continued
12 occupancy or additional relocation benefits.” The option agreement required the CITY to refuse to
13 recognize the residents’ claims—not based on any consideration for the legitimacy of those claims—
14 but as a perk for DHRG offering to assume the relocation expense.

15
16 **The CITY agrees to negotiate exclusively with DHRG—shutting out the homeowners.**

17 25. By 1999, the CITY and DHRG had formalized a Memorandum of Understanding (“MOU”),
18 under which the CITY claimed it was contractually prevented from discussing land use issues with
19 the residents. The CITY rebuked the residents’ efforts to discuss potential solutions from 1999 until
20 the MOU expired in mid-2003—only months before the 50-year Master Lease was set to end. On
21 May 7, 2003, DHRG notified the CITY and Park residents that it had abandoned its efforts to develop
22 a hotel; the MOU then expired on May 23, 2003. When DHRG’s redevelopment plan died, “full
23 responsibility for all costs associated with closing the mobilehome park” reverted back to the CITY,
24 as approval of the hotel plan was a condition precedent to DHRG assuming those relocation
25 responsibilities.

26
27 **The CITY tries to bulldoze homeowners with its take-it-or-leave-it “transition plan.”**

28 26. With time running out, the CITY appeared at a resident meeting at De Anza Cove on or

1 about October 22, 2003, to talk with Park residents for the first time about its long-awaited “transition
2 plan.” Presenting the “plan” was the CITY’s Director of Real Estate Assets, who was flanked by
3 four armed policemen. The CITY’s message was blunt: waive all of your statutory rights—including
4 those under the MRL—and sign the CITY’s take-it-or-leave-it settlement/rental agreement or the
5 CITY will evict you. The CITY sent documents to residents in the following days, accompanied by
6 a cover letter stating: **“Please be advised that if you do not accept the offer, eviction proceedings
7 will be commenced against you and all other occupants of your mobilehome beginning
8 November 24, 2003.”** On or about November 18, 2003, the City Council finally announced—as
9 required by its local mobilehome park closure ordinance passed more than a decade before—how it
10 would “deal with any discontinuance and relocation issues involved with De Anza Mobilehome
11 Park.”¹ Instead of following its own ordinance to minimize “the adverse impact on the housing
12 supply and on displaced persons,”² the Council simply reiterated its ultimatum: the CITY will evict
13 anyone who won’t waive their statutory relocation rights and accept the CITY’s “transition plan”—
14 its one-sided settlement/rental agreement. In flagrant violation of the MRL, the City sought to close
15 De Anza Cove but failed to first prepare a tenant impact report, hold open hearings to discuss the
16 report, or send notices referencing the impact report as required.

17 27. The CITY had over 20 years to prepare for the expiration of the master ground lease and the
18 sunset of the Kapiloff Bill, to follow the provisions of the Mobilehome Residency Law, the Mello
19 Act, and the California Relocation Assistance Law, to prepare a Tenant Impact Report, to hold public
20 hearings, and to gather and distribute financial and other resources to help relocate the owners and
21 residents of the Park. Instead, the CITY refused to follow its statutory duties under State law and
22 opted to threaten De Anza Cove residents with eviction unless they accepted the CITY’s
23 euphemistically-labeled “transition plan.”

24 28. The majority of De Anza Cove residents are elderly, many are infirm, and most live on a
25 limited, fixed income, such as Social Security disability benefits. Many have lived in the Park for
26 decades, finding strength in a community that revolves around Sunday gatherings at the Park church.

27
28 ¹ S.D. Muni. Code § 143.0615(b).

² S.D. Muni. Code § 143.0610.

1 However, when the CITY threatened them with eviction on October 22, 2003—and in letters
2 thereafter—the residents were terrified that they were going to lose their homes and their community.

3 29. From October 22, 2003 onward, the CITY and its agents continued to use the threat of
4 eviction and other threats, misinformation, half-truths, false legal information, confusion, and
5 misrepresentations in order to coerce and improperly convince Park residents to either leave the Park
6 or to sign the CITY’s take-it-or-leave-it release/rental agreement.

7
8 **State law protects De Anza Cove’s residents from the CITY’s unlawful actions.**

9 30. The State legislature passed extensive measures to protect mobilehome residents,
10 recognizing that mobilehome parks are one of the last vestiges of affordable housing in California,
11 particularly for the elderly.

12 31. For this reason, State law mandates that, prior to lease termination or park closure, the CITY
13 must conduct a Tenant Impact Report (“Impact Report”), must hold open session hearings at the
14 residents’ request to discuss the findings of the Impact Report, must provide the Impact Report to the
15 residents in advance of any such hearings, and must take affirmative steps to mitigate the harm
16 resulting from park closure, taking into account the availability of alternate housing and relocation
17 costs.

18 32. Furthermore, because Park homes are located in a coastal zone, the CITY must comply with
19 special low-income-housing initiatives (Mello Act) that require additional feasibility studies to
20 determine the availability of affordable replacement housing in the area.

21 33. Most of the homes located at the Park, having been exposed to marine conditions for so
22 long, are simply too old to move. In fact, most other mobilehome parks will not even accept homes
23 more than five to ten years old, even if they had 500 vacancies, which they do not. So, effectively,
24 the CITY’s closure of the Park forces residents to abandon and demolish their homes without regard
25 for the utter scarcity of alternate housing or the financial hardship that the CITY imposes on these
26 residents.

27 ///

28 ///

1 **On November 24, 2003, the CITY was again in exclusive possession of De Anza Cove.**

2 34. When the CITY took exclusive possession of the premises on November 24, 2003—and
3 although a temporary restraining order was in place from the *De Anza Cove* class action litigation—
4 the CITY and its agents continued their take-it-or-leave-it efforts. The CITY brought in hand-
5 selected agents to take over and run the Park. The CITY’s heavy-handed management style led the
6 CITY and its agents to, among other things:

- 7
- 8 • Threaten residents—who had paid their rent—with eviction through *ex*
- 9 *parte* communication by the CITY’s lawyers and on-site management
- 10 company;
- 11 • Inform homeowners and residents that State Law—including but not
- 12 limited to the Mobilehome Residency Law and the Mello Act—did not
- 13 apply to the Park and did not apply to the City of San Diego;
- 14 • Inform homeowners and residents that the City’s Municipal Code and
- 15 policies related to mobilehome park closure did not apply to De Anza Cove
- 16 and its owners and occupants;
- 17 • Inform homeowners and residents that they were not entitled to any
- 18 relocation benefits or assistance;
- 19 • Instruct homeowners and residents that they would be evicted if they did
- 20 not sign the City’s rental/settlement agreement;
- 21 • Instruct homeowners who were renting their homes to others that they could
- 22 no longer rent out their homes—but had to keep paying their space rent or
- 23 face immediate eviction—unless they signed the CITY’s settlement/rental
- 24 agreement;
- 25 • Illegally search residents’ homes and falsely detain residents;
- 26 • Bring in armed guards and instruct its guards to act more aggressively
- 27 towards residents;

28 ///

- 1 • Construct a guard shack checkpoint with gate and klieg lights at the Park
- 2 entrance;
- 3 • Prohibit free access to the park;
- 4 • Demand all who enter the park to provide personal information;
- 5 • Fail to inform guards of the Court’s TRO and Injunction orders;
- 6 • Fail to disclose alleged health and safety issues, like natural gas leaks;
- 7 • Erect chain-link and barbed-wire fencing;
- 8 • Remove all common area furniture and amenities, then falsely represent to
- 9 the Court that the CITY was not responsible;
- 10 • Tear down the playground and refuse to replace it;
- 11 • Impound all items from residents’ storage areas;
- 12 • Prohibit residents’ parking in their assigned parking slots in the overflow
- 13 parking area;
- 14 • Tow and impound residents’ cars, trucks, and trailers;
- 15 • Destroy the residents’ storage facilities and refuse to replace them;
- 16 • Destroy laundry facilities and refuse to replace them;
- 17 • Destroy the De Anza Mart market and refuse to replace it;
- 18 • Close the Pavilion clubhouse and main laundry mat;
- 19 • Create an oppressive, blighted existence for residents;
- 20 • Clear-cut existing flower gardens, shrubs, trees, and lush landscaping—
- 21 replaced by the CITY’s “flourishing weeds” and ubiquitous orange
- 22 construction fencing;
- 23 • Remove the entrance fountain and landscaping;
- 24 • Contact the County Assessor secretly to have residents taxed like never
- 25 before;
- 26 • Send unilateral and inadequate notices to cut trees and shut off residents’
- 27 water supply;
- 28 • Threaten and physically intimidate residents and their guests;

- 1 • Unilaterally create new “rules” for the Park;
- 2 • Prohibit mobilehome owners from renting their homes and causing them
- 3 lost income; and
- 4 • Refuse to allow the HOA to replace the chairs and tables that the CITY had
- 5 ordered DHRG to remove from the Park’s church and clubhouse.

6 35. The De Anza Cove Homeowners Association had repeatedly requested, both orally and in
7 writing, a meeting with the CITY’s representatives to rectify these and other issues, but were rebuffed
8 for months. The CITY’s stated mantra was: “No one is going to tell us how to run this Park.”

9 36. As a result of the CITY’s coercive actions, and other misrepresentations by the CITY and
10 its agents, many Park residents allegedly entered into settlement/rental agreements with the CITY
11 whereby they purportedly gave up their legal rights—including unwaivable statutory rights
12 guaranteed under California’s Mobilehome Residency Law, other statutes, and common law. The
13 CITY’s settlement/rental agreements, which included a stipulated judgment against the residents,
14 were presented as a take-it-or-leave-it basis and were all substantially similar, an exemplar of which
15 is attached herewith as Exhibit 1 and incorporated herein by this reference.

16 37. Since the MRL prohibits the waiver of residents’ rights under the MRL, the CITY cannot
17 force tenants to waive their MRL rights. The CITY, as part of its settlement/rental agreements,
18 required residents to purportedly waive their statutory rights and claims in order to continue renting
19 their spaces from the CITY beyond November 2003. Residents also had to acknowledge that “the
20 Mobilehome Residency Law pursuant to California Civil Code section 798 *et seq.*, will no longer
21 govern Resident’s occupancy/possession of the Premises.” But any attempt by the CITY to use
22 language in lease contracts, settlement agreements, or any other agreements to eviscerate its statutory
23 obligations are *void and unenforceable* as a matter of law.

24 38. The MRL states:

25 **No rental or sale agreement shall contain a provision by which the purchaser**
26 **or homeowner waives his or her rights** under this chapter. **Any such waiver shall**
27 **be deemed contrary to public policy and shall be void and unenforceable.**³

28 _____
³ Civ. Code § 798.77 (emphasis added); See also Civ. Code § 798.19.

1 39. As the MRL’s blunt language demonstrates, the State Legislature prohibits the waiver of
 2 mobilehome residents’ MRL protections. Intuitively, this makes sense because residents are
 3 typically confronted with pre-printed lease agreements drafted by a party with superior bargaining
 4 power and offered on a “take-it-or-leave-it” basis. And that’s what the CITY did here. As part of its
 5 settlement/rental agreement, the CITY warned: “You are under no obligation to accept the settlement
 6 offer. Please be advised that if you do not accept the offer, eviction proceedings will be commenced
 7 against you and all other occupants of your mobilehome beginning November 24, 2003.” With this
 8 sledgehammer over residents’ heads—and despite this Court’s temporary restraining order and
 9 injunction—the CITY bulldozed forward with its settlement agreements and “transition plan.” The
 10 CITY’s attempts—through its own actions and the actions of its former attorneys, armed guards, and
 11 management company—to subvert these statutory protections through densely written waiver
 12 provisions violates the express terms of the MRL⁴ and violates public policy.⁵ Furthermore, the
 13 CITY’s settlement/rental agreements are unenforceable because of: economic duress, mistake of fact
 14 and/or law, material misrepresentations, fraud, undue influence, illegality, contract against public
 15 policy, unconscionability, and certain Plaintiffs lacked capacity.

16 40. Thus, among other things, Plaintiffs request that the Court declare the CITY’s
 17 settlement/rental agreements void and unenforceable as a matter of law and/or grant rescission of the
 18 settlement/rental agreements, and thereafter determine the reasonable costs of relocation and award
 19 general and special damages and other compensation owed to these Plaintiffs.

20 21 **Procedural History**

22 41. As part of the original *De Anza Cove Class Action* litigation seeking relocation benefits and
 23 assistance, the HOA, on behalf of itself and in its representative capacity on behalf of all present and
 24 former owners, tenants, residents, and occupants of the Park, as well as many individual homeowners

25
26 ⁴ Civ. Code §§ 798.19, 798.77.

27 ⁵ *Timney v. Lin* (2003) 106 Cal.App.4th 1121, citing *Cal. State Auto. Assn. Inter-Ins. Bureau v.*
 28 *Sup. Ct.* (1990) 50 Cal.3d 658 (rejecting provisions of a settlement as unjust or against public
 policy); *Tri-Q, Inc. v. Sta-Hi Corp.* (1965) 63 Cal.2d 199 (withholding relief to party relying
 on illegal contract.); *Loving & Evans v. Blick* (1949) 33 Cal.2d 603, 607; *Hooper v. Barranti*
 (1947) 81 Cal.App.2d 570; *Schur v. Johnson* (1934) 2 Cal.App.2d 680; Civ. Code § 1667.

1 and residents, timely filed an administrative claim with the CITY on April 17, 2004, in compliance
2 with the government tort claims act, as might be applicable. Their claim was denied. Confirming
3 Plaintiffs' compliance with the claims statute, the Honorable Charles Hayes ruled on July 14, 2004,
4 that all homeowners and residents of the Park had substantially and satisfactorily complied with the
5 claims statute requirements and that the CITY had been on adequate notice of these relocation claims
6 since at least 2003.

7 42. The *De Anza Cove* litigation was eventually certified as a Class Action as to the relocation
8 claims. The Class Definition underwent several refinements until, eventually, the Plaintiffs herein
9 were purportedly deemed excluded by virtue of the CITY's assertion that they had either entered into
10 release agreements with the CITY or had been evicted from the Park. At trial in October 2007, the
11 trial court was supposed to rule on the validity of Plaintiffs' alleged settlement agreements. The trial
12 court, however, failed to rule on which residents/homeowners had signed valid settlement/rental
13 agreements despite Plaintiffs' counsel's numerous requests. It was not until February 2014 that the
14 Court entered its orders excluding certain individuals from the De Anza Cove class action. In those
15 orders, the Court reconfirmed "On July 14, 2004, this Court overruled Defendant City's Demurrer to
16 the Second Amended Complaint, finding that all homeowners and residents, including those listed
17 herein, were in substantial compliance with the statutory claim presentation requirements via the
18 Plaintiff De Anza Cove HOA's claim submittal: RULING AFTER ORAL ARGUMENT: ...the
19 Court having read and considered Defendant City of San Diego's Demurrer; the Oppositions filed
20 thereto; the Supplemental Briefs filed by the Parties; the Second Amended Complaint on file herein;
21 and the arguments presented by counsel, hereby finds that the Second Amended Complaint properly
22 alleges an excuse from strict compliance with the statutory claim presentation requirements. Plaintiff
23 alleges that the City has been on notice of the issues at bar since March 7, 2003 when the De Anza
24 Harbor Resort & Golf LLC notified the City and Park residents that it had abandoned the hotel
25 development efforts; that the City and the park residents were engaged in on-going pre-litigation
26 negotiations regarding the issues at bar; that the City threatened eviction on October 22, 2003 which
27 caused the filing of this action on November 18, 2003; and, Plaintiff's submission of a claim that was
28 filed on April 16, 2004 which was thereafter denied by the City. The City's due process rights have

1 not been violated since the City has been on notice of the issues since May 2003. Accordingly, the
2 Court hereby confirms the July 9, 2004 Tentative Ruling.”

3 43. On June 18, 2008, Plaintiffs again filed administrative claims with the CITY—not because
4 they thought it was legally required—but because they anticipated that the CITY would contend it
5 was required even though the claims are the same ones that the CITY was put on notice of—and
6 denied—in 2004. Plaintiffs do not concede that they are or were legally required to again comply
7 with any claim filing requirement. In any event, the second round of claim forms was denied by the
8 CITY by operation of law on or about August 2, 2008. This action was thereafter timely filed (if not
9 prematurely filed) on or about January 23, 2009.

10 44. On or about October 2014, the Court in the De Anza Cove class action entered its final
11 judgment, including its rulings that: (1) “De Anza Cove is a mobilehome park and the Mobilehome
12 Residency Law (Civil Code §§ 798 et seq, Gov’t Code §§ 65863.7-65863.8) applies in full to
13 De Anza Cove and the City of San Diego,” (2) “The City of San Diego is under a mandatory duty to
14 comply with the Mobilehome Residency Law, including but not limited to Civil Code §798.56(g)-(h)
15 and Gov’t Code §65863.7 which regulate closure of De Anza Cove, the timing and content of notice
16 to residents, and tenant-impact-reporting and relocation assistance requirements” and (3) “The City
17 violated the Mobilehome Residency Law, the Civil Code §798.56(g)-(h) and Gov’t Code §65863.7
18 by failing to prepare a tenant impact report and serve lawful notices that complied with the MRL’s
19 timing and content requirements.”

20 45. On or about January 2015, the CITY disseminated a 12-Month Notice of Termination of
21 Tenancy and a Relocation Impact Report (“RIR”). The RIR did not address the legally-required
22 mitigation for the people who are encompassed by this Aglio case. The RIR stated in relevant part:
23 “Plaintiffs’ Class Counsel and Counsel for the Aglio plaintiffs is of the opinion that the City of San
24 Diego’s Notices of Park Closure and Relocation Impact Report dated Janaury 2015 applicable to
25 Non-Class Members does not satisfy California’s Mobilehome Residency Law or the San Diego local
26 laws (including but not limited to the San Diego Housing Commission Policy applicable to
27 mobilehome park closures) and that the relocation claims of all Non-Class Members must be lawfully
28 resolved prior to park closure and termination of any of their tenancies in the park.” Further, the

1 MRL’s notice provisions mandate distribution of a valid RIR at least 6 months prior to park closure.
2 The CITY’s January 2015 RIR was insufficient as to individuals who were not class members of the
3 *De Anza Cove* case, and therefore, the CITY’s 12-Month Notice of Termination of Tenancy did not
4 comport with the notice requirements of the MRL.

5 6 **Class Action Allegations**

7 46. Plaintiffs herein incorporate by reference all preceding and succeeding paragraphs of this
8 Complaint as though fully set forth herein.

9 47. This action is brought as a class action by Class Representative Plaintiff
10 James C. Giaciolli—individually and on behalf of all others similarly situated—pursuant to Code of
11 Civil Procedure section 382.

12 48. **Class Definitions**. Plaintiffs seek class certification intended to include all current and
13 former homeowners and residents in the Park after October 22, 2003, who were not class members
14 in the *De Anza Cove* class action case as follows: **Aglio-eligible Master Settlement Class (“Aglio**
15 **Class”)**: As of October 22, 2003, and thereafter, all homeowners and/or residents—and their heirs—
16 of the approximately 509 homes within the mobilehome park now known as Mission Bay Park and
17 formerly known as De Anza Harbor Resort (“Park”), located at 2727 De Anza Road, San Diego,
18 California, who were *not* class members within the *De Anza Cove* class action (San Diego Superior
19 Court, Case No. GIC 821191).

20 49. Plaintiffs also seek certification of the following subclasses:

21 50. **Subclass A (“Settlement Agreement Subclass”)**: “All homeowners and/or residents within
22 the Aglio Class who signed release agreements with the City of San Diego regarding the Park.” This
23 subclass will address the alleged unenforceability of these release agreements in light of state law
24 prohibiting any waiver of rights under the MRL, the false pretenses under which such agreement
25 were obtained, and the heavy-handedness with which these agreements were secured.

26 51. **Subclass B (“Eviction Subclass”)**: “All homeowners and/or residents within the Aglio
27 Class who were evicted from the Park on or before September 4, 2007.”

28 52. **Subclass C (“Current Resident Subclass”)**: “All homeowners and/or residents within the

1 Aglio Class who currently reside at the Park (at anytime during the period from January 14, 2015
2 though July 1, 2016 or the revised Park Closure Date, whichever is later) and are not part of Subclass
3 A or B.” This Subclass will address what relocation benefits may or may not be owed to those
4 homeowners and residents who currently reside at the Park, but did not reside in the Park on October
5 22, 2003, as would be required to be a class member within the *De Anza Cove* class action case.

6 53. Numerosity. There are approximately 211 households eligible for the Aglio Class,
7 rendering the members of the Class so numerous that joinder of all Class members would be
8 impracticable, and would cause tremendous problems in terms of case management, cost, delay, and
9 confusion.

10 54. Typicality. Plaintiff JAMES C. GIACIOLLI (“GIACIOLLI”) has a common interest with
11 all homeowners and/or residents—and their heirs—of the approximately 211 Aglio-Class eligible
12 households of the mobilehome park now known as Mission Bay Park and formerly known as De
13 Anza Harbor Resort (“Park”), located at 2727 De Anza Road, San Diego, California, who were
14 homeowners and/or residents as of October 22, 2003 and thereafter, and who were *not* class members
15 within the *De Anza Cove* class action (San Diego Superior Court, Case No. GIC 821191) in enforcing
16 the applicable state and local laws, and has a community of interest in the determination of the
17 questions of law and fact, causes of action, the damages as further alleged in this Complaint. Plaintiff
18 GIACIOLLI’s claims are typical of the claims of the other members of the Class because all Class
19 members were similarly damaged as a result of Defendants’ improper conduct and failure to comply
20 with state laws.

21 55. Adequacy. Plaintiff GIACIOLLI will fairly and adequately represent the interests of the
22 other members of the Class. GIACIOLLI’s interests are coincident with, and not antagonistic to,
23 those of the Class as a whole and the other Class members. GIACIOLLI will prosecute class claims
24 aggressively and has retained counsel who are competent and experienced in the prosecution of
25 complex, multi-party cases involving class action, mass tort actions, property claims, mobilehome
26 park law, eminent domain, landlord/tenant disputes and tortious acts.

27 56. Commonality. There are questions of law and fact common to all members of the Class
28 which predominate over any issues that may affect only individual members of the Class. These

1 common issues include, but are not limited to:

- 2 • Whether the Mobilehome Residency Law (“MRL”) applies to the closure of De
- 3 Anza Cove mobilehome park;
- 4 • Whether the City of San Diego is bound by the MRL;
- 5 • Whether the City’s conduct and decision-making violated the MRL;
- 6 • Whether the Mello Act applies to the closure of De Anza Cove mobilehome
- 7 park;
- 8 • Whether the City of San Diego is bound by the Mello Act;
- 9 • Whether the City’s conduct and decision-making violated the Mello Act;
- 10 • Whether the City’s violations of the MRL, the Mello Act, and other state
- 11 statutes and regulations caused injury to plaintiffs and members of the Class;
- 12 • The appropriate measure of damages sustained by Plaintiffs and members of
- 13 the Class;
- 14 • The availability of permanent injunctive relief;
- 15 • Whether the City can, by contract or otherwise, lawfully require Class members
- 16 to waive their statutory rights; and
- 17 • Whether the City can, through adopting local ordinances, lawfully exempt itself
- 18 from state mandates regulating the operation and closure of mobilehome parks
- 19 without violating the Equal Protection and Due Process guarantees of the State
- 20 Constitutions.

21 57. Superiority. A class action is superior to any other available method to ensure the fair and
22 efficient adjudication of this controversy. Class treatment under Code of Civil Procedure section 382
23 and California Rules of Court, Rules 3.760 *et seq.*, will permit a large number of similarly-situated
24 persons to prosecute their claims efficiently and without duplication of effort and expense that
25 hundreds of multiple individual actions would entail. There are no difficulties likely to be
26 encountered in the management of this action that would preclude its maintenance as a class action.
27 Notice can be given individually to Class members utilizing the City’s rent rolls, the parties’
28 databases, Overland Pacific & Cutler’s records, county property tax records, HOA membership lists,

1 and hand-delivery, supplemented as necessary by publication or other mass dissemination of notice.
2 No superior alternative exists for the fair and efficient adjudication of this dispute.

3 58. Given the sheer number of potential claimants that would be forced to proceed on their own
4 in the absence of class representation, class treatment avoids an otherwise high risk of prejudice
5 resulting from separate actions, conflicting judgments, incompatible standards, and inconsistent
6 declaratory relief that would be impossible for Defendants to comply with. Moreover, declaratory
7 and injunctive relief will benefit the Class as a whole.

8 59. Plaintiffs reserve the right to request bifurcation of personal injury claims, or to utilize other
9 procedural devices, as necessary, to facilitate the certification of the claims of the Class.

10 60. Defendants have acted on grounds generally applicable to the entire Class, thereby making
11 it appropriate for the court to consider permanent injunctive relief or corresponding declaratory relief
12 with respect to the Class as a whole.

14 **First Cause of Action**

15 **Action for Rescission**

16 (Against Defendant CITY and DOES 1-50)

17 61. Plaintiffs hereby incorporate by reference all preceding and succeeding paragraphs of this
18 Complaint as though fully set forth herein.

19 62. Plaintiffs bring this cause of action, among other things, under Civil Code §§ 1688 *et seq.*

20 63. Plaintiffs gave Defendants proper notice of rescission in accord with Civil Code
21 section 1691 and *Myerchin v. Family Benefits, Inc.* 162 Cal.App.4th 1533.

22 64. Plaintiffs seek the rescission of the CITY's rental/settlement agreements with Plaintiffs—
23 an exemplar of which is attached as Exhibit 1—based on: mistake of fact, mistake of law, undue
24 influence, economic duress, unconscionability, fraud, illegality, contract against public policy, and
25 lack of capacity.

26 **Mistake of Fact**

27 65. Plaintiffs were ignorant of a past or present fact material to the contract, or believed in the
28 present existence of something material to the contract that does not exist or in the past existence of

1 something that never existed. (See, e.g., Civil Code § 1577.) A contract is subject to unilateral
2 rescission by a party whose consent to the contract was given by mistake. (See Civil Code
3 § 1689(b)(1).)

4 66. Defendant CITY, for example, instructed Plaintiffs that State Law did not apply to the City
5 of San Diego and did not apply to the De Anza Cove mobilehome park. Defendant CITY instructed
6 Plaintiffs that they had no right to any relocation benefits, whether under State Law or under its
7 Municipal Code and policies. Defendant City further instructed Plaintiffs that if they did not sign
8 the CITY’s rental/settlement agreement, Plaintiffs would be evicted and would receive no relocation
9 payments whatsoever. The CITY’s representations of fact were false. On or about October 2014,
10 the Court in the De Anza Cove class action entered its final judgment, including its rulings that: (1)
11 “De Anza Cove is a mobilehome park and the Mobilehome Residency Law (Civil Code §§ 798 et
12 seq, Gov’t Code §§ 65863.7-65863.8) applies in full to De Anza Cove and the City of San Diego,”
13 (2) “The City of San Diego is under a mandatory duty to comply with the Mobilehome Residency
14 Law, including but not limited to Civil Code §798.56(g)-(h) and Gov’t Code §65863.7 which regulate
15 closure of De Anza Cove, the timing and content of notice to residents, and tenant-impact-reporting
16 and relocation assistance requirements” and (3) “The City violated the Mobilehome Residency Law,
17 the Civil Code §798.56(g)-(h) and Gov’t Code §65863.7 by failing to prepare a tenant impact report
18 and serve lawful notices that complied with the MRL’s timing and content requirements.”

19 67. Moreover, the CITY’s rental/settlement agreement, an exemplar of which is attached as
20 Exhibit 1, is a contract of adhesion. It was a standardized contract, imposed and drafted by the
21 CITY—a party of superior bargaining power and strength—which relegated to Plaintiffs only the
22 opportunity to adhere to the contract or reject it. As generally described herein (see, e.g., ¶¶ 26-37),
23 the CITY’s rental/settlement agreement—for example with certain of its provisions asserting that
24 Plaintiffs waive their rights under various State Laws—results in unfair surprise to Plaintiffs and fails
25 to meet the “reasonable expectations” of Plaintiffs, and/or was unduly oppressive or unconscionable.
26 The terms of the rental/settlement agreement are one-sided, lacking in justification, and reallocate
27 the risks of the bargain in an objectively unreasonable or unexpected manner.

28 68. Based on these and other mistakes of fact, Plaintiffs were induced to sign the CITY’s

1 rental/settlement agreements. As a direct and proximate result of the mistake of fact, Plaintiffs seek
2 rescission of the settlement/rental agreements and complete relief, including restitution of benefits,
3 as a result of the transaction and any consequential damages to which Plaintiffs are entitled and/or
4 compensatory damages which justice may require. (See Civil Code § 1692.)

5 **Mistake of Law**

6 69. Plaintiffs had a mistaken belief as to the legal consequences of the facts at the time they
7 signed the rental/settlement agreements. Plaintiffs and the CITY either thought they knew and
8 understood the law—all parties thereby making substantially the same mistake as to the law; or,
9 alternatively, Plaintiffs misunderstood the law at the time of contracting and the CITY knew the law
10 but did not rectify Plaintiffs’ misunderstanding. (See Civil Code § 1578.) A contract is subject to
11 unilateral rescission by a party whose consent to the contract was given by mistake. (See Civil Code
12 § 1689(b)(1).)

13 70. Defendant CITY, for example, instructed Plaintiffs that State Law did not apply to the City
14 of San Diego and did not apply to the De Anza Cove mobilehome park. Defendant CITY further
15 instructed Plaintiffs that if they did not sign the CITY’s rental/settlement agreement, Plaintiffs would
16 be evicted and would receive no relocation payments whatsoever. The CITY’s representations of
17 law were false. On or about October 2014, the Court in the De Anza Cove class action entered its
18 final judgment, including its rulings that: (1) “De Anza Cove is a mobilehome park and the
19 Mobilehome Residency Law (Civil Code §§ 798 et seq, Gov’t Code §§ 65863.7-65863.8) applies in
20 full to De Anza Cove and the City of San Diego,” (2) “The City of San Diego is under a mandatory
21 duty to comply with the Mobilehome Residency Law, including but not limited to Civil Code
22 §798.56(g)-(h) and Gov’t Code §65863.7 which regulate closure of De Anza Cove, the timing and
23 content of notice to residents, and tenant-impact-reporting and relocation assistance requirements”
24 and (3) “The City violated the Mobilehome Residency Law, the Civil Code §798.56(g)-(h) and Gov’t
25 Code §65863.7 by failing to prepare a tenant impact report and serve lawful notices that complied
26 with the MRL’s timing and content requirements.”

27 71. Based on these and other mistakes of law, Plaintiffs were induced to sign the CITY’s
28 rental/settlement agreements. As a direct and proximate result of the mistake of law, Plaintiffs seek

1 rescission of the settlement/rental agreements and complete relief, including restitution of benefits,
2 as a result of the transaction and any consequential damages to which Plaintiffs are entitled and/or
3 compensatory damages which justice may require. (See Civil Code § 1692.)

4 **Undue Influence**

5 72. The CITY, holding a real and apparent authority over Plaintiffs, took unfair advantage of
6 Plaintiffs' weakness of mind, and/or took a grossly oppressive and unfair advantage of Plaintiffs'
7 necessities or distress. The CITY's undue influence was seen in its high pressure tactics, pressure
8 that works on mental, moral, or emotional weakness to such an extent that it approaches the
9 boundaries of coercion. A contract is subject to unilateral rescission by a party whose consent to the
10 contract was obtained through duress, fraud, or undue influence. (See Civil Code § 1689(b)(1).)

11 73. As generally described herein (see, e.g., ¶¶ 26-37), the CITY committed wrongful acts—
12 like putting up barbed wire fences, bringing in armed guards, destroying the common areas—which
13 were sufficiently coercive to take unfair advantage of Plaintiffs, and were grossly oppressive and
14 took unfair advantage of Plaintiffs' necessities or distress, causing them to cave-in to the CITY's
15 high-pressure tactics to sign the CITY's rental/settlement agreement, an exemplar of which is
16 attached as Exhibit 1.

17 74. Based on the CITY's undue influence, Plaintiffs were induced to sign the CITY's
18 rental/settlement agreements. As a direct and proximate result of the mistake of law, Plaintiffs seek
19 rescission of the settlement/rental agreements and complete relief, including restitution of benefits,
20 as a result of the transaction and any consequential damages to which Plaintiffs are entitled and/or
21 compensatory damages which justice may require. (See Civil Code § 1692.)

22 **Economic Duress**

23 75. As generally described herein (see, e.g., ¶¶ 26-37), the CITY committed wrongful acts which
24 were sufficiently coercive to cause Plaintiffs—reasonably prudent persons who were faced with no
25 reasonable alternative—to agree to an unfavorable contract, namely the CITY's rental/settlement
26 agreement, an exemplar of which is attached as Exhibit 1. Thus, Plaintiffs consent was obtained
27 under economic duress. (See Civil Code § 1689(b)(1).)

28 76. As a direct and proximate result of the CITY's economic duress, Plaintiffs seek rescission

1 of the settlement/rental agreements and complete relief, including restitution of benefits, as a result
2 of the transaction and any consequential damages to which Plaintiffs are entitled and/or
3 compensatory damages which justice may require. (See Civil Code § 1692.) Alternatively, as a
4 direct and proximate result of the CITY’s economic duress, Plaintiffs seek to recover from
5 Defendants for all injuries and damages suffered, which include, but are not limited to, special
6 damages, general damages, attorneys’ fees and costs, prejudgment interest, as well as all other forms
7 of relief allowed by law.

8 **Unconscionability**

9 77. Unconscionability is generally recognized as including an absence of meaningful choice on
10 the part of one of the parties, together with contract terms that are unreasonably favorable to the other
11 party. The procedural element of unconscionability includes (i) oppression arising from an inequality
12 of bargaining power that results in no real negotiation and an absence of meaningful choice; and (ii)
13 surprise, involving the extent to which the supposedly agreed-upon terms are hidden in a prolix
14 printed form drafted by the party seeking to enforce the disputed terms (i.e., essentially, a contract of
15 adhesion).

16 78. The CITY’s rental/settlement agreement, an exemplar of which is attached as Exhibit 1, is
17 a contract of adhesion. It was a standardized contract, imposed and drafted by the CITY—a party of
18 superior bargaining power and strength—which relegated to Plaintiffs only the opportunity to adhere
19 to the contract or reject it. As generally described herein (see, e.g., ¶¶ 26-37), the CITY’s
20 rental/settlement agreement—for example with certain of its provisions asserting that Plaintiffs waive
21 their rights under various State Laws—results in unfair surprise to Plaintiffs and fails to meet the
22 “reasonable expectations” of Plaintiffs, and/or was unduly oppressive or unconscionable. The terms
23 of the rental/settlement agreement are one-sided, lacking in justification, and reallocate the risks of
24 the bargain in an objectively unreasonable or unexpected manner.

25 79. Further, rescission for a unilateral mistake of fact is authorized where “the effect of the
26 mistake is such that enforcement of the contract would be unconscionable.” In such cases, it need
27 not be shown that the opposing (nonrescinding) party caused or even knew of the mistake. In
28 determining whether rescission is warranted for a unilateral mistake of fact, substantive rather than

1 procedural unconscionability is often the determinative factor because the oppression and surprise
2 ordinarily results from the mistake—enforcing contract would yield overly harsh and one-sided
3 result, thereby warranting rescission.

4 80. As a direct and proximate result of the CITY’s unconscionable contract and/or clauses
5 within that contract, Plaintiffs seek rescission of the settlement/rental agreements and complete relief,
6 including restitution of benefits as a result of the transaction and any consequential damages to which
7 Plaintiffs are entitled and/or compensatory damages which justice may require. (See Civil Code §
8 1692.) Plaintiffs further seek all applicable remedies, both equitable and statutory (see Civil Code §
9 1670.5), that the Court deems appropriate.

10 **Fraud**

11 81. Fraud is an affirmative misrepresentation, or suppression of a fact, or promise made without
12 the intent to keep it of a material fact with knowledge of falsity or effect of concealment of material
13 fact; actual and justifiable reliance, which causes damages. A contract is subject to unilateral
14 rescission by a party whose consent to the contract was obtained through duress, fraud, or undue
15 influence. (See Civil Code § 1689(b)(1).)

16 82. As generally described herein (see, e.g., ¶¶ 26-37), the CITY and Does 1-50 made
17 affirmative misrepresentations of material facts to Plaintiffs, suppressed and concealed material facts
18 from Plaintiffs, and did so with a knowledge of falsity and/or through concealment. Plaintiffs
19 justifiably relied on the CITY’s representations and concealed facts, which caused and induced
20 Plaintiffs to sign the CITY’s rental/settlement agreement, an exemplar of which is attached as Exhibit
21 1.

22 83. As a direct and proximate result of the CITY’s fraudulent conduct and misrepresentations,
23 Plaintiffs seek rescission of the settlement/rental agreements and complete relief, including
24 restitution of benefits, as a result of the transaction and any consequential damages to which Plaintiffs
25 are entitled and/or compensatory damages which justice may require. (See Civil Code §§ 1689(b)(1),
26 1692.)

27 **Illegality & Contract Against Public Policy**

28 84. A contract is subject to an action for rescission if the contract is unlawful for causes which

1 do not appear in its terms or conditions, and the parties are not equally at fault. (Civil Code
2 § 1689(b)(5).) A contract is also subject to an action for rescission if the contract, or clauses within
3 the contract, violates public policy⁶ or where its enforcement would be prejudicial to the public
4 interest. (See Civil Code § 1689(b)(6).)

5 85. First, the CITY employed improper, unlawful, coercive tactics described generally herein
6 (see, e.g., ¶¶ 26-38) to induce and force Plaintiffs to sign the settlement/rental agreements. Further,
7 the CITY's densely-written, take-it-or-leave-it settlement/rental agreements include clauses whereby
8 Plaintiffs purportedly gave up their legal rights—including unwaivable statutory rights guaranteed
9 under California's Mobilehome Residency Law and other statutes and common law—in order to
10 continue to live at the Park or rent their homes. Not only does the MRL prohibit the waiver of
11 residents' rights under the MRL,⁷ it is unlawful for the CITY to force owners and residents to waive
12 their MRL and other statutory rights. The CITY's settlement/rental agreements stated that "the
13 Mobilehome Residency Law pursuant to California Civil Code section 798 et seq., will no longer
14 govern Resident's occupancy/possession of the Premises." The CITY's attempts—through its own
15 actions and the actions of its former attorneys, armed guards, and management company—to subvert
16 these statutory protections and to deny Plaintiffs their right to relocation benefits through densely
17 written waiver provisions in its settlement/rental agreements violates the express terms of the MRL,⁸
18 violates public policy,⁹ and is subject to rescission due to its unlawful clauses and purpose. It is
19 certainly in the public's interest to ensure that its government and municipal officials do not
20 contravene important interests of society, such as the rights of mobilehome owners and residents.

21 86. Plaintiffs seek rescission of the CITY's settlement/rental agreements and complete relief,
22

23 ⁶ *Timney v. Lin* (2003) 106 Cal.App.4th 1121, citing *Cal. State Auto. Assn. Inter-Ins. Bureau v.*
24 *Sup. Ct.* (1990) 50 Cal.3d 658 (rejecting provisions of a settlement as unjust or against public
25 policy); *Tri-Q, Inc. v. Sta-Hi Corp.* (1965) 63 Cal.2d 199 (withholding relief to party relying
26 on illegal contract.); *Loving & Evans v. Blick* (1949) 33 Cal.2d 603, 607; *Hooper v. Barranti*
27 (1947) 81 Cal.App.2d 570; *Schur v. Johnson* (1934) 2 Cal.App.2d 680; Civ. Code § 1667.

28 ⁷ Civ. Code § 798.77 (emphasis added); See also Civ. Code § 798.19.

⁸ Civ. Code §§ 798.19, 798.77.

⁹ *Timney v. Lin* (2003) 106 Cal.App.4th 1121, citing *Cal. State Auto. Assn. Inter-Ins. Bureau v.*
Sup. Ct. (1990) 50 Cal.3d 658 (rejecting provisions of a settlement as unjust or against public
policy); *Tri-Q, Inc. v. Sta-Hi Corp.* (1965) 63 Cal.2d 199 (withholding relief to party relying
on illegal contract.); *Loving & Evans v. Blick* (1949) 33 Cal.2d 603, 607; *Hooper v. Barranti*
(1947) 81 Cal.App.2d 570; *Schur v. Johnson* (1934) 2 Cal.App.2d 680; Civ. Code § 1667.

1 including restitution of benefits, as a result of the transaction and any consequential damages to which
2 Plaintiffs are entitled and/or compensatory damages which justice may require. (See Civil Code
3 § 1692.)

4 **Lack of Capacity**

5 87. To determine whether a valid contract even comes into existence, the first element that needs
6 to be proven is “parties capable of contracting.” (Civil Code § 1550.) Thus, a contract is void if a
7 party did not understand the nature, purpose, and effect of the contract he signed.

8 88. Certain of the Plaintiffs—through age or mental or other disabilities—lacked the capacity to
9 understand the nature, purpose, and effect of the CITY’s settlement/rental agreement. Accordingly,
10 their purported settlement/rental agreement is void as it never came into existence since those
11 Plaintiffs were not capable of contracting.

12 89. In accordance with the foregoing, Plaintiffs seek the rescission of the CITY’s
13 rental/settlement agreements with Plaintiffs based on: mistake of fact, mistake of law, undue
14 influence, economic duress, unconscionability, fraud, illegality, contract against public policy, and
15 lack of capacity. Plaintiffs further pray for complete relief, including but not limited to restitution of
16 benefits as a result of the transaction and any consequential damages to which Plaintiffs are entitled
17 and/or compensatory damages which justice may require. (See, e.g., Civil Code §§ 1670.5,
18 1689(b)(1), 1692.)

19 20 **Second Cause of Action**

21 **Economic Duress**

22 (Against Defendant CITY and DOES 1-50)

23 90. Plaintiffs hereby incorporate by reference all preceding and succeeding paragraphs of this
24 Complaint as though fully set forth herein.

25 91. As generally described herein (see, e.g., ¶¶ 26-37), the CITY did wrongful acts—like putting
26 up barbed wire fences, bringing in armed guards, destroying the common areas, making
27 misrepresentations of fact and law—which were sufficiently coercive to cause Plaintiffs—who were
28 reasonably prudent persons faced with no reasonable alternative—to agree to an unfavorable

1 contract, namely the CITY's rental/settlement agreement, an exemplar of which is attached as Exhibit
2 1.

3 92. As a direct and proximate result of the CITY's economic duress, Plaintiffs seek rescission
4 of the settlement/rental agreements and complete relief, including restitution of benefits, as a result
5 of the transaction and any consequential damages to which Plaintiffs are entitled and/or
6 compensatory damages which justice may require. (See Civil Code § 1692.)

7 93. Alternatively, as a direct and proximate result of the CITY's economic duress, Plaintiffs
8 seek to recover from Defendants for all injuries and damages suffered, which include, but are not
9 limited to, general and special damages, consequential and compensatory damages, and other
10 damages according to proof, attorneys' fees and costs, prejudgment interest, as well as all other forms
11 of relief allowed by law.

12
13 **Third Cause of Action**

14 **Negligent Misrepresentation**

15 (Against Defendant CITY and DOES 1-50)

16 94. Plaintiffs hereby incorporate by reference all preceding and succeeding paragraphs of this
17 Complaint as though fully set forth herein.

18 95. A cause of action for negligent misrepresentation arises when a party to a contract makes an
19 unwarranted and untrue assertion, intending to induce another party to enter into a contract.

20 96. As generally described herein (see, e.g., ¶¶ 26-37), the CITY and Does 1-50 made
21 affirmative misrepresentations of material facts to Plaintiffs, suppressed and concealed material facts
22 from Plaintiffs, and did so with the intent to induce Plaintiffs' reliance on the representations. The
23 CITY had no reasonable grounds for believing those representations to be true. Plaintiffs justifiably
24 relied on the CITY's misrepresentations and concealed facts, which caused and induced Plaintiffs to
25 sign the CITY's rental/settlement agreement, an exemplar of which is attached as Exhibit 1.

26 97. As a direct and proximate result of the CITY's negligent misrepresentations, Plaintiffs
27 suffered injuries and damages, which include, but are not limited to, general and special damages,
28 consequential and compensatory damages, and other damages according to proof, attorneys' fees and

1 costs, prejudgment interest, as well as all other forms of relief allowed by law. Plaintiffs further seek
2 rescission of the settlement/rental agreements and complete relief, including restitution of benefits,
3 as a result of the transaction and any consequential damages to which Plaintiffs are entitled and/or
4 compensatory damages which justice may require.

6 **Fourth Cause of Action**

7 **Fraud**

8 (Against Defendant CITY and DOES 1-50)

9 98. Plaintiffs hereby incorporate by reference all preceding and succeeding paragraphs of this
10 Complaint as though fully set forth herein.

11 99. Fraud is an affirmative misrepresentation, or suppression of a material fact, or promise made
12 without the intent to keep it, with knowledge of its falsity, or effect of concealment of material fact;
13 actual and justifiable reliance, which causes damages. Actual fraud, consists in any of the following
14 acts, committed by a party to the contract, or with his connivance, with intent to deceive another
15 party thereto, or to induce him to enter into the contract:

- 16 1. The suggestion, as a fact, of that which is not true, by one who does not believe it
17 to be true;
- 18 2. The positive assertion, in a manner not warranted by the information of the person
19 making it, of that which is not true, though he believes it to be true;
- 20 3. The suppression of that which is true, by one having knowledge or belief of the
21 fact;
- 22 4. A promise made without any intention of performing it; or,
- 23 5. Any other act fitted to deceive. (Civil Code § 1572.)

24 100. Constructive fraud consists of: “1. In any breach of duty which, without an actually
25 fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by
26 misleading another to his prejudice, or to the prejudice of any one claiming under him; or, 2. In any
27 such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.”
28 (Civil Code § 1573.)

1 101. As generally described herein (see, e.g., ¶¶ 26-37), the CITY and Does 1-50 made
2 affirmative misrepresentations of material facts to Plaintiffs, fraudulently suppressed and concealed
3 material facts from Plaintiffs, and did so with a knowledge of falsity of those representations, and/or
4 through concealment. The CITY intended to deceive Plaintiffs. Plaintiffs justifiably relied on the
5 CITY's representations and were unaware of the concealed facts, which caused and fraudulently
6 induced Plaintiffs to sign the CITY's rental/settlement agreement, an exemplar of which is attached
7 as Exhibit 1.

8 102. As a direct and proximate result of the CITY's fraudulent conduct, misrepresentations, and
9 concealment, Plaintiffs suffered injuries and damages, which include, but are not limited to, general
10 and special damages, consequential and compensatory damages, and other damages according to
11 proof, attorneys' fees and costs, prejudgment interest, as well as all other forms of relief allowed by
12 law. Plaintiffs further seek rescission of the settlement/rental agreements and complete relief,
13 including restitution of benefits, as a result of the transaction and any consequential damages to which
14 Plaintiffs are entitled and/or compensatory damages which justice may require.

15
16 **Fifth Cause of Action**

17 **Unjust Enrichment**

18 (Against Defendant CITY and DOES 1-50)

19 103. Plaintiffs hereby incorporate by reference all preceding and succeeding paragraphs of this
20 Complaint as though fully set forth herein.

21 104. Unjust enrichment is the receipt of a benefit and unjust retention of the benefit at the expense
22 of another.

23 105. By inducing Plaintiffs to execute its settlement/rental agreement, or by evicting Plaintiffs
24 from the mobilehome park, the CITY benefited by denying Plaintiffs' ability to receive lawful
25 compensation and relocation benefits that the CITY owed under the MRL and other statutes and
26 codes. The CITY further benefited by denying said Plaintiffs inclusion in the *De Anza Cove* class
27 action case, further delaying their right to recover the monies and benefits owed to them. The CITY
28 had continued to unjustly retain Plaintiffs' benefits.

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(b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult. (c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult. (See Welf. & Inst. Code § 15610.30.)

109. Many of the Plaintiffs herein are elderly or dependent adults. As generally described herein (see, e.g., ¶¶ 26-39), the CITY and Does 1-50 made affirmative misrepresentations of material facts to Plaintiffs, suppressed and concealed material facts from Plaintiffs, and took, secreted, appropriated, or retained the real or personal property of these Plaintiffs for a wrongful use or with an intent to defraud, or with undue influence. The CITY directly and proximately induced Plaintiffs to sign the CITY’s rental/settlement agreement, an exemplar of which is attached as Exhibit 1, and to suffer injuries and damages, which include, but are not limited to, general and special damages, consequential and compensatory damages, and other damages according to proof, attorneys’ fees and costs, prejudgment interest, as well as all other forms of relief allowed by law. Plaintiffs further seek rescission of the settlement/rental agreements and complete relief, including restitution of benefits, as a result of the transaction and any consequential damages to which Plaintiffs are entitled and/or compensatory damages which justice may require.

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1 **Seventh Cause of Action**

2 **Violation of the Mobilehome Residency Law**

3 **(Park Closure & Relocation Provisions)**

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

5 (Against Defendant CITY and DOES 1-50)

6 110. Plaintiffs hereby incorporate by reference all preceding and succeeding paragraphs of this
7 Complaint as though fully set forth herein.

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

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

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

1 “at the same time as the notice of the change is provided to the residents pursuant to paragraph (2) of
2 subdivision (f) of Section 798.56 of the Civil Code.” (Gov’t Code § 65863.7(b)-(c).)

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

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

24 116. In addition to the protections afforded mobilehome owners and residents as described above,
25 the Mobilehome Residency Law mandates the timing, content, form, and manner of service of notices
26 to mobilehome owners before any lawful termination of the tenancy (or refusal to extend the tenancy)
27 can occur or any eviction process can be instituted. (*See, e.g.*, Civ. Code § 798.56(g), Gov’t Code
28 §§ 65863.7, 65863.8.)

1 117. Moreover, the statutory protections mandated by the State Legislature cannot be waived by
2 the Park's homeowners and residents, by contract or otherwise. (*E.g.*, Civ. Code §§ 798.19, 798.77.)
3 These provisions, in particular, play a pivotal role in this litigation.

4 118. Furthermore, under Government Code § 65863.7(i), after reviewing the Tenant Impact
5 Report, *and prior to even initiating park closure*, the CITY had a mandatory duty to mitigate the
6 hardship of park closure by providing relocation assistance, utilizing the Tenant Impact Report as an
7 objective benchmark for the proper amount of compensation to Plaintiffs.

8 119. As generally described herein (see, e.g., ¶¶ 26-39), the CITY and DOES 1-50 violated the
9 Mobilehome Residency Law and related sections by, among other things:

- 10 • failing to provide an authorized reason under Civil Code section 798.56 for the
11 termination of the Park residents' tenancy;
- 12 • failing to timely and properly serve written notices as required by the
13 Mobilehome Residency Law that provide an authorized reason under Civil
14 Code section 798.56 for the termination of the Park residents' tenancy;
- 15 • failing and refusing to timely prepare a mandatory Tenant Impact Report
16 before initiating park closure that would have, among other things, addressed
17 the availability and paucity of adequate replacement housing in other
18 mobilehome parks and appropriate relocation costs;
- 19 • failing and refusing to timely file the required Tenant Impact Report with the
20 local legislative body or its advisory agency;
- 21 • failing and refusing to provide a timely a copy of the Tenant Impact Report to
22 every resident and homeowner at De Anza Cove;
- 23 • failing and refusing to timely provide a public hearing before the legislative
24 body on the sufficiency of the Tenant Impact Report prior to initiating park
25 closure;
- 26 • failing and refusing to take adequate steps to timely mitigate any adverse
27 impact of park closure on the ability of displaced mobilehome park residents
28 to find adequate housing in another mobilehome park or elsewhere;

- 1 • failing to serve timely notices that comply with the timing, content, form,
2 and/or manner of service required by the Mobilehome Residency Law and
3 other statutes;
- 4 • failing to serve notices on the legal owners and all junior lien-holders of all
5 Park mobilehomes that comply with the timing, content, form, and/or manner
6 of service required by the Mobilehome Residency Law and other statutes; and
- 7 • pressuring Plaintiffs to sign settlement/rental agreements under threat of
8 eviction and based on false information (*i.e.* “You have no legal right to
9 relocation benefits.”)—agreements that purport to waive all statutory rights.

10 120. To prevent the CITY and DOES 1-50 from committing further violations of the various
11 provisions of the Mobilehome Residency Law (Civ. Code §§ 798 *et seq.*, Gov’t Code § 65863.7),
12 Plaintiffs have and may seek further injunctive relief ordering Defendants, among other things, to:

- 13 • stop any attempt to threaten or institute any Unlawful Detainer or other eviction
14 proceeding or legal process against Plaintiffs herein, who are current and former
15 homeowners and residents of the Park, located at 2727 De Anza Road, San
16 Diego, California, until the time that the factual and legal issues alleged herein
17 reach a final judicial determination;
- 18 • stop any attempt to cease, discontinue, or decrease the level of any services,
19 maintenance, common area access, and security provided to the Plaintiff
20 homeowners and residents of the Park; and
- 21 • comply in full with the Mobilehome Residency Law—including but not limited
22 to payment of full mitigation to Plaintiffs before taking any further steps to close
23 the Park or evict any residents.

24 121. As a further result of CITY’s (and DOES 1-50) violations of the various provisions of the
25 Mobilehome Residency Law (Civ. Code §§ 798 *et seq.*, Gov’t Code § 65863.7), Plaintiffs suffered
26 injuries and damages, which include, but are not limited to, general and special damages,
27 consequential and compensatory damages, and other damages according to proof, to recover its
28 attorneys’ fees and costs pursuant to Civil Code section 798.85 and as otherwise allowed by law,

1 prejudgment interest, as well as all other forms of relief allowed by law. Moreover, due to
2 Defendants' willful violations, Plaintiffs seek statutory penalties under Civil Code section 798.86 of
3 \$2,000 for *each* separate violation committed by the CITY and DOES 1-50 as to *each* of the
4 Plaintiffs. Plaintiffs also seek a declaration by the Court that the settlement/rental agreements are
5 null and void.

6
7 **Eighth Cause of Action**

8 **Violation of the Mello Act**

9 (Gov't Code §§ 65590 et seq.)

10 (Against Defendant CITY and DOES 1-50)

11 122. Plaintiffs hereby incorporate by reference all preceding and succeeding paragraphs of this
12 Complaint as though fully set forth herein.

13 123. The Mello Act prohibits the conversion or demolition of dwelling units occupied by persons
14 and families of low or moderate income within a coastal zone *unless* local government has provided
15 replacement dwelling units within the coastal zone of the same city or county as the converted or
16 demolished dwelling units. "Conversion" means a change of a residential dwelling, including a
17 mobilehome...or a mobilehome lot in a mobilehome park...to a nonresidential use." (Gov't Code §
18 65590(g)(1).) "Demolition" means the demolition of a residential dwelling, including a
19 mobilehome...or a mobilehome lot in a mobilehome park." (Gov't Code § 65590(g)(2).) If
20 replacement housing is not feasible within the coastal zone of the same city or county, then the local
21 government must provide replacement dwelling units within three miles of the coastal zone. (Gov't
22 Code § 65590(b).)

23 124. The Mello Act requires that all local governments comply with its requirements.
24 (Gov't Code § 65590(a).)

25 125. Here, before the CITY can evict the Park's residents, convert the Park to another use—such
26 as parkland or a hotel development—or otherwise take any further steps to close the Park, the CITY
27 must, among other things, evaluate the feasibility of replacement housing, taking into account
28 "economic, environmental, social, and technical factors" to determine whether adequate replacement

1 housing can be “accomplished in a successful manner within a reasonable period of time.” (Gov’t
2 Code § 65590(g)(3).)

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

7 127. Plaintiffs allege that, among other things, CITY and DOES 1-50:

- 8 • failed to make a threshold determination whether the residential units to be
9 converted or demolished—or those units already removed—have been
10 occupied by low or moderate-income persons;
- 11 • failed to make factual findings to determine whether the proposed new use for
12 the Park is “coastal dependent” or “coastal related”;
- 13 • failed to complete a feasibility analysis as required by the Mello Act;
- 14 • failed to identify and/or provide replacement dwelling units within the coastal
15 zone in the City of San Diego or County of San Diego;
- 16 • failed to provide replacement dwelling units within three miles of the coastal
17 zone in the City of San Diego or County of San Diego;
- 18 • failed to provide a fee payment procedure in lieu of providing replacement
19 dwellings; and
- 20 • failed to reconcile the future displacement of over 1,100 De Anza residents with
21 the State of Emergency declared by the City due to the critical shortage of low-
22 income housing within the City.

23 128. As these determinations are a mandatory condition precedent to allowing the destruction
24 and/or removal of low to moderate-income housing in a coastal zone, Plaintiffs may seek further
25 injunctive relief to:

- 26 • stop any attempt to threaten or institute any Unlawful Detainer, eviction
27 proceeding, or other legal action or procedure against Plaintiffs, the current or
28 former owners or residents of the Park, located at 2727 De Anza Road, San

1 Diego, California, until the time that the factual and legal issues alleged herein
2 reach a final judicial determination;

- 3 • stop any attempt to cease, discontinue, or decrease the level of any services,
4 maintenance, common area access, and security provided to the owners and
5 residents of the Park; and
- 6 • compel the CITY to comply in full with the provisions of the Mello Act
7 pursuant to Government Code §§ 65590 *et seq.* before taking any further steps
8 to close the Park or evict any residents or homeowners.

9 129. In addition, the CITY's breach of these mandatory duties proximately caused Plaintiffs to
10 suffer injuries and damages, which include, but are not limited to, general and special damages,
11 consequential and compensatory damages, and other damages according to proof, attorneys' fees and
12 costs, prejudgment interest, as well as all other forms of relief allowed by law.

13 14 **Ninth Cause of Action**

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

16 (Violation of Gov't Code §§ 815 *et seq.*)

17 (Against Defendant CITY and DOES 1-50)

18 130. Plaintiffs hereby incorporate by reference all preceding and succeeding paragraphs of this
19 Complaint as though fully set forth herein.

20 131. CITY and DOES 1-50 were under a mandatory duty to comply with the Mobilehome
21 Residency Law, the Mello Act, and the California Relocation Assistance Law—specifically, Civil
22 Code §§ 798 *et seq.*, Government Code §§ 7260 *et seq.*, 65590 *et seq.*, 65863.7, and 65863.8. The
23 language of these enactments explicitly require that particular action be taken or not taken.

24 132. The injuries and damages claimed by Plaintiffs are among the adverse consequences that the
25 Legislature sought to prevent by imposing these mandatory duties.

26 133. Defendants' breach of these mandatory duties proximately caused Plaintiffs to suffer injuries
27 and damages, which include, but are not limited to, general and special damages, consequential and
28 compensatory damages, and other damages according to proof, attorneys' fees and costs,

1 prejudgment interest, as well as all other forms of relief allowed by law as well as all forms of relief
2 provided for in Government Code sections 815 *et seq.*

3
4 **Tenth Cause of Action**

5 **Inverse Condemnation**

6 **(Regulatory Taking)**

7 (Against Defendant CITY and DOES 1-50)

8 134. Plaintiffs hereby incorporate by reference all preceding and succeeding paragraphs of this
9 Complaint as though fully set forth herein.

10 135. At all relevant times, Plaintiffs owned personal property located at 2727 De Anza Road,
11 including but not limited to their mobilehomes, appurtenances, improvements, and landscaping.

12 136. CITY and DOES 1-50 have, through their actions, inactions, concealment and
13 misrepresentations, caused a taking without just compensation of Plaintiffs' personal property,
14 including but not limited to their mobilehomes, appurtenances, improvements, and landscaping.
15 Plaintiffs have been, or imminently will be, deprived of essentially all economically viable use of
16 their property and all market value of their property. Plaintiffs have not received full compensation
17 for the damage and/or resultant destruction of their property. As a proximate result, Plaintiffs
18 suffered injuries and damages, which include, but are not limited to, general and special damages,
19 consequential and compensatory damages, and other damages according to proof, attorneys' fees and
20 costs, prejudgment interest, as well as all other forms of relief allowed by law.

21 137. Plaintiffs have incurred and will incur attorneys' fees, mobilehome and real estate appraisal
22 fees, engineering fees, and other types of investigative and expert consulting fees because of this
23 proceeding and which are recoverable against Defendants under Code of Civil Procedure section
24 1036.

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Eleventh Cause of Action

Violation of the California Relocation Assistance Law

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

(Against Defendant CITY and DOES 1-50)

138. Plaintiffs hereby incorporate by reference all preceding and succeeding paragraphs of this Complaint as though fully set forth herein.

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

140. The CITY and DOES 1-50 have failed to comply with the requirements of Government Code sections 7260 *et seq.* Despite threatening to evict Park residents and thereby displace those residents, and turn the Park into a different use, and taking steps to do so, the CITY has not provided Plaintiffs with the payments required by Government Code Section 7260 *et seq.*

141. As a result, Plaintiffs have directly and proximately suffered injuries and damages, which include, but are not limited to, general and special damages, consequential and compensatory damages, and other damages according to proof, attorneys’ fees and costs, prejudgment interest, as well as all other forms of relief allowed by law.

Twelfth Cause of Action

Violation of the California Constitution

(Against Defendant CITY and DOES 1-50)

142. Plaintiffs hereby incorporate by reference all preceding and succeeding paragraphs of this Complaint as though fully set forth herein. As pleaded below, Defendants have violated the California Constitution by violating the Equal Protection clause, the Due Process clause, and the State Preemption doctrine.

1 **Equal Protection**

2 143. As alleged in this Complaint, CITY and DOES 1-50 have acted under color of law to
3 deprive, and continue to deprive, Plaintiffs of their right to equal protection of the laws—as secured
4 by Article I, Section 7(a), of the California Constitution—by discriminating against Plaintiffs in the
5 CITY’s application of the laws of the State of California and the municipal ordinances of the CITY
6 of San Diego.

7 144. CITY and DOES 1-50 have violated fundamental rights of Plaintiffs by attempting—
8 through adoption of local ordinances, resolutions, and policies—to exempt the CITY from mandatory
9 obligations created by State and municipal law for the specific benefit and protection of these Plaintiff
10 mobilehome owners and residents.

11 145. Moreover, San Diego Municipal Code section 143.0610 (the Mobilehome Overlay Zone)
12 was enacted to minimize “the adverse impact on the housing supply . . . by providing certain rights
13 and benefits to tenants and by requiring tenant relocation assistance whenever an existing
14 mobilehome park or portion thereof is converted to another use.” S.D.M.C. § 143.0610. This
15 provision furthers the CITY’s stated goal to safeguard the existing housing stock, particularly low-
16 income housing.

17 146. However, to this specific provision, the CITY added subsection 143.0615(b)—which
18 expressly singles out and excludes the De Anza Cove mobilehome park from the CITY’s
19 Mobilehome Overlay Zone—thereby completely depriving Plaintiffs from the benefits of S.D.M.C.
20 §143.0610, benefits enjoyed by all other residents of all other mobilehome parks located within the
21 CITY’s designated Mobilehome Overlay Zone. The CITY then further adopted a Housing
22 Commission Policy that was aimed to deny Plaintiffs their right to compensation and relocation
23 benefits stemming from the loss of the value of their homes at time of Park closure.

24 147. CITY and DOES 1-50 have discriminated against the impoverished, disabled, and elderly,
25 and all other Plaintiffs who are denied relocation assistance under State law and under the challenged
26 municipal ordinance and policy. As certain Plaintiffs belong to one or more suspect classes in the
27 context of constitutional analysis, the CITY’s actions and challenged municipal ordinance should be
28 subject to the “strict scrutiny” standard of review. Alternatively, even in the absence of a suspect

1 class, the challenged ordinance unlawfully favors mobilehome residents residing at every other San
2 Diego mobilehome park subject to closure by providing benefits and protections that the CITY and
3 DOES 1-50 have deliberately denied to Plaintiffs, which results in either “intermediate scrutiny” or
4 rational basis” standard of review of the ordinance and policy.

5 **Due Process**

6 148. CITY and DOES 1-50 have acted under color of law to unfairly deprive, and continue to
7 deprive, Plaintiffs of their fundamental property rights without procedural and substantive due
8 process in violation of the Due Process clause of the California Constitution (Article I, Section 7(a)).

9 149. CITY and DOES 1-50 have violated fundamental rights of Plaintiffs by attempting—
10 through adoption of local ordinances, resolutions, and policies—to exempt the CITY from mandatory
11 obligations created by State and municipal law for the specific benefit and protection of mobilehome
12 owners and residents.

13 150. Further, the CITY’s actions—specifically, its enactment and application of Municipal Code
14 section 143.0615(b)—are constitutionally invalid because the CITY cannot show either a compelling
15 state interest or that less burdensome means do not exist for carrying out the CITY’s intent to provide
16 protection for fundamental property rights and relocation benefits under State law and municipal
17 ordinance for all mobilehome residents within the CITY, with the exception of those residing at De
18 Anza Cove.

19 **State Preemption**

20 151. In addition, Municipal Code section 143.0615(b) and the CITY’s Housing Commission
21 policy is preempted by State law because the State Legislature has fully occupied the area of
22 mobilehome-park closure and established the minimum standards for mitigating the harms caused by
23 mobilehome-park closure through its enactment and amendments to the Mobilehome Residency Law
24 and related statutes, such as the California Relocation Assistance Law.

25 152. As a result of the CITY’s violations of the Constitution under the Equal Protection clause,
26 Due Process clause, and State Preemption doctrine, Plaintiffs seek declaratory relief stating that San
27 Diego Municipal Code section 143.0615(b) and its related Housing Commission Policy is
28 unconstitutional and unenforceable. Plaintiffs have suffered injuries and damages as a direct and

1 proximate result of the CITY's violations of the Constitution, which includes, but is not limited to,
2 all applicable relocation benefits, as well as general and special damages, consequential and
3 compensatory damages, and other damages according to proof, attorneys' fees and costs,
4 prejudgment interest, as well as all other forms of relief allowed by law.

5 6 **Thirteenth Cause of Action**

7 **Declaratory Relief**

8 (Against Defendant CITY and DOES 1-50)

9 153. Plaintiffs hereby incorporate by reference all preceding and succeeding paragraphs of this
10 Complaint as though fully set forth herein.

11 154. Code of Civil Procedure §§ 1060-1062.5 governs the circumstances under which action for
12 declaratory relief can be brought. An actual controversy exists related to the CITY's rental/settlement
13 agreement, an exemplar of which is attached herewith as Exhibit 1, and the legal rights and
14 obligations of Plaintiffs and Defendant CITY and Does 1-50.

15 155. Plaintiffs seeking declaratory relief have standing since they face imminent injury such that
16 all relevant facts and issues can be adequately presented and Plaintiffs have the necessity for such
17 relief now. A declaration of this court is necessary or proper at this time and under the existing
18 circumstances, among other reasons, because: (a) Plaintiffs herein have been excluded from the *De*
19 *Anza Cove* class action case, case no. GIC 821191, by reason of signing a settlement/rental agreement
20 or by reason of eviction from the Park; (b) Plaintiffs' homes have been destroyed or will be destroyed
21 and relocation benefits have been owed by the CITY to Plaintiffs dating back to no later than
22 November 23, 2003; (c) Plaintiffs herein who were evicted from the Park have received no relocation
23 benefits whatsoever and have lost their homes at the Park; (d) Plaintiffs need finality and a
24 determination of whether the CITY's settlement/rental agreements are enforceable.

25 156. Accordingly, Plaintiffs seek the following declarations from the Court:

- 26 a. The CITY's settlement/rental agreement with Plaintiffs is void and
27 unenforceable;

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- 1 b. The provisions of the Mobilehome Residency Law cannot be waived by
2 contract and that any such waiver language contained in the
3 settlement/rental agreement between the CITY and Plaintiffs is null and
4 void as against public policy and State law;
- 5 c. The CITY unlawfully withheld statutory relocation benefits to those
6 Plaintiff homeowners and residents of the Park who were evicted after the
7 November 23, 2003 park-closure date;
- 8 d. The CITY was and continues to be under a mandatory duty to comply
9 with all provisions of the Mobilehome Residency Law at the Park;
- 10 e. The CITY was and continues to be under a mandatory duty to comply
11 with all provisions of the California Relocation Assistance Law regarding
12 the CITY's attempts to close the Park;
- 13 f. The CITY was and continues to be under a mandatory duty to comply
14 with all provisions of the Mello Act regarding the CITY's attempts to
15 close the Park;
- 16 g. Plaintiffs are entitled to statutory relocation benefits and damages from
17 the CITY under the Mobilehome Residency Law;
- 18 h. Plaintiffs are entitled to statutory relocation benefits and damages from
19 the CITY under the California Relocation Assistance Law;
- 20 i. Plaintiffs are entitled to statutory relocation benefits and damages from
21 the CITY under the Mello Act;
- 22 j. The CITY's Municipal Code section 143.0615(b) is unconstitutional;
- 23 k. The CITY's Housing Policy is unconstitutional.

24
25 **Prayer**

26 Plaintiffs pray for judgment against Defendants as follows:

27 157. For rescission of the CITY's rental/settlement agreements with Plaintiffs—an exemplar
28 of which is attached as Exhibit 1—based on: mistake of fact, mistake of law, undue influence,

1 economic duress, unconscionability, fraud, illegality, contract against public policy, and lack of
2 capacity.

3 158. For all lawful remedies and damages allowed by law and equity as a result of the
4 rescission. (See Civil Code §§ 1670.5, 1689, 1692.)

5 159. For general, special, compensatory, consequential, and incidental damages, according to
6 proof;

7 160. For statutory damages under Civil Code section 798.86 of \$2,000 for *each* separate
8 violation of the Mobilehome Residency Law committed by the CITY and/or its agents as to *each*
9 Plaintiff.

10 161. For restitution and disgorgement of all profits earned by CITY and DOES 1-50 from the
11 operation of the Park from November 24, 2003 until a final judicial decision is reached herein;

12 162. Plaintiffs have and may seek further injunctive relief ordering Defendants, among other
13 things, to:

- 14 • stop any attempt to threaten or institute any Unlawful Detainer or other eviction
15 proceeding or legal process against Plaintiffs herein, who are current and former
16 homeowners and residents of the Park, located at 2727 De Anza Road, San
17 Diego, California, until the time that the factual and legal issues alleged herein
18 reach a final judicial determination;
- 19 • stop any attempt to cease, discontinue, or decrease the level of any services,
20 maintenance, common area access, and security provided to the Plaintiff
21 homeowners and residents of the Park; and
- 22 • comply in full with California law—the Mello Act, the Mobilehome Residency
23 Law, and the California Relocation Assistance Law and provide full statutory
24 compensation—before taking any further steps to close the Park or initiating
25 evictions of any Plaintiffs.

26 163. For declaratory relief, namely declarations from the Court that:

- 27 a. The CITY's settlement/rental agreement with Plaintiffs is void and
28 unenforceable;

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- b. The provisions of the Mobilehome Residency Law cannot be waived by contract and that any such waiver language contained in the settlement/rental agreement between the CITY and Plaintiffs is null and void as against public policy and State law;
- c. The CITY unlawfully withheld statutory relocation benefits to those Plaintiff homeowners and residents of the Park who were evicted after the November 23, 2003 park-closure date;
- d. The CITY was and continues to be under a mandatory duty to comply with all provisions of the Mobilehome Residency Law at the Park;
- e. The CITY was and continues to be under a mandatory duty to comply with all provisions of the California Relocation Assistance Law regarding the CITY's attempts to close the Park;
- f. The CITY was and continues to be under a mandatory duty to comply with all provisions of the Mello Act regarding the CITY's attempts to close the Park;
- g. Plaintiffs are entitled to statutory relocation benefits and damages from the CITY under the Mobilehome Residency Law;
- h. Plaintiffs are entitled to statutory relocation benefits and damages from the CITY under the California Relocation Assistance Law;
- i. Plaintiffs are entitled to statutory relocation benefits and damages from the CITY under the Mello Act;
- j. The CITY's Municipal Code section 143.0615(b) is unconstitutional; and
- k. The CITY's Housing Policy is unconstitutional.

- 164. For attorneys' fees and costs incurred herein according to proof;
- 165. For other fees and costs of suit incurred herein;
- 166. For prejudgment interest on all applicable monetary amounts at the maximum legally permissible rate; and

///

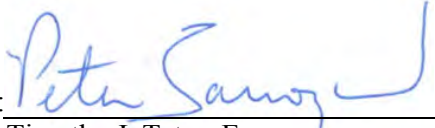
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167. For such other and further relief as the court may deem just and proper.

DATE: January 6, 2015

Respectfully Submitted,

TATRO & ZAMOYSKI, LLP

By: 

Timothy J. Tatro, Esq.
Peter A. Zamoyski, Esq.
Attorneys for Plaintiffs

Exhibit 1

the addresses and
DeAnza Harbor Resort & Golf, LLC ("DHRG")

the Sublease, and as more fully set forth therein, Residents of DeAnza Road, Space No. K-026, San Diego, California, and the Property upon which the Premises are located ("the Park") on November 23, 2003.

The Sublease expires on November 23, 2003. As a result of the expiration of the Sublease and DHRG and the expiration of the Sublease, Residents must vacate the Park on or before November 23, 2003. Residents under the Sublease and the Sublease, the Mobilehome Residents' Ordinance 798, *et seq.*, will no longer govern Residents' occupancy of the Park on November 24, 2003, and to restore the Park to park and recreational use (including the removal of all of the occupants of mobilehomes, including mobilehomes).

On the Plan, City filed a complaint for unlawful detainer in the courts permitted, against Residents in order to repossess the certain matter known as City of San Diego v. Accolli, an individual filed in the Superior Court for the County of San Diego ("Action"). as Case No. _____ ("Action").

nt shall depart the premises on or before April 25,

before the first day of December 2003, and continue for one month until the Departure Date, Residents shall pay C (\$562.91) and all charges for electric, gas, water, sewer, storage charges and late charges) incurred by Residents shall insure Residents' mobilehome and personal property due to fire, until such time as Residents' mobilehome is removed from the Premises. **There will be no rent increases.**

before the Departure Date, Residents shall remove all related improvements, including, but not limited to, the like from the Premises. The Premises shall be left in good condition and not damaged or cause any damage to occur to park property. Residents shall coordinate all removal efforts with the City and shall assume full responsibility for any outstanding debts and shall fully indemnify and hold City harmless.

City, in its sole discretion, determines that Residents and the City will receive assistance removing Residents' mobilehome and shall execute all documents necessary to transfer ownership and title of the mobilehome and shall release all liens and encumbrances.

Residents' obligations set forth in Paragraphs 2.a. through 2.d. herein as the "Settlement Obligations."

In the event that Residents fail to perform any of the Settlement Obligations set forth under this Settlement Agreement or the Stipulation, City reserves the right to enforce the Stipulation in the San Diego Superior Court and to seek entry of the Judgment against Residents upon the finding that Residents defaulted in their obligations. Residents warrant that the provisions contained in this Settlement Agreement, the Stipulation, and the Judgment shall not be used to limit City's right to seek and obtain a reward for the recovery of its costs upon Residents' default.

Documents/Unenforceability. City and Residents warrant that all documents and agreements that are consistent with this Settlement Agreement shall have full effect to the rights and benefits that each party is entitled to upon performance of each party's obligations under this Settlement Agreement. Notwithstanding the foregoing, City does not, for any reason (including, but not limited to, the effect of any other third-party intervention) receive the right to enforce the Settlement Obligations under this Settlement Agreement, including, without limitation, the right to enforce any one or more provisions of this Settlement Agreement, if Residents do not fully and timely perform the Settlement Obligations. City shall not bring any similar action against Residents. If City is precluded from bringing an action by a court order, regulatory agency or other third-party, City shall have no recourse against City for any damages or costs incurred in an effort to enforce any of the terms of this Settlement Agreement.

...y for the full and proper enforcement of the provis
themselves, individually and collectively, and for e
gents, assigns, attorneys, directors, employees, exc
partners, predecessors, representatives, servants, sha
ts, transferees, trustees and underwriters, now and
under or in concert with one or more of them, hereb
pective past, present and future administrators, aff
officials, employees, executors, heirs, insurers, man
representatives, servants, shareholders, subsidiaries,
and all persons acting by, through, under or in conce
ner of actions, liabilities, liens, debts, damages, suits,
kind, nature and/or description, whether known or un
ed to, or in any way connected with the Action, (C
ement or otherwise related to Residents' occupan
Residents' Released Claims”).

Release by City. Provided that Residents fully r
bove, in the time and manner required herein, a
Settlement Agreement, and as necessary for the full
Settlement Agreement, City, for itself, and for
gents, assigns, attorneys, directors, elected officials
officers, partners, predecessors, representatives,
interest, transferees, trustees and underwriters, now
under or in concert with one or more of them, hereb
Residents' respective past, present and future adminis

Civil Code Section 1542. The undersigned, and each of
of Civil Code section 1542 and declare that they
currently know nothing about and that, as to them, they
m, also declare they understand that the Parties they
their respective claims if this Settlement Agreement
not yet have manifested themselves or may be unknown

Initial

REPRESENTATIONS AND WARRANTIES

of Compromised Claims; Representations and Warranties
as of the Effective Date hereof, they alone are the
they are authorized to enter into this Settlement Agreement
or transferred, nor purported to assign or transfer,
other matters covered by this Settlement Agreement
of them, represent and warrant that, as of the Effective
them is the owner of any of Residents' Released Claims
is authorized to enter into this Settlement Agreement
ed or transferred, or purported to assign or transfer,
Claims or City's Released Claims.

Warranty. The Parties represent and warrant that, except
Date hereof, none of the claims, rights, or other

... interest whatsoever. ...
gain or expand a possessory or other interest of any nature
without the express prior written consent of the City Manager
at the City Manager's sole and absolute discretion. Residents agree
to indemnify and hold the City harmless from any and all damages, claims, actions of any nature
or liability, including reasonable attorney's fees, arising out of or
resulting from any warranty or default under this provision.

Law, Jurisdiction, Attorneys' Fees. This Settlement Agreement shall be governed by the laws of the State of California. In the event of any litigation arising out of this Settlement Agreement, the parties have agreed, and each of them, consent to jurisdiction and venue to be conducted in the Superior Court of the State of California in the County of ... of any such Proceeding or any dispute between the Parties. In the event of (a) interpretation, (b) legal effect or (c) enforcement of this Settlement Agreement or other documents, the prevailing party shall be entitled to reasonable attorney's fees, and all other costs of litigation incurred in connection with such other relief as may be deemed appropriate by the court.

Interest Tax. Residents recognize and agree that the interest subject to property taxation, and that Residents shall pay all such interest, and that Residents shall pay all such taxes, fees and assessments without payment for such taxes, fees and assessments will be levied by the City hereunder.

uments supersede and replace any and all pre-
relating to the subject matter hereof, whether oral
Agreement and other documents shall not be miscon-
ty on the part of any person, firm, partnership, corp-
and other documents constitutes the settlement of cla-
further understand, acknowledge and agree that th-
nor intended to induce or require any future bu-
d Residents.

No provision of this Settlement Agreement or of
changed, waived, amended, discharged or terminat-
of the Parties which expressly refers to the provisio-
changed, waived, amended, discharged or terminated

Each individual whose signature appears below
actual authority to enter into this Settlement Agreement
individuals on whose behalf he or she signs this Set-
so to the fullest extent of his or her authority, wh-
r, partner, joint venturer or otherwise. Residents agr-
n any and all damages, claims, actions of any nature
arranty or default under this provision.

If any non-material portion of this Settlement
enforceable by any court of competent jurisdiction, th-
ler of this Settlement Agreement and other docume-

quences hereof, and are freely and voluntarily entered into; (c) that this Settlement Agreement and other documents are intended to give effect to the intent expressed in the documents referred to herein and to their fair meaning and that it and the other documents shall not be construed against any of the Parties hereto; (d) that the Parties shall be bound by the terms of the documents with regard to the preparation, review, negotiation and execution of the documents and (e) captions in this Settlement Agreement shall not be construed to only and do not define, describe or limit the scope of the settlement. Each party hereto further agrees that the Parties shall understand and agree to the settlement and the transactions described herein during the periods described herein.

CITY OF SAN DIEGO, a municipal corporation

By:

Name: William T. Griffith

Title: Real Estate Assets Director

RESIDENT

By:

James C. Smith

RESIDENT

CENTRAL DIVISION

IEGO,

Plaintiff,

CIOLLI, an individual,
GIACCOLLI, an
OES 1 through 25,

Defendants.

CASE NO. _____

STIPULATION FOR
JUDGMENT FOR
MONEY; ORDER T

CASE FILED: 11/
DEPT:
IC JUDGE:
TRIAL DATE: No

City of San Diego ("City"), on the one hand, and de
laciolli ("Residents"), on the other hand, hereby e
ent for Possession and Money and Order Thereon ("
facts:

AS, Residents are the sublessees under that certain I
hereof between DeAnza Harbor Resort & Golf, LLC

es the orderly departure of all of the occupants

Plan also requires removal of the mobilehomes.

AS, as part of the Plan, City filed a complaint

003, or as soon thereafter as the courts permitted, a

on of the Premises and damages in that certain m

C. Giaccioli, an individual, and Leslie D. Giaccoll

for the State of California, County of San I

_____ (“Action”).

AS, the Parties have consulted with their respec

visors regarding the Sublease, the Plan, the rights a

ntemplated herein. It is the expressed desire of the P

AS, in order to facilitate the settlement of all claim

out of or in connection with Residents' term of occ

gree to execute this Stipulation.

Residents shall vacate the Premises on or before the
1st day of December 2003, or on the 1st day of each month until the Departure Date, Re-
sidents shall pay to the Landlord Two and 91/100ths Dollars (\$562.91) and all charges and
fees (including, but not limited to, storage charges) while Residents occupy the Premises. There shall be no
warranty of habitability for Residents' mobilehome and personal property against
the Landlord, until such time as Residents' mobilehome and personal property are removed from the
Premises.

On or before the Departure Date, Residents shall remove from the Premises Residents' mobilehome and all related improvements, including, but not limited to, hardscape, landscaping and the like from the Premises in
good and workable condition. Residents shall not damage or cause damage to the Premises, including, but not limited to, the utilities. Residents

Agreement and Stipulation will be of full force and effect. (i) City shall file the Stipulation with the Court and (ii) City shall file the Stipulation with the Court.

Any payment due from Residents under this Stipulation shall be paid prior to the due date for such payment with interest.

Residents shall at all times in the occupancy of the Property comply with all laws, ordinances, rules, regulations, as may be amended from time to time for the purpose of enforcing the laws, ordinances, rules, and regulations of City, county, state, and federal government. In addition, Residents shall comply with any order or judgment of the Court or his authorized representative under the authority of this Stipulation.

Residents' obligations set forth in Paragraphs 1 through 10 are referred to herein as the "**Settlement Obligations.**"

In the event that Residents fail to perform any of the Settlement Obligations required under this Stipulation or the Settlement Agreement, the City shall

m and content of this Stipulation.

the event all obligations as called for in paragraph
above, are timely performed, City shall deliver to F
sal of this Action in its entirety with prejudice.

is further stipulated and agreed that no appeal
d under this Stipulation, nor shall Residents be e
of Civil Procedure section 1174(c) or California

Residents stipulate and represent that, except as set fo
ying the Premises and that no other person(s) or e
ory, occupancy or any other interest whatsoever in th

is further stipulated and agreed by and between C
any and all rights including, but not limited to, rec
s default in the obligations called for above, and Judge

Resident

CITY OF SAN DIEGO

By: 

Name: William T. G

Title: Real Estate A

ERED.

JUDGE OF THE SUP

DIEGO,

Plaintiff,

GIACIOLLI, an individual,
GIACCOLLI, an
DOES 1 through 25,

Defendants.

CASE NO. _____

**JUDGMENT FOR
MONEY PURSUANT
FOR ENTRY OF J**

CASE FILED: 11
DEPT:
CLERK JUDGE:
TRIAL DATE: No

above-entitled cause, Plaintiff City of San Diego (City) vs. Leslie D. Giaciolli and Leslie D. Giaciolli ("Residents"), having been reviewed by counsel for Plaintiff, and such declaration by counsel for Plaintiff, and such declaration reviewed by the Court:

ORDERED AND ADJUDGED THAT:

Plaintiff have and recover from Residents and all

Exhibit 2

Individually-named Plaintiffs

Space	Name
A01	Carstensen, James
A02	Trapp, Ronald
A03	Qualls, William D.(Estate of); Marilyn Qualls
A07	Arnold, Joan Ransone, Ingrid, Richard, & Sharon
A10	Kelly, Richard & Tara & Jennifer
A13	Anderson, Ella & Grace
A18	Bornt, Joann
A19	Billick, Brian D.
A21	Hayden, Michael & Hayden-Sato Hisako
A22	Benderman, David & Denise; minors Holly & Kelly
A24/26	Henderson, S. Douglas (Estate of) by and through Janice I. Henderson; Jesse C. Henderson, and Summer Shepherd (a minor) **
A25	Vikinniemi, Heikki; Elo, Sarianni
A27	Dederian, Elizabeth
A29	Thorpe, Tracie
A35	Harris, Franklyn
A37	Monahan Jones, Carol
A38	Bowdidge, Sheila
A40	LaRowe, Kirk
A42	Cedron-Harding, Grace
B02	Rizzo, Grace (Estate of) & Rizzo, Robert
B12/B14	Tank, Donald & Hazel

Individually-named Plaintiffs

B13	Dear, Winston
B18	Hoops, Robert, & Kathleen
B19	Peterson, Kris; Lange, Susan
B20	Norton, Kathleen
B24	Christian, Alberta & Jeanette
B28/B30	Racilis Jr., Severo, Remedios, and Edward
C03	Parker, Robert
C09/C11	Sorrell, Joy
C17	Hanula, Henrietta & David
C18	Brandes, Brandy
C19	Hay, Rosemary (Estate of) by and through Cheryl D. Dorris
C20	Phelps, Denny & Marsha
C21/C23	Ditomaso, John
D02	Cerone, Rosemary (Estate of), c/o Michelle Bloch
D04/D06	Otanez, Celeste
D07/D09	Thomas, Barbara & William (c/o Robin Newton, Trustee of the Barbara Anne Thomas Revocable Trust 8/31/1988, and c/o Kelly Dees, Administrator of the Estate of William Glenn Thomas)
D15	Taylor, Michael c/o Michael Taylor, Jr. & Tiffany Macpherson
E02	Morgan, Audrey (Estate of) *
E12	Ramfar, Asghar; Ramfar, Lisa, Trisha & Tanya
E14/E16	Aglio, Joseph(Estate of); Ostrander, Gaye
F02	Peterson, Jeffrey; Bravant-Peterson, Deborah; Peterson, Chris *
F03	Dittberner, Mary (Estate of, by Janet L. Dittberner and Joy E. Dittberner)
F04	Leimbach, Alfred & Sharon

Individually-named Plaintiffs

F11/F13	Medina-Gomez, Reyna
F12	Plank, Diane
G01	Nott, Graham & Connie
G07/G09	Dawson, Grace
G08	Smith, Sandra & VonLindern, Susan
H03	Spencer, Grace (Richard Spencer POA on behalf of)
H11	Maurer, Andrew
H13	Caperon, Raquel; Moreno, Lazaro *
H14	Mills, Ronald (Estate of); Mills, Susan; and Mills, Jennifer
H16	Stephenson, Robert
I01	Davis, Goerge
I09	Mitrano, Joanna
I15	Rushlow, Robert
I16	Kwasigroch, Tammy
I22	Fulton, Willson (Patrick Fulton for Estate)
I25	Parker, Donald; Self, Merline
J03	Kraft, Oscar & Valerie (by and through John Kraft, POA for Oscar Kraft and Estate of Valerie Kraft)
J08	Mallett, Gregory & Mark
J27	Beguelin, Elizabeth & H. Mark
J29	Church, Ray C. (Estate of); Church, Laura
K03	Starr, (Frederick) Ethel
K04	Wilson, Dolores & Terry
K07	Castaneda, Allyn & Mahalita **

Individually-named Plaintiffs

K10/K12	Sager, Elwood (Estate of--"The Sager Family Trust"); Sager, Barbara (by the Barbara E. Sager Trust)
K13	Pumphrey, Dale
K14	Miner, Nancy
K18	Hanson, John (Jean Dickson, Executrix for Estate)
K24	Bartholmew, John R.
K26	Giacioli, James & Leslie
K28	Mucerino, Mark & Lucille (Estate of)
K31	Downie, Robert & Nellie
K33	Fritz, Ivana
K34	Jewell-Loudermilk, Susan
K34 renter	Bradani-Rittenberg, Wendy (renter)
K36	Peltcher, Frank (Estate of, by Executor Lynn C. Peltcher Jr.)
L05	Gadalla, Samer & Tupito
L06	Crane-Ablin, Loucinda
L07	Pawluk, Stephen
L18	Klunder, Bonnie (Estate of, by Julie D. Gutierrez and Kelly L. Klunder)
L19	Clark, James (Estate of) & Connie (Estate of); by Executor Cheryl Clark
L20	McAleavy, Kavi P. (formally Cermak, Kavi Micah)
L26	Savelli, Joseph & Richard (Joseph Savelli Survivor Trust, Diane K. Pike and Arleen Lorraine Trustees)
L32	Prince, George (Mona Gallo for Estate) *
L36	Becker, Robert
L38	Italiano, Charles (Estate of); Italiano, Linda; Greenfield, Joyce (Wayne Greenfield as POA)
L40	Gneck, Patricia

Individually-named Plaintiffs

L41	Favale, John & Carol
L42	Hohler, David & Barbara
L43	Champagne, Dennis & Debra
L44	Turner, Ann (Gail Smith, executor of Estate)
M01	Winters, Frederic (Estate of) & Joan
M06	Disher, William
M07	Hittinger, William (Estate of, by Executrix Jane Elizabeth Hittinger)
M14	Barker, Monnie & Kai
M16	Crawford, David & Margaret (Estate of) by Trustee Leslie Crawford
M19	Jordan, Jeme (James)
M26	Covert, Vivian & P.M. (Harry Covert, executor of the Estate)
N01	Merchant, David & Christine
N10	Downie, Robert & Nellie
N16	Curtis, Reginald (Estate of, by and through Executor Robert Curtis)
NW02	Streck, Mary Ellen
NW03	Chapman, Phyllis; Champman-Perez, Michelle; Estate of Paul Perez
NW04	Duckat, Arleen
NW05	Petrucci, Robert; Estate of Ellen L. Petrucci, by POA Robert Petrucci
NW06	Kraft, Ralph
NW07	Garcia, Vedna
NW07	Garcia, Raul (no relation to Vedna)
O06	Crooks, Patricia (Estate of, by and through Patricia G. Crooks)
O07	Kennedy, Sharel (Estate of, by Lenore Nan Jorgensen)

Individually-named Plaintiffs

O11	Ranck, James & Virginia
O13	McAbee, Gary
O16	Hoskins, Myrtle; Wield, Nick
O17/O19	Herbert, Lynn
O18/O20	Michael, Carley (Estate of); Michael, Megan
O26	Hendry, Arleene (Estate of, by Executor Jackson Ordean)
O27	Courtney, Andrea
O31	Kovac, Barbra
O32	Bendrick, Mildred (Estate of) & Delbert (Estate of) by Executor Randy Bendrick)
O35	Beadle, Florence
O36	Johnson, Penne **
O37	Busk, Donald
R09	Fox, Stephen
R12	Himebaugh, John & Ella
R16	Lakin, William & Joanne
R22	Rubin, Mildred (Estate of) & Rubin, Stephen
SD09	Linstrom, Robert (Estate of) & Linstrom, Jacqueline
SD11	Paterno, Wolfgang & Nancy
SD13	Wasson, Jack & Constance
SD17	Aniban, Cesar & Kyoko
SD19	Carmichael, Pamela *
SD20	Nipnikas, Frank; Schoenwald, Anja *
SD21	Villanueva, Mark & Michele - sold and assigned to Erika Bird

Individually-named Plaintiffs

SD24	Harriet E. Longley Trust, by Trustee Barbara Kovac
SD35	Ball, Olga (Estate of) & Ball, Ted (Estate of) by Executix Carol Piehl Gooding
SD41	Anderson, Donald & Rebecca
SD50	Widdecke, James(Estate of); Widdecke, Jane (Estate of)
SD58	Buse, Courtney & Bernice
SD59	Dumelle, Barbara (Estate of) by Executor/Trustee Michelle Regan
T03	Loudermilk, Gary & Susan
T07	Sutton, Victor & Virginia
T08	Sullivan, Leonard (Estate of) by, and through Michael Sullivan and Michelle Sullivan
T09	Drittenbas, Lynn
T16	Cummings, James & Jo