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5 Attorneys for Plaintiffs DE ANZA COVE
HOMEOWNERS ASSOCIATION, INC., ETHEL
6 MURPHY, DORCAS TUROSKI, MILDRED
RUBIN, ROBERT RUFFATO, EILEEN COFER,
7 LISA BOCK, JAMES GIACOLLI, and ALL
OTHERS SIMILARLY SITUATED
8
9

F I L E D
Clerk of the Superior Court

AUG 26 2005

By: D. LIM, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN DIEGO

12 DE ANZA COVE HOMEOWNERS
13 ASSOCIATION, INC., a California non-profit
corporation;
14 ETHEL MURPHY, an individual;
DORCAS TUROSKI, an individual;
15 MILDRED RUBIN, an individual;
ROBERT RUFFATO, an individual;
16 EILEEN COFER, an individual;
LISA BOCK, an individual; and
17 JAMES GIACOLLI, an individual,
ON BEHALF OF THEMSELVES AND ALL
18 OTHERS SIMILARLY SITUATED,

19 Plaintiffs,

20 v.

21 CITY OF SAN DIEGO, a California
municipality;
22 CONCORDIA ENTERPRISES, INC., a
California corporation;
23 HAWKEYE ASSET MANAGEMENT, an
unknown business entity type which is allegedly
24 a wholly owned subsidiary of CONCORDIA
ENTERPRISES, INC.;
25 METROPOLITAN PUBLIC SAFETY, a
California corporation; and
26 DOES 1-50, inclusive,

27 Defendants.
28

Case No. GIC 821191

CLASS ACTION

**THIRD AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF, DECLARATORY
RELIEF, AND DAMAGES FOR:**

- (1) VIOLATION OF THE MOBILEHOME
RESIDENCY LAW I (PARK CLOSURE
& RELOCATION);
- (2) VIOLATION OF THE MELLO ACT;
- (3) FAILURE TO DISCHARGE A
MANDATORY DUTY;
- (4) INVERSE CONDEMNATION;
- (5) VIOLATION OF THE CALIFORNIA
RELOCATION ASSISTANCE LAW;
- (6) VIOLATION OF THE CALIFORNIA
CONSTITUTION;

- (7) VIOLATION OF THE MOBILEHOME
RESIDENCY LAW II
(ABUSE/MISMANAGEMENT CLAIMS)
- (8) NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS;
- (9) INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS;
- (10) VIOLATION OF THE UNFAIR
COMPETITION LAW (BUS. & PROF.
CODE § 17200)

[REQUEST FOR JURY TRIAL]

1 Plaintiffs, individually and on behalf of all others similarly situated, complain as follows as
2 against Defendants and each of them as specified:

3
4 **Nature of Action**

5 1. This class action is brought on behalf of the homeowners, tenants, residents, and other
6 occupants of the mobilehome park located at 2727 De Anza Road, San Diego, California (the
7 “Park”), which was formerly known as De Anza Harbor Resort mobilehome park. On or around
8 October 22, 2003, Defendant City of San Diego (“CITY”) announced to Plaintiffs and the Class
9 that it intended to close the Park. The CITY threatened imminent eviction against Plaintiffs and
10 Class members who wouldn’t waive all of their rights under the City’s Transition Plan.

11 2. Plaintiffs and the Class seek statutory and tort damages, relocation benefits, permanent
12 injunctive relief, and other remedies under California’s Mobilehome Residency Law, Mello Act,
13 and other causes of action. Before the CITY can close the Park, it must, among other things,
14 complete a Tenant Impact Report, provide full relocation assistance, and ensure adequate low-
15 income replacement housing in its coastal zone, as required by these state mandates.

16
17 **Jurisdiction and Venue**

18 3. This court has jurisdiction over this litigation, and venue is proper, because Plaintiff DE
19 ANZA COVE HOMEOWNERS ASSOCIATION is located within San Diego County, Plaintiffs
20 MURPHY, TUROSKI, RUBIN, RUFFATO, COFER, BOCK, and GIACOLLI own or reside in
21 property located in San Diego County, the alleged harm occurred in San Diego County, the Park is
22 located in San Diego County, the violations of state law occurred here in the City and County of
23 San Diego, and defendant City of San Diego is a municipal entity operating within San Diego
24 County. The relief requested is within the jurisdiction of the Court and damages exceed the
25 minimum jurisdictional requirement.

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27 ///

28 ///

Parties

1
2 4. Plaintiff DE ANZA COVE HOMEOWNERS ASSOCIATION, INC. (“HOA”), a California
3 non-profit corporation, is and at all relevant times was a corporation duly organized under the laws
4 of the State of California, and conducting business and residing in the City of San Diego, County of
5 San Diego, State of California. The HOA was formed in order to pursue and protect the legal rights
6 of its members, as well as the legal rights of the approximately 1,100 mobilehome present and
7 former owners, tenants, residents, and occupants of the approximately 509 homes within the Park,
8 and to constantly strive to concern itself with the good and welfare of its members and residents.

9 5. Plaintiff ETHEL MURPHY (“MURPHY”) is an individual homeowner and resident at the
10 Park. She is 95 years old and has lived at the Park since 1976.

11 6. Plaintiff DORCAS TUROSKI (“TUROSKI”) is an individual homeowner and resident at
12 the Park. She is 78 years old and has lived at the Park since 1988.

13 7. Plaintiff MILDRED RUBIN (“RUBIN”) is an individual homeowner and resident at the
14 Park. She is 84 years old and has lived at the Park since approximately 1972. RUBIN is legally
15 blind and is one of the Class members who signed the CITY’s contested release agreement.

16 8. Plaintiff ROBERT RUFFATO (“RUFFATO”) is an individual homeowner and resident at
17 the Park. He is 82 years old and has lived at the Park since 1981.

18 9. Plaintiff EILEEN COFER (“COFER”) is an individual subtenant and resident at the Park.
19 She is 70 years old and has lived at the Park since approximately 1999.

20 10. Plaintiff LISA BOCK (“BOCK”) is an individual subtenant and resident at the Park. She is
21 41 years old and has lived at the Park since 2001.

22 11. Plaintiff JAMES GIACOLLI (“GIACOLLI”) is an individual homeowner and resident at
23 the Park. He is 60 years old and has lived at the Park since 1988. GIACOLLI is one of the Class
24 members who signed the CITY’s contested release agreement.

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

28 13. Defendant CONCORDIA ENTERPRISES, INC. (“CONCORDIA”) is and was, at all

1 relevant times herein, a California corporation, duly organized under the laws of the State of
2 California, and conducting business in the City of San Diego, County of San Diego, State of
3 California. Furthermore, CONCORDIA allegedly does business in the City of San Diego, State of
4 California as defendant HAWKEYE ASSET MANAGEMENT (“HAWKEYE”), an unknown
5 business entity contracted by the CITY to conduct management operations at the Park in San
6 Diego, California.

7 14. Defendant METROPOLITAN PUBLIC SAFETY (“METRO”) is and was, at all relevant
8 times herein, a California corporation, duly organized under the laws of the State of California, and
9 conducting business in the City of San Diego, County of San Diego, State of California. METRO
10 provided armed guards at the Park.

11 15. Plaintiffs do not know the true names or capacities of Defendants sued herein as DOES 1
12 through 50, inclusive, and therefore sue these Defendants as DOES until their identities and
13 involvement can be determined. Plaintiffs anticipate that DOES 1-15 may represent individual
14 employees or agents of the CITY or specific departments thereof, and that DOES 16-50 may
15 represent individual employees or agents of CONCORDIA, HAWKEYE, METRO, or some as yet
16 unnamed defendant. Plaintiffs will amend this Complaint to allege their true names and capacities
17 when ascertained. Plaintiffs are informed and believe and thereon allege that each of the
18 fictitiously named Defendants is in some manner responsible for the damages to Plaintiffs alleged
19 herein.

20 16. Plaintiffs are informed and believe and thereon allege that at all relevant times Defendants
21 CITY, CONCORDIA, HAWKEYE, METRO, and DOES 1 through 50, and each of them, were
22 acting in their capacity as agents, servants, independent contractors, joint venturers, partners, alter
23 egos, assigns, successors in interest and/or employees of their co-defendants, and at all times
24 relevant hereto were acting within the full course and scope of their authority as such agents,
25 servants, assigns, independent contractors, joint venturers, partners, alter egos, successors in
26 interest and/or employees with the express, implied, and/or apparent consent, knowledge,
27 permission and ratification of their co-defendants, and each of them, and are in some way liable to
28 Plaintiffs on the facts alleged herein, and proximately caused injuries and damages thereby as

1 herein alleged.

3 **Factual Allegations**

4 **The City nurtures the growth of De Anza Cove by authorizing permanent construction.**

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

10 **In the 1960’s, the City re-zones De Anza Cove to parkland.**

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

17 **The City requires its lessee to propose a redevelopment plan to change the use of the land.**

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

26 20. The City’s contractual requirement to kick-start the redevelopment process highlighted its
27 agenda—begun more than 30 years ago—to close the mobilehome park.

28 ///

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

2 21. After months of consideration and staff reports, the City Council passed a resolution in
3 June 1981 to plan redevelopment of the property—even though the lease wasn't scheduled to
4 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 rent revenues increase
6 dramatically: double within six months, triple in less than four years, and quadruple in less than
7 seven years.

8 22. The City's redevelopment plans caused the State Legislature to draft legislation that became
9 known as the Kapiloff Bill. Under the Kapiloff Bill, the Legislature wanted to protect residents and
10 ensure that they could remain at De Anza Cove at least until the lease was set to expire in 2003.
11 The Kapiloff Bill also required that residents be treated fairly and in accordance with the law—not
12 to try to emasculate their unwaivable statutory rights: “[W]e never agreed that the Kapiloff Bill
13 would take the place of any other benefits or protections to which De Anza Park residents may be
14 entitled under any other state law. Indeed, the Kapiloff Bill does not contain any language
15 requiring, nor did we ever agree that, residents must waive any of their statutory rights under the
16 law.”

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

27 24. On January 25, 1982—facing the prospect of losing land use authority, untold millions from
28 development after November 2003, upwards of anticipated \$50 million from rent revenue through

1 2003, and costing only \$7 million for relocation benefits—the City Council voted to ratify the
2 Kapiloff Bill. Although the City currently asserts that it has not made any “planning decision,
3 action, or inaction” with regard to the mobilehome park, the Kapiloff Bill itself required the City’s
4 unequivocal action: if the City didn’t expressly ratify the Bill, it would have automatically become
5 inoperative.

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

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

15
16 **Homeowners foot the bill for the City’s negotiated rent hikes.**

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

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

1 November 2003—even if they moved their homes out of the Park. Most residents, limited by fixed
2 incomes and meager retirement benefits, could not afford to pay rent simultaneously at two places
3 and, therefore, were economically bound to finish out their lease term at De Anza Cove.

4
5 **The City demands that San Diego’s mobilehome park owners provide relocation assistance.**

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

14 30. Over the next two years, the City estimated its potential cost of relocating the 500 families
15 from De Anza Cove when it closed the park under the City’s mobilehome ordinance. These
16 estimates ranged between \$3 million and \$67 million. Then, the City included a sole exception to
17 its mobilehome park closure ordinance—it exempted De Anza Cove and denied Park residents the
18 very protections the Housing Commission provided to everyone else. Ironically, the stated purpose
19 of the City’s ordinance is: “to benefit the general public by minimizing the adverse impact on the
20 housing supply and on displaced persons by providing certain rights and benefits to tenants and by
21 requiring tenant relocation assistance whenever an existing mobilehome park or portion thereof is
22 converted to another use.” (S.D. Muni. Code § 143.0610.)

23
24 **The City considers several plans for a mammoth hotel resort.**

25 31. In June 1991, the City considered a plan to develop an 800-room hotel complex at De Anza
26 Cove. This proposal was significant because, if the plan was approved, it promised to shift from
27 the City to DHRG the financial commitment of relocating more than 500 families—a commitment
28 then estimated at about \$25 million. Pursuant to the contractual obligations imposed by the City,

1 DHRG continued to present various redevelopment plans throughout the 1990's.

2
3 **The City contractually agrees not to recognize residents' claims.**

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

10
11 **The City agrees to negotiate exclusively with DHRG—shutting out the homeowners.**

12 33. By 1999, the City and DHRG had formalized a Memorandum of Understanding (“MOU”),
13 under which the City claimed it was contractually prevented from discussing land use issues with
14 the residents. The City rebuked residents’ efforts to discuss potential solutions from 1999 until the
15 MOU expired in mid-2003—only months before the 50-year lease was set to end. On May 7, 2003,
16 DHRG notified the City and Park residents that it had abandoned its efforts to develop a hotel; the
17 MOU then expired on May 23, 2003. When DHRG’s redevelopment plan died, “full responsibility
18 for all costs associated with closing the mobilehome park” reverted back to the City.

19
20 **The City tries to bulldoze homeowners with its take-it-or-leave-it “transition plan.”**

21 34. With time running out, the City appeared at a resident meeting at De Anza Cove on or about
22 October 22, 2003, to talk with Park residents for the first time about its long-awaited “transition
23 plan.” Presenting the “plan” was the City’s Director of Real Estate Assets, who was flanked by
24 four armed policemen. The message was clear: waive all of your statutory rights—including those
25 under the MRL—and sign the City’s take-it-or-leave-it settlement agreement or the City will evict
26 you. The City sent documents to residents in the following days, accompanied by a cover letter
27 stating: “Please be advised that if you do not accept the offer, eviction proceedings will be
28 commenced against you and all other occupants of your mobilehome beginning November 24,

1 2003.”

2 35. The City of San Diego has had over 20 years to prepare for the expiration of the ground
3 lease and the sunset of the Kapiloff Bill, to follow the provisions of the Mobilehome Residency
4 Law, Mello Act, and Relocation Assistance Law, to prepare a Tenant Impact Report, to hold public
5 hearings, and to gather and distribute financial and other resources to help relocate the owners and
6 residents of the Park. Instead, the City refused to follow its statutory duties and decided to threaten
7 all De Anza Cove residents with eviction.

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

13 37. From October 22, 2003 onward, the CITY and its agents continued to use the threat of
14 eviction and other threats, misinformation, half-truths, false legal information, confusion, and
15 misrepresentations in order to coerce and improperly convince Park residents to either leave the
16 Park or sign the CITY’s take-it-or-leave-it agreement.

17
18 **State law protects De Anza Cove’s residents from the City’s unlawful actions.**

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

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

28 40. Furthermore, because Park homes are located in a coastal zone, the CITY must comply with

1 special low-income-housing initiatives that require additional feasibility studies to determine the
2 availability of affordable replacement housing in the area.

3 41. Most of the homes located at the Park, having been exposed to salt water for so long, are
4 simply too old to move. In fact, most other mobilehome parks will not even accept homes more
5 than five to ten years old. So, effectively, the CITY's attempt to close the Park forces residents to
6 abandon and demolish their homes without regard for the utter scarcity of alternate housing or the
7 financial hardship that the CITY imposes on these residents.

8
9 **On November 24, 2004, the City was again in exclusive possession of De Anza Cove.**

10 42. When the CITY took exclusive possession of the premises on November 24, 2003—and
11 although a temporary restraining order was in place—the CITY and its agents continued their take-
12 it-or-leave-it efforts. The CITY's heavy-handed management style included, among other things,
13 to:

- 14 • Threaten residents—who've paid their rent—with eviction through ex parte communication
- 15 by the City's lawyers and on-site management company
- 16 • Illegally search residents' homes and falsely imprison them
- 17 • Bring in armed guards and instruct its guards to act more aggressively towards residents
- 18 • Construct a guard shack checkpoint and gate
- 19 • Prohibit free access to the park
- 20 • Demand all who enter the park to provide personal information
- 21 • Fail to inform guards of the Court's TRO and Injunction orders
- 22 • Fail to disclose alleged health and safety issues, like natural gas leaks
- 23 • Erect chain-link and barbed-wire fencing
- 24 • Install klieg lights at the Park entrance
- 25 • Remove all common area furniture and amenities, then lie to the Court that the City was not
- 26 responsible
- 27 • Tear down the playground and refuse to replace it
- 28 • Impound all items from residents' storage areas

- 1 • Prohibit residents’ parking in their assigned parking slots in the overflow parking area
- 2 • Tow and impound residents’ cars, trucks, and trailers
- 3 • Destroy the residents’ storage facilities and refuse to replace them
- 4 • Destroy laundry facilities and refuse to replace them
- 5 • Destroy the De Anza Mart market and refuse to replace it
- 6 • Close the Pavilion clubhouse and main laundry mat
- 7 • Create an oppressive, blighted existence for residents
- 8 • Clear-cut existing flower gardens, shrubs, trees, and lush landscaping—replaced by the
- 9 City’s “flourishing weeds” and ubiquitous orange construction fencing
- 10 • Remove the entrance fountain and landscaping
- 11 • Contact the County Assessor secretly to have residents taxed like never before
- 12 • Send unilateral notices to cut trees and shut off their water
- 13 • Threaten and physically intimidate residents and their guests
- 14 • Unilaterally create new “rules” for the Park
- 15 • Prohibit mobilehome owners from renting their homes
- 16 • Refuse to allow the HOA to replace the chairs and tables that the CITY had ordered DHRG
- 17 to remove from the Park’s church and clubhouse.

18 43. The HOA’s representatives had repeatedly requested, both orally and in writing, a meeting
19 with the CITY’s representatives to rectify these and other issues, but were rebuffed for months.
20 The CITY’s stated mantra was: “No one is going to tell us how to run this Park.”

21 44. As a result of the CITY’s coercive actions, some tenants and residents have entered into
22 settlement agreements with the CITY whereby they purportedly gave up their legal rights—
23 including unwaivable statutory rights guaranteed under California’s Mobilehome Residency Law
24 and other statutes and common law decisions.

25 45. The HOA, on behalf of itself and in its representative capacity on behalf of all present and
26 former owners, tenants, residents, and occupants of the Park, as well many Class members, timely
27 filed administrative claims with the City of San Diego in compliance with the government claims
28 statutes, as might be applicable. Without exception, those claims were denied. Pursuant to a

1 stipulation filed with the court on February 22, 2005, all existing and future administrative claims
2 against the CITY related to the Park have been tolled until September 30, 2005, and the parties are
3 negotiating a continuation of that tolling agreement.

4 5 **Class Action Allegations**

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

8 47. This action is brought as a class action on behalf of plaintiffs—individually and on behalf of
9 all others similarly situated—pursuant to Code of Civil Procedure section 382.

10 48. **Class Definitions.** Plaintiffs will seek certification of a Master Class (“Class”) consisting
11 of: As of October 22, 2003, and thereafter, all homeowners, tenants, residents, other occupants—
12 and their heirs and assignees—of the approximately 509 homes within the mobilehome park now
13 known as Mission Bay Park and formerly known as De Anza Harbor Resort (“Park”), located at
14 2727 De Anza Road, San Diego, California.

15 49. Additionally, plaintiffs reserve the right to seek certification of several subclasses as
16 follows. **Subclass A** will consist of: All homeowners, tenants, residents, and other occupants who
17 signed release agreements with the City of San Diego regarding De Anza Cove. This subclass will
18 address the enforceability of these release agreements in light of state law prohibiting any waiver of
19 rights under the MRL, the false pretenses under which such agreements were obtained, and the
20 heavy-handedness with which these agreements were secured.

21 50. **Subclass B** will consist of: All Park residents who do not own the mobilehome in which
22 they reside. This subclass will address the relocation benefits specific to renters and other non-
23 owner occupants.

24 51. **Subclass C** will consist of all homeowners who did not sublet or rent their homes, or any
25 portion thereof, or were not allowed new occupants in their homes, from November 23, 2003 to the
26 present, because the CITY prohibited new subtenants and occupants unless homeowners signed
27 release agreements with the CITY. This subclass will address the financial losses specifically
28 caused by the CITY’s unilateral decision to deprive subclass members the right to sublease that

1 they always had before the City took possession of the property in November 2003. This subclass
2 may be the subject of a future request to bifurcate and/or sever in the event that class treatment of
3 this subclass proves unduly challenging.

4 52. **Subclass D** will consist of: All Park homeowners, residents, other occupants, and visitors
5 who allege personal, physical, financial, or emotional injury as a result of the abuse, oppression,
6 and harassment allegedly carried out by the CITY and its agents since November 24, 2003. This
7 subclass addresses the personal injury and torts alleged herein and may be the subject of a future
8 request to bifurcate and/or sever in the event that class treatment of this subclass proves unduly
9 challenging.

10 53. **Numerosity**. The members of the Class are so numerous that joinder of all Class members
11 would be impracticable. In fact, the Court specifically held the City's cross-complaint in abeyance
12 to the extent that the City actually attempted to join over 900 individual residents in the subject suit,
13 noting that allowing the case to mushroom exponentially would create tremendous problems in
14 terms of case management, cost, delay, and confusion.

15 54. **Typicality**. The HOA, MURPHY, TUROSKI, RUBIN, RUFFATO, COFER, BOCK, and
16 GIACOLLI have a common interest with the present and former homeowners, tenants, residents,
17 and occupants of the Park in enforcing the applicable state and local laws, and have a community of
18 interest in the determination of the questions of law and fact, causes of action, and damages as
19 further alleged in this Complaint. Plaintiffs' claims are typical of the claims of the other members
20 of the Class because all Class members were similarly damaged as a result of Defendants' improper
21 conduct and failure to comply with state laws.

22 55. **Adequacy**. Plaintiffs will fairly and adequately represent the interests of the other members
23 of the Class. Their interests are coincident with, and not antagonistic to, those of the Class as a
24 whole and the other Class members. Plaintiffs will prosecute class claims aggressively and have
25 retained counsel who are competent and experienced in the prosecution of complex, multi-party
26 cases involving class actions, property claims, municipal liability, eminent domain, landlord/tenant
27 disputes, and tortious acts.

28 56. **Commonality**. There are questions of law and fact common to all members of the Class

1 which predominate over any issues that may affect only individual members of the Class. These
2 common issues include, but are not limited to:

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

19 57. A class action is superior to any other available method to ensure the fair and efficient
20 adjudication of this controversy. Class treatment under Code of Civil Procedure section 382 and
21 California Rules of Court, Rules 1850 *et seq.*, will permit a large number of similarly-situated
22 persons to prosecute their claims efficiently and without duplication of effort and expense that
23 hundreds of multiple individual actions would entail. There are no difficulties likely to be
24 encountered in the management of this action that would preclude its maintenance as a class action.
25 Notice can be given individually to Class members utilizing the City’s rent rolls, county property
26 tax records, HOA membership lists, and hand-delivery, supplemented as necessary by publication
27 or other mass dissemination of notice. In fact, the City was prepared to serve virtually every Class
28 member with its cross-complaint before such service was stayed by the Court, highlighting the
parties’ ability to ascertain Class members for the purpose of giving proper notice. No superior
alternative exists for the fair and efficient adjudication of this dispute.

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

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

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

11
12 **First Cause of Action**

13 **Violation of the Mobilehome Residency Law I**

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

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

16 (Against CITY and DOES 1-15)

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

19 62. Under the Mobilehome Residency Law, the Legislature has provided special protections for
20 mobilehome owners. “The Legislature finds and declares that, because of the high cost of moving
21 mobilehomes, the potential for damage resulting therefrom, the requirements relating to the
22 installation of mobilehomes, and the costs of landscaping or lot preparation, it is necessary that the
23 owners of mobilehomes occupied within mobilehome parks be provided with the unique protection
24 from actual or constructive eviction afforded by the provisions of this chapter.” Civ. Code
25 § 798.55(a).

26 63. The Legislature has mandated that a mobilehome owner’s “[t]enancy may only be
27 terminated for reasons contained in [Civil Code] Section 798.56.” If the reason for terminating the
28 tenancy is not one of the seven authorized reasons permitted by the Legislature in section 798.56,

1 the tenancy *cannot* be legally terminated.

2 64. Under State law, the Legislature requires that a mandatory Tenant Impact Report be
3 completed and filed with the local legislative body or its appointed agency by the person or entity
4 proposing closure of the park or a change in use of the park. “Change in use” is expressly defined
5 by Civil Code section 798.10 as any “use of the park for a purpose other than the rental, or the
6 holding out for rent, of two or more mobilehome sites to accommodate mobilehomes used for
7 human habitation.” The mandatory Tenant Impact Report must “address the availability of
8 adequate replacement housing in mobilehome parks and relocation costs.” Gov’t Code
9 § 65863.7(a). A copy of the Tenant Impact Report must be provided to the resident of each
10 mobilehome in the park at least 15 days before a hearing before the advisory agency or the
11 legislative body, and, when a park closure is proposed, the Tenant Impact Report must be provided
12 to a resident of each mobilehome “at the same time as the notice of the change is provided to the
13 residents pursuant to paragraph (2) of subdivision (f) of Section 798.56 of the Civil Code.” Gov’t
14 Code § 65863.7(b)-(c).

15 65. When a park closure—or cessation of use of the land as a mobilehome park—*is even*
16 *proposed*, the provisions of the Mobilehome Residency Law are triggered. Park residents have the
17 right to an open hearing before the legislative body on the sufficiency of the Tenant Impact Report.
18 Gov’t Code § 65863.7(d). After reviewing the Impact Report and before any change of use or
19 closure, the legislative body “may require, as a condition of the change, the person or entity to take
20 steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the ability of
21 displaced mobilehome park residents to find adequate housing in a mobilehome park.” Gov’t Code
22 § 65863.7(e). If the closure or cessation of use of the park is the result of a decision by a local
23 governmental entity or planning agency not to renew a conditional use permit or zoning variance
24 under which the mobilehome park has operated—or as a result of any other zoning or planning
25 decision, action, or inaction—the local governmental agency proposing the closure or cessation of
26 use of the land as a mobilehome park “is required to take steps to mitigate the adverse impact of the
27 change as may be required under subdivision (e).” Gov’t Code § 65863.7(i).

28 66. The mandates of these sections of the Mobilehome Residency Law found in Government

1 Code section 65863.7 are specifically applicable to the CITY since the Legislature expressly made
2 this section “applicable to charter cities.” Gov’t Code § 65863.7(h). The Legislature made the
3 protections applicable to cities in 1988 “for the immediate preservation of the public peace, health,
4 or safety within the meaning of Article IV of the Constitution.... It is anticipated that there will be
5 many mobilehome park closures in charter cities in the near future and thousands of mobilehome
6 owners may be displaced. This act will provide some remedy for the situation, and it is necessary
7 that this act take effect immediately.” Statutes of 1986, ch. 190, p. 1058, §4.

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

13 68. Moreover, the statutory protections mandated by the State Legislature cannot be waived by
14 the Park’s homeowners and residents, by contract or otherwise. E.g., Gov’t Code § 798.77.

15 69. Furthermore, under Government Code § 65863.7(i), after reviewing the Tenant Impact
16 Report, the CITY has a mandatory duty to mitigate the hardship of park closure by providing
17 relocation assistance, utilizing the Tenant Impact Report as an objective benchmark for the proper
18 amount of compensation to the Class.

19 70. The CITY and DOES 1-15 violated the Mobilehome Residency Law and related sections
20 by, among other things:

- 21 • failing to provide an authorized reason under Civil Code section 798.56 for the termination
22 of the Park residents’ tenancy;
- 23 • failing to timely and properly serve written notices as required by the Mobilehome
24 Residency Law that provide an authorized reason under Civil Code section 798.56 for the
25 termination of the Park residents’ tenancy;
- 26 • failing and refusing to prepare a mandatory Tenant Impact Report that would have, among
27 other things, addressed the availability and paucity of adequate replacement housing in
28 other mobilehome parks and relocation costs;

- 1 • failing and refusing to file the required Tenant Impact Report with the local legislative body
- 2 or its advisory agency;
- 3 • failing and refusing to provide—at any time—a copy of the Tenant Impact Report to any
- 4 resident, let alone to the resident of each mobilehome in the Park;
- 5 • failing and refusing to provide a copy of the Tenant Impact Report at the time of service, if
- 6 any, of a notice that complies with Civil Code section 798.56(f)(2) to any resident, let alone
- 7 to the resident of each mobilehome in the Park;
- 8 • failing and refusing to provide a public hearing before the legislative body on the
- 9 sufficiency of the Tenant Impact Report;
- 10 • failing and refusing to take adequate steps to mitigate any adverse impact of the closure or
- 11 cessation of use on the ability of displaced mobilehome park residents to find adequate
- 12 housing in another mobilehome park or elsewhere;
- 13 • failing to serve notices that comply with the timing, content, form, and/or manner of service
- 14 required by the Mobilehome Residency Law and other statutes;
- 15 • failing to serve notices on the legal owners and all junior lien-holders of all Park
- 16 mobilehomes that comply with the timing, content, form, and/or manner of service required
- 17 by the Mobilehome Residency Law and other statutes; and
- 18 • pressuring Plaintiffs and the Class to sign release agreements under threat of eviction—
- 19 agreements that purport to waive all statutory rights.

20 71. To prevent the CITY and DOES 1-15 from committing further violations of the various
 21 provisions of the Mobilehome Residency Law (Civ. Code §§ 798 *et seq.*, Gov't Code § 65863.7),
 22 Plaintiffs have and will seek an injunction ordering Defendants to:

- 23 • stop any attempt to threaten or institute any Unlawful Detainer or other eviction proceeding
- 24 or legal process against the current and former homeowners and residents of the Park,
- 25 located at 2727 De Anza Road, San Diego, California, until the time that the factual and
- 26 legal issues alleged herein reach a final judicial determination;
- 27 • stop any attempt to cease, discontinue, or decrease the level of any services, maintenance,
- 28 common area access, and security provided to homeowners and residents of the Park; and

- comply in full with the Mobilehome Residency Law—including but not limited to preparation of a Tenant Impact Report, mitigation of the hardship on residents through full compensation, and all other aspects of the Mobilehome Residency Law and Government Code § 65863.7—before closing the Park or evicting any residents or Class members.

72. As a further result of CITY’s (and DOES 1-15) violations of the various provisions of the Mobilehome Residency Law (Civ. Code §§ 798 *et seq.*, Gov’t Code § 65863.7), Plaintiffs and Class members have directly and proximately suffered damages according to proof. Moreover, due to Defendants’ willful violations alleged above, Plaintiffs seek statutory penalties under Civil Code section 798.86 of \$2,000 for *each* separate violation committed by Defendants as to *each* of the up to 509 units in the Park. Plaintiffs also seek to recover its attorneys’ fees and costs pursuant to Civil Code section 798.85 and as otherwise allowed by law.

Second Cause of Action

Violation of the Mello Act

(Gov’t Code §§ 65590 *et seq.*)

(Against CITY and DOES 1-15)

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

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

1 75. The Mello Act requires that all local governments comply with its requirements. Gov't
2 Code § 65590(a).

3 76. Here, before the CITY can evict the Park's residents, convert the Park to another use such
4 as parkland or a hotel development, or otherwise effectuate the closure of the Park, the CITY must,
5 among other things, evaluate the feasibility of replacement housing, taking into account "economic,
6 environmental, social, and technical factors" to determine whether adequate replacement housing
7 can be "accomplished in a successful manner within a reasonable period of time." Gov't Code
8 § 65590(g)(3).

9 77. In its resolution dated November 18, 2003, the CITY asserted—in a self-serving,
10 unsubstantiated, and conclusory fashion—"That the discontinuance of the use of the Property as a
11 permanent residential mobile home park is not a conversion or demolition by the City of San Diego
12 or the Lessee within the meaning of Government Code section 65590 or any other provision of
13 law."

14 78. Plaintiffs allege that, among other things, CITY and DOES 1-15:

- 15 • failed to make a threshold determination whether the residential units to be converted or
16 demolished have been occupied by low or moderate-income persons;
- 17 • failed to make factual findings to determine whether the proposed new use for the Park is
18 "coastal dependent" or "coastal related";
- 19 • failed to complete a feasibility analysis as required by the Mello Act;
- 20 • failed to identify and/or provide replacement dwelling units within the coastal zone in the
21 City of San Diego or County of San Diego;
- 22 • failed to provide replacement dwelling units within three miles of the coastal zone in the
23 City of San Diego or County of San Diego;
- 24 • failed to provide a fee payment procedure in lieu of providing replacement dwellings; and
- 25 • failed to reconcile the displacement of over 1,100 residents with the State of Emergency
26 recently declared by the San Diego Housing Commission regarding the critical shortage of
27 low-income housing.

28 79. As these determinations are a mandatory condition precedent to allowing the destruction

1 and/or removal of low to moderate income housing in a coastal zone, Plaintiffs seek injunctive
2 relief to:

- 3 • stop any attempt to threaten or institute any Unlawful Detainer, eviction proceeding, or
4 other legal action or procedure against the current or former owners or residents of the Park,
5 located at 2727 De Anza Road, San Diego, California, until the time that the factual and
6 legal issues alleged herein reach a final judicial determination;
- 7 • stop any attempt to cease, discontinue, or decrease the level of any services, maintenance,
8 common area access, and security provided to owners and residents of the Park; and
- 9 • comply in full with the provisions of the Mello Act pursuant to Government Code §§ 65590
10 et seq. before closing the Park or evicting any residents or Class members.

11 80. In addition, CITY's breach of these mandatory duties proximately caused Plaintiffs and
12 Class members to suffer injuries and damages, which include, but are not limited to, special
13 damages, general damages, attorneys' fees and costs, as well as all other forms of relief allowed by
14 law. Plaintiffs further pray for a writ of mandate compelling the CITY to comply with the
15 provisions of the Mello Act.

17 **Third Cause of Action**

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

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

20 (Against CITY and DOES 1-15)

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

23 82. CITY and DOES 1-15 were under a mandatory duty to comply with the Mobilehome
24 Residency Law and the Mello Act, specifically, Civ. Code §§ 798 *et seq.*, Gov't Code §§ 65590 *et*
25 *seq.*, 65863.7, and 65863.8. The language of these enactments explicitly require that particular
26 action be taken or not taken.

27 83. The injuries and damages claimed by Plaintiffs are among the adverse consequences that
28 the Legislature sought to prevent by imposing these mandatory duties.

1 84. Defendants' breach of these mandatory duties proximately caused Plaintiffs and the Class to
2 suffer injuries and damages, which include, but are not limited to special damages, general
3 damages, attorneys' fees and costs, as well as all forms of relief provided for in Government Code
4 sections 815 *et seq.*

5
6 **Fourth Cause of Action**

7 **Inverse Condemnation**

8 (Against CITY and DOES 1-15)

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

11 86. Plaintiffs and Class members—except for proposed Subclass B—own personal property
12 located at 2727 De Anza Road, including but not limited to their mobilehomes, appurtenances,
13 improvements, and landscaping.

14 87. CITY and DOES 1-15 have, through their actions, inactions, concealment and
15 misrepresentations, caused a taking without just compensation of Plaintiffs' and the Class' personal
16 property, including but not limited to their mobilehomes, appurtenances, improvements, and
17 landscaping. Plaintiffs and Class members have been deprived of essentially all economically
18 viable use of their property and essentially all market value of their property. Plaintiffs and Class
19 members have not received full compensation for the damage and/or destruction of their property.
20 As a proximate result, Plaintiffs and Class members have suffered damages in an amount subject to
21 proof.

22 88. Plaintiffs and Class members have incurred and will incur attorneys' fees, mobilehome and
23 real estate appraisal fees, engineering fees, and other types of investigative and expert consulting
24 fees because of this proceeding and which are recoverable under Code of Civil Procedure section
25 1036.

26 ///

27 ///

28 ///

1 **Fifth Cause of Action**

2 **Violation of the California Relocation Assistance Law**

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

4 (Against CITY and DOES 1-15)

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

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

13 91. The CITY and DOES 1-15 have failed to comply with the requirements of Government
14 Code sections 7260 *et seq.* Despite threatening to evict Park residents and thereby displace those
15 residents, and turn the Park into a different use, the CITY has not provided the residents with the
16 payments required by Government Code Section 7260 *et seq.*

17 92. As a result, Plaintiffs and the Class have directly and proximately suffered damages in an
18 amount subject to proof.

19
20 **Sixth Cause of Action**

21 **Violation of the California Constitution**

22 (Against CITY and DOES 1-15)

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

25 **Equal Protection.**

26 94. As alleged in this Complaint, CITY and DOES 1-15 have acted under color of law to
27 deprive, and continue to deprive, Plaintiffs and Class members of their right to equal protection of
28 the laws—as secured by Article I, Section 7(a), of the California Constitution—by discriminating

1 against Plaintiffs and the Class in the CITY’s application of the laws of the State of California and
2 the City of San Diego.

3 95. CITY and DOES 1-15 have violated fundamental rights of Plaintiffs and the Class by
4 attempting—through adoption of local ordinances and resolutions—to exempt the CITY from
5 mandatory obligations created by state and municipal law for the specific benefit and protection of
6 mobilehome owners and residents.

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

13 97. However, to this provision, CITY added subsection 143.0615(b)—which expressly singles
14 out and excludes the De Anza Cove mobilehome park from the CITY’s Mobilehome Overlay
15 Zone—thereby completely depriving Plaintiffs and the Class from the benefits of S.D.M.C.
16 §143.0610, benefits enjoyed by all other residents of all other mobilehome parks located within the
17 CITY’s designated Mobilehome Overlay Zone.

18 98. CITY and DOES 1-15 have discriminated against impoverished, disabled, elderly, and all
19 other Park residents who are denied relocation assistance under state law and under the challenged
20 municipal ordinance. As members of the Class belong to one or more suspect classes in the context
21 of constitutional analysis, the CITY’s actions and challenged municipal ordinance should be
22 subject to the “strict scrutiny” standard of review. Alternatively, even in the absence of a suspect
23 class, the challenged ordinance unlawfully favors mobilehome residents at all other San Diego
24 mobilehome parks subject to closure by providing benefits and protections that the CITY and
25 DOES 1-15 have deliberately denied Plaintiffs and the Class.

26 **Due Process.**

27 99. As alleged in this Complaint, CITY and DOES 1-15 have acted under color of law to
28 unfairly deprive, and continue to deprive, Plaintiffs and Class members of their fundamental

1 property rights without procedural and substantive due process in violation of the Due Process
2 clause of the California Constitution (Article I, Section 7(a)).

3 100. CITY and DOES 1-15 have violated fundamental rights of Plaintiffs and the Class by
4 attempting—through adoption of local ordinances and resolutions—to exempt the CITY from
5 mandatory obligations created by state and municipal law for the specific benefit and protection of
6 mobilehome owners and residents.

7 101. Further, CITY’s actions—and in specific Municipal Code section 143.0615(b)—are
8 constitutionally invalid because the CITY cannot show either a compelling state interest or less
9 burdensome means do not exist for the CITY’s deprivation of Plaintiffs and the Class members’
10 fundamental property rights and relocation benefits under state law and municipal ordinance.

11 **State Preemption.**

12 102. In addition, Municipal Code section 143.0615(b) is preempted by state law because the
13 State Legislature has fully occupied the area of mobilehome-park closure and established the
14 minimum standards for mobilehome-park closure through its enactment and amendments to the
15 Mobilehome Residency Law and related statutes.

16 103. Therefore, Plaintiffs and the Class seek declaratory relief stating that San Diego Municipal
17 Code section 143.0615(b) is unconstitutional and unenforceable.

18
19 **Seventh Cause of Action**

20 **Violation of the Mobilehome Residency Law II**

21 **(Abuse/Mismanagement)**

22 (Civ. Code §§ 798 *et seq.*, Gov’t Code §§ 815 *et seq.*)

23 (Against ALL DEFENDANTS and DOES 1-50)

24 104. Plaintiffs and members of the Class or Subclass hereby incorporate by reference all
25 preceding and succeeding paragraphs of this Complaint as though fully set forth herein.

26 105. Defendants CITY, CONCORDIA, HAWKEYE, METRO, and DOES 1-50, violated the
27 MRL after November 23, 2003, by, among other things:

- 28
 - failing to meet and consult with the Park’s residents and their representatives before the

1 CITY unilaterally created new “rules” for the Park, failing to give 10 days’ written notice of
2 the proposed change of the Park’s rules, failing to provide all residents the proposed rule
3 changes in the required notice, failing to hold such a meeting, all of which is in violation of
4 Civil Code section 798.25;

- 5 • retaliating against Park residents after the CITY took possession of the Park on
6 November 24, 2003 by, among other things:

- 7 a) Threatening residents—who’ve paid their rent—with eviction through ex parte
8 communication by the City’s lawyers and on-site management company
- 9 b) Illegally searching residents’ homes and falsely imprisoning them
- 10 c) Bringing in armed guards and instructing its guards to act more aggressively towards
11 residents
- 12 d) Constructing a guard shack checkpoint and gate
- 13 e) Prohibiting free access to the park
- 14 f) Demanding all who enter the park to provide personal information
- 15 g) Failing to inform guards of the Court’s TRO and Injunction orders
- 16 h) Failing to disclose alleged health and safety issues, like natural gas leaks
- 17 i) Erecting chain-link and barbed-wire fencing
- 18 j) Installing klieg lights at the Park entrance
- 19 k) Tearing down the playground and refusing to replace it
- 20 l) Impounding all items from residents’ storage areas
- 21 m) Prohibiting residents’ parking in their assigned parking slots in the overflow parking
22 area
- 23 n) Towing and impounding residents’ cars, trucks, and trailers
- 24 o) Destroying the residents’ storage facilities and refusing to replace them
- 25 p) Destroying laundry facilities and refusing to replace them
- 26 q) Destroying the De Anza Mart market and refusing to replace it
- 27 r) Closing the Pavilion clubhouse and main laundry mat
- 28 s) Creating an oppressive, blighted existence for residents

- t) Clear-cutting existing flower gardens, shrubs, trees, and lush landscaping—replaced by “flourishing weeds” and ubiquitous orange construction fencing
- u) Removing the entrance fountain and landscaping
- v) Contacting the County Assessor secretly to have residents taxed like never before
- w) Sending unilateral notices to cut trees and shut off their water
- x) Threatening and physically intimidating residents and their guests
- y) Unilaterally creating new “rules” for the Park
- z) Refusing to allow the HOA to replace the chairs and tables that the CITY had ordered DHRG to remove from the Park’s church and clubhouse.

- creating a public nuisance by failing and refusing to properly maintain and service the Park’s common areas;
- creating a take-it-or-leave-it release agreement that purportedly waives the provisions of the Mobilehome Residency Law and other statutorily-protected rights and convinced some Park residents to enter into that agreement with the CITY;
- refusing to allow mobilehome owners to sell their mobilehomes in violation of Article 7 of the Mobilehome Residency Law;
- refusing to allow mobilehome owners to rent part or all of their mobilehomes in violation of, among other things, Article 3 of the Mobilehome Residency Law
- failing and refusing to meet with the HOA and its representatives—as they had repeatedly requested—and continuing to fail and refuse to meet within 30 days of written request in violation of Civil Code section 798.53.

105. These acts also violate Civil Code section 1942.5 and common law anti-retaliatory act doctrines.

106. As a direct and proximate result of the above-referenced conduct, Plaintiffs and members of the Class or Subclass suffered physical, emotional, property-related, and/or economic injuries and damages in an amount subject to proof.

107. As against CITY and DOES 1-15, Plaintiffs and members of the Class or Subclass seek compensatory and statutory damages as authorized under the MRL, and attorney’s fees, as

1 applicable. As against CONCORDIA, HAWKEYE, METRO, and DOES 16-50, Plaintiffs and
2 members of the Class or Subclass seek compensatory, statutory and punitive damages and fines, as
3 appropriate, as well as enhanced damages under both Welfare & Institutions Code sections 15657
4 et seq. (Elder Abuse and Dependent Adult Civil Protection Act), and Civil Code section 3345
5 (Unfair Practices against Senior Citizens), including attorneys fees and treble damages.

7 **Eighth Cause of Action**

8 **Negligent Infliction of Emotional Distress**

9 (Against ALL DEFENDANTS and DOES 1-50)

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

12 109. Defendants, and each of them, owed Plaintiffs and the Class a duty of due care based on the
13 special relationship existing between the CITY as putative landlord, CONCORDIA and
14 HAWKEYE as the management company, METRO as the on-site guard force, and the
15 homeowners and residents of the Park. Moreover, additional duties were imposed on Defendants,
16 and each of them, by virtue of the applicable provisions of the Long Term Rental Agreements, the
17 Rules and Regulations De Anza Harbor Resort Mobilehome Community dated July 1997, and the
18 Court's various orders, including the Temporary Restraining Order issued on November 20, 2003,
19 the Preliminary Injunction issued in January 2004, and the Modified Preliminary Injunction. These
20 statutes, rules, and court orders collectively require the Defendants, either individually or as agents
21 of the CITY, to maintain the status quo; this duty means that, with the exception of tightly drawn
22 exceptions where there is an imminent health and safety risk, Defendants cannot initiate changes to
23 the Park, to the services previously provided, or to the rights and obligations of the homeowners
24 and residents of the Park.

25 110. Moreover, the Defendants, and each of them, are under duties imposed by the Mobilehome
26 Residency Law (Civ. Code §§ 798 et seq.) which carefully regulates all aspects of park operations,
27 management, parking, security, towing, rule changes, common area maintenance, privacy rights,
28 and dispute resolution.

1 111. Additionally, Plaintiffs are informed and believe that the written agreement between the
2 CITY and HAWKEYE imposes additional duties, including obligations intended to benefit and/or
3 affect Plaintiffs, members of the Class or Subclass, and all other homeowners and residents of the
4 Park. Similarly, the written agreement between HAWKEYE and METRO imposes additional
5 duties intended to benefit and/or affect Plaintiffs, members of the Class or Subclass, and all other
6 homeowners and residents of the Park.

7 112. Plaintiffs and members of the Class allege that Defendants, and each of them, breached their
8 duties to Plaintiffs and the Class by, among other things:

- 9 • Threatening residents—who've paid their rent—with eviction through ex parte
10 communication by the City's lawyers and on-site management company
- 11 • Illegally searching residents' homes and falsely imprisoning them
- 12 • Bringing in armed guards and instructing its guards to act more aggressively towards
13 residents
- 14 • Constructing a guard shack checkpoint and gate
- 15 • Prohibiting free access to the park
- 16 • Demanding all who enter the park to provide personal information
- 17 • Failing to inform guards of the Court's TRO and Injunction orders
- 18 • Failing to disclose alleged health and safety issues, like natural gas leaks
- 19 • Erecting chain-link and barbed-wire fencing
- 20 • Installing klieg lights at the Park entrance
- 21 • Tearing down the playground and refusing to replace it
- 22 • Impounding all items from residents' storage areas
- 23 • Prohibiting residents' parking in their assigned parking slots in the overflow parking area
- 24 • Towing and impounding residents' cars, trucks, and trailers
- 25 • Destroying the residents' storage facilities and refusing to replace them
- 26 • Destroying laundry facilities and refusing to replace them
- 27 • Destroying the De Anza Mart market and refusing to replace it
- 28 • Closing the Pavilion clubhouse and main laundry mat

- 1 • Creating an oppressive, blighted existence for residents
- 2 • Clear-cutting existing flower gardens, shrubs, trees, and lush landscaping—replaced by
- 3 “flourishing weeds” and ubiquitous orange construction fencing
- 4 • Removing the entrance fountain and landscaping
- 5 • Contacting the County Assessor secretly to have residents taxed like never before
- 6 • Sending unilateral notices to cut trees and shut off their water
- 7 • Threatening and physically intimidating residents and their guests
- 8 • Unilaterally creating new “rules” for the Park
- 9 • Refusing to allow the HOA to replace the chairs and tables that the CITY had ordered
- 10 DHRG to remove from the Park’s church and clubhouse
- 11 • Brandishing firearms, effectuating false arrests, assaulting residents, trespassing, and
- 12 creating an oppressive environment.

13 113. As a direct and proximate result of Defendants’ conduct, Plaintiffs and members of the
14 Class or Subclass suffered severe emotional distress, including but not limited to, symptoms of
15 fright, shock, nervousness, anxiety, worry, grief, humiliation, embarrassment, indignity,
16 apprehension, and duress. The Defendants, and each of them, and DOES 1-50, knew or should
17 have known that their actions were likely to cause Plaintiffs and members of the Class or Subclass
18 severe emotional distress, particularly given that most of the Plaintiffs and most of the Class
19 members are elderly. Plaintiffs allege that the primary purpose of such conduct was to coerce De
20 Anza residents into leaving the park and/or signing release agreements with the CITY—release
21 agreements that purportedly compel residents to waive their statutory rights.

22 114. As against CITY and DOES 1-15, Plaintiffs and Subclass D seek compensatory and
23 statutory damages, including attorney’s fees, as applicable. As against CONCORDIA,
24 HAWKEYE, METRO, and DOES 16-50, Plaintiffs and members of the Class or Subclass seek
25 compensatory, statutory and punitive damages, as appropriate, as well as enhanced damages under
26 both Welfare & Institutions Code sections 15657 et seq. (Elder Abuse and Dependent Adult Civil
27 Protection Act), and Civil Code section 3345 (Unfair Practices against Senior Citizens), including
28 attorneys’ fees and treble damages.

1 **Ninth Cause of Action**

2 **Intentional Infliction of Emotional Distress**

3 (Against ALL DEFENDANTS and DOES 1-50)

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

6 116. Plaintiffs and members of the Class or Subclass suffered severe emotional injury caused by
7 the outrageous conduct of the defendants, and each of them, who acted with intent to cause, or with
8 reckless disregard of the probability of causing, emotional distress to Plaintiffs and members of the
9 Class or Subclass.

10 117. Defendants’ outrageous conduct flowed from their abuse of official management and police
11 powers over Plaintiffs and members of the Class or Subclass. These abuses, which exceeded all
12 bounds of common decency, include but are not limited to:

- 13 • Threatening residents—who’ve paid their rent—with eviction through ex parte
- 14 communication by the City’s lawyers and on-site management company
- 15 • Illegally searching residents’ homes and falsely imprisoning them
- 16 • Bringing in armed guards and instructing its guards to act more aggressively towards
- 17 residents
- 18 • Constructing a guard shack checkpoint and gate
- 19 • Prohibiting free access to the park
- 20 • Demanding all who enter the park to provide personal information
- 21 • Failing to inform guards of the Court’s TRO and Injunction orders
- 22 • Failing to disclose alleged health and safety issues, like natural gas leaks
- 23 • Erecting chain-link and barbed-wire fencing
- 24 • Installing klieg lights at the Park entrance
- 25 • Tearing down the playground and refusing to replace it
- 26 • Impounding all items from residents’ storage areas
- 27 • Prohibiting residents’ parking in their assigned parking slots in the overflow parking area
- 28 • Towing and impounding residents’ cars, trucks, and trailers

- 1 • Destroying the residents’ storage facilities and refusing to replace them
- 2 • Destroying laundry facilities and refusing to replace them
- 3 • Destroying the De Anza Mart market and refusing to replace it
- 4 • Closing the Pavilion clubhouse and main laundry mat
- 5 • Creating an oppressive, blighted existence for residents
- 6 • Clear-cutting existing flower gardens, shrubs, trees, and lush landscaping—replaced by
- 7 “flourishing weeds” and ubiquitous orange construction fencing
- 8 • Removing the entrance fountain and landscaping
- 9 • Contacting the County Assessor secretly to have residents taxed like never before
- 10 • Sending unilateral notices to cut trees and shut off their water
- 11 • Threatening and physically intimidating residents and their guests
- 12 • Unilaterally creating new “rules” for the Park
- 13 • Refusing to allow the HOA to replace the chairs and tables that the CITY had ordered
- 14 DHRG to remove from the Park’s church and clubhouse
- 15 • Brandishing firearms, effectuating false arrests, assaulting residents, trespassing, and
- 16 creating an oppressive environment.

17 118. Defendants engaged in the above conduct with the intent to inflict injury, with reckless
18 disregard, or, at a minimum, realizing that injury to Plaintiffs and Subclass D was substantially
19 certain to result, particularly given that most of the Plaintiffs and most of the Class members are
20 elderly. Plaintiffs allege that the primary purpose of such conduct was to coerce De Anza residents
21 into leaving the park and/or signing release agreements with the CITY—release agreements that
22 purportedly compel residents to waive their statutory rights.

23 119. As a direct and proximate result of Defendants’ conduct, Plaintiffs and Subclass D suffered
24 severe emotional distress, including but not limited to, symptoms of fright, shock, nervousness,
25 anxiety, worry, grief, humiliation, embarrassment, indignity, apprehension, and duress. The
26 emotional distress suffered by Plaintiffs and Subclass D was of such substantial quantity and
27 enduring quality that no reasonable person in a civilized society would be expected to endure it.

28 120. As against CITY and DOES 1-15, Plaintiffs and Subclass D seek compensatory and

1 statutory damages, including attorney’s fees, as applicable. As against CONCORDIA,
2 HAWKEYE, METRO, and DOES 16-50, Plaintiffs and Subclass D seek compensatory, statutory
3 and punitive damages, as appropriate, as well as enhanced damages under both Welfare &
4 Institutions Code sections 15657 et seq. (Elder Abuse and Dependent Adult Civil Protection Act),
5 and Civil Code section 3345 (Unfair Practices against Senior Citizens), including attorneys’ fees
6 and treble damages.

7
8 **Tenth Cause of Action**

9 **Violation of Unfair Competition Law**

10 (Violation of Bus. & Prof. Code §§ 17200 *et seq.*)

11 (Against CONCORDIA, HAWKEYE, METRO and DOES 16-50)

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

14 122. The statutes cited in this Complaint, and which Defendants have violated, are intended for
15 the protection of Plaintiffs, the Class, and all residents, guests, and mobilehome owners at the Park.

16 123. CONCORDIA, HAWKEYE, METRO and DOES 16-50 violated, among others, the
17 following statutes: Civ. Code §§ 798 *et seq.*, Civ. Code §§ 1798.90 *et seq.*, Veh. Code § 10851, and
18 as alleged herein. As such, CONCORDIA, HAWKEYE, METRO and DOES 16-50 engaged in
19 unlawful business practices to the detriment of Plaintiffs and members of the Class or Subclass.

20 124. From November 24, 2003 and thereafter, CONCORDIA, HAWKEYE, METRO and DOES
21 16-50 further engaged in unfair business practices to the detriment of Plaintiffs and the Class, as set
22 forth herein. CONCORDIA, HAWKEYE, METRO and DOES 16-50 also engaged in fraudulent
23 business practices likely to mislead the public, all to detriment of Plaintiffs and the Class, as set
24 forth herein.

25 125. Based on information and belief, these unlawful, unfair, and fraudulent business practices
26 include, but are not limited to:

- 27 • Threatening residents—who’ve paid their rent—with eviction through ex parte
28 communication by the City’s lawyers and on-site management company

- 1 • Illegally searching residents’ homes and falsely imprisoning them
- 2 • Bringing in armed guards and instructing its guards to act more aggressively towards
- 3 residents
- 4 • Constructing a guard shack checkpoint and gate
- 5 • Prohibiting free access to the park
- 6 • Demanding all who enter the park to provide personal information
- 7 • Failing to inform guards of the Court’s TRO and Injunction orders
- 8 • Failing to disclose alleged health and safety issues, like natural gas leaks
- 9 • Erecting chain-link and barbed-wire fencing
- 10 • Installing klieg lights at the Park entrance
- 11 • Tearing down the playground and refusing to replace it
- 12 • Impounding all items from residents’ storage areas
- 13 • Prohibiting residents’ parking in their assigned parking slots in the overflow parking area
- 14 • Towing and impounding residents’ cars, trucks, and trailers
- 15 • Destroying the residents’ storage facilities and refusing to replace them
- 16 • Destroying laundry facilities and refusing to replace them
- 17 • Destroying the De Anza Mart market and refusing to replace it
- 18 • Closing the Pavilion clubhouse and main laundry mat
- 19 • Creating an oppressive, blighted existence for residents
- 20 • Clear-cutting existing flower gardens, shrubs, trees, and lush landscaping—replaced by
- 21 “flourishing weeds” and ubiquitous orange construction fencing
- 22 • Removing the entrance fountain and landscaping
- 23 • Contacting the County Assessor secretly to have residents taxed like never before
- 24 • Sending unilateral notices to cut trees and shut off their water
- 25 • Threatening and physically intimidating residents and their guests
- 26 • Unilaterally creating new “rules” for the Park
- 27 • Refusing to allow the HOA to replace the chairs and tables that the CITY had ordered
- 28 DHRG to remove from the Park’s church and clubhouse

- 1 • Brandishing firearms, effectuating false arrests, assaulting residents, trespassing, and
2 creating an oppressive environment.

3 126. Defendants’ unlawful, unfair, and fraudulent business practices have injured Plaintiffs and
4 members of the Class or Subclass.

5 127. In addition to potential injunctive relief, Plaintiffs and members of the Class or Subclass
6 will seek restitution and disgorgement of all profits earned by CONCORDIA, HAWKEYE,
7 METRO and DOES 16-30 for any management, supervision, or security services performed or
8 provided at the Park. Plaintiffs and members of the Class or Subclass will further seek all other
9 relief as may be just and proper, including the imposition of an asset freeze and a constructive trust
10 over the amount of Defendants’ improper gains from their misconduct, to be held for the benefit of
11 Plaintiffs and members of the Class or Subclass.

12
13 **Prayer**

14 Plaintiffs and the Class pray for judgment against Defendants as follows:

15 AS AGAINST CITY:

16 128. Certification of the Class and Subclasses, as described in ¶¶ 48-52 of this Complaint, as to
17 the first six causes of action;

18 129. For an injunction ordering CITY and DOES 1-15 to:

- 19 • stop any attempt to threaten or institute any Unlawful Detainer or other eviction proceeding
20 or legal process against the Class, homeowners, residents, and other occupants of the Park,
21 located at 2727 De Anza Road, San Diego, California, until the time that the factual and
22 legal issues alleged herein reach a final judicial determination;
- 23 • stop any attempt to cease, discontinue, or decrease the level of any services, maintenance,
24 common areas or their access, and security provided to owners and residents of the Park and
25 return any such discontinued or decreased services or common areas and the like to their
26 prior levels;
- 27 • comply in full with California law—the Mello Act, the Mobilehome Residency Law, and
28 the California Relocation Assistance Law, and provide full statutory compensation—before

1 closing the Park or initiating evictions of any Plaintiffs and Class members;

2 130. For statutory damages under Civil Code section 798.86 of \$2,000 for *each* separate
3 violation of the Mobilehome Residency Law committed by the CITY and/or its agents for *each* of
4 the up to 509 mobilehome lots in the Park.

5 131. For declaratory relief that the provisions of the Mobilehome Residency Law cannot be
6 waived by contract and that any such purported waiver language contained in any agreement with
7 members of the Class is null and void as against public policy and state law.

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

13 133. For restitution and disgorgement of all profits earned by CITY and DOES 1-15, from the
14 operation of the De Anza Harbor Resort mobilehome park from October 22, 2002 through
15 November 23, 2003, and from November 24, 2003 until a final judicial decision is reached herein;

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

17 135. For attorneys' fees and costs incurred herein;

18 136. For fees and costs of suit incurred herein;

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

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

22 AS AGAINST CONCORDIA, HAWKEYE, METRO, and DOES 16-50:

23 139. Certification of the Class and Subclasses, as described in ¶¶ 48-52 of this Complaint, as to
24 causes of action seven through ten, as feasible;

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

28 141. For restitution and disgorgement of all profits earned by CONCORDIA, HAWKEYE,

1 METRO and DOES 16-50, for any management, supervision, or security services performed or
2 provided at the Park from November 24, 2003 through and until a final judicial decision is reached
3 herein;

4 142. For the imposition of an asset freeze and a constructive trust over Defendants' improper
5 gains from their misconduct, to be held for the benefit of Plaintiffs and the Class.

6 143. For injunctive relief as necessary;

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

8 145. For attorneys' fees and costs incurred herein;

9 146. For enhanced damages under Welfare & Institutions Code sections 15657 et seq. (Elder
10 Abuse and Dependent Adult Civil Protection Act), and Civil Code section 3345 (Unfair Practices
11 against Senior Citizens), including attorneys' fees and treble damages;

12 147. For punitive damages under Civil Code § 3294;

13 148. For fees and costs of suit incurred herein;

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

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

17
18 Respectfully Submitted,

TATRO & ZAMOYSKI, LLP

19
20
21 By: 

22 Timothy J. Tatro, Esq.

Peter A. Zamoyski, Esq.

23 Attorneys for Plaintiff DE ANZA COVE
24 HOMEOWNERS ASSOCIATION, INC.

25
26
27
28
DATE: August 26, 2005