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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

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

18 Plaintiffs,

19 v.

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

26 Defendants.

27 AND RELATED CROSS ACTION
28

Case No. GIC 821191

CLASS ACTION

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR CLASS
CERTIFICATION**

DATE: August 31, 2005
TIME: 10:00 a.m.
DEPT: 66
I/C JUDGE: Honorable Charles R. Hayes

Complaint Filed: Nov. 18, 2003
Trial Date: Feb. 1, 2007

Introduction

Beginning in the 1950s, the City of San Diego took steps to develop *permanent* mobilehome sites on its land at De Anza Cove (“Park”) along the shores of Mission Bay, and even dredged the bay to create the peninsula that now underlies about half of the mobilehome park. The community quickly grew to over 500 homes and became a safe-haven for elderly and other fixed-income residents looking for an affordable place to live.

Now the City is closing the Park, a decision that will result in the utter destruction of the vast majority of these homes because they are too old to move, there are no vacant mobilehome sites available, and other mobilehome parks will not accept homes of this vintage. In fact, because of the City’s actions since November 2003, about 150 homes have already been removed and destroyed. So, for the residents of De Anza Cove, park closure means a complete loss of their homes and all equity in their homes, leaving them homeless and desperate. Yet, the City refuses to provide them with the relocation benefits required under State law, which was designed to soften the hardships created by such park closures.

Under California’s Mobilehome Residency Law (MRL), the City cannot close the Park or change its use to anything else without first conducting a formal study of the impact of park closure (tenant impact report), holding hearings, and compensating the residents and homeowners for the imminent loss of their homes. *See* Gov’t Code § 65863.7; Civ. Code § 798.56. Despite the fact that the City calculated the cost of relocating De Anza residents, collected millions of dollars in rent over the years, and projected multi-millions for itself in future revenues after it closes the Park and redevelops the land, the City completely failed to comply with the MRL when it sought to close the Park in November 2003. **The City contends that the MRL—which admittedly applies to every other mobilehome park in the State—does not apply to the City in relation to the De Anza Cove homeowners and residents. This is the lynchpin of the City’s case and it highlights the central and only question of law before the court: *Is the City of San Diego required to comply with the MRL prior to closing the De Anza Cove mobilehome park?***

This threshold issue underpins every claim asserted and presents the same legal issue for every individual class member. In other words, if the MRL applies to *any* homeowner or resident of De

1 Anza Cove, it applies to *all* homeowners and residents of De Anza Cove. It is this common
2 question of law that makes this dispute so appropriate for class treatment.

3 In fact, while presiding over nearly three years of this litigation, **this Court has occasionally**
4 **commented on the efficiencies that will be achieved by proceeding on a class basis: “This is**
5 **the type of case that is going to save a lot of time and money if we can resolve it under the**
6 **umbrella of a class action rather than 900 separate suits.”** (Ex. 19, Rptr’s Tr., June 30, 2005,
7 p. 39, ll. 21-24.)

8 This Motion seeks certification of a class of individuals who have resided or owned a home at
9 De Anza Cove mobilehome park at any time between October 22, 2003—when the City announced
10 its “transition plan”—and the present. The proposed class fits comfortably within the statutory
11 definition and decisional parameters of a class action because:

- 12 1. **One common question of law** bridges across the entire litigation: **Is the City of**
13 **San Diego bound by state law** mandating, among other things, adequate
14 relocation assistance and relocation benefits for De Anza Cove’s residents when
15 the City closes the Park?
- 16 2. Park closure will affect *all* class members since all members will be forced to
17 leave the Park;
- 18 3. The City contends that *none* of the class members are entitled to relocation
19 benefits under California law;
- 20 4. The evidence gathered to date establishes that there is an easily ascertainable
21 class and a well-defined community of interest (see, *e.g.*, Exs. 1-18); and
- 22 5. In terms of cost, time, burden on the parties, and judicial efficiency, class
23 treatment is superior to the mass litigation of over 1000 individual property
24 claims.

25 This Motion seeks to certify Plaintiffs’ first and third causes of action against the City for
26 violations of the MRL and its mandatory duties under the MRL, the basis for which involves the
27 same precise question of law for each and every class member.
28

29 **Summary of Facts**

30 Mission Bay is one of the City’s crown jewels. Over many decades, it has become home to
31 hotels, aquatic parks, and campgrounds, and is a central lure in the City’s tourism strategy. The
32 land around the bay is very valuable and provides the City with lucrative leaseholds and

1 development opportunities that yield tens of millions of dollars in yearly revenue. The City of San
2 Diego owns the residential mobilehome park at De Anza Cove, which is on the northeastern
3 boundary of Mission Bay Park. The City intends to close the mobilehome park and transition it to
4 another use. Although Plaintiffs do not attempt to prove the merits of their case here—all
5 allegations in Plaintiffs’ complaint are presumed true for class certification purposes (*La Sala v.*
6 *American Sav. & Loan Ass’n* (1971) 5 Cal.3d 864, 869)—a brief review of the evidence and history
7 of the Park, the City’s actions, and State law is helpful to put things in context.

8
9 **1. The birth of a new community...and its history since.**

10 **A. The City nurtures the growth of De Anza Cove.**

11 In 1953, the City entered into a 50-year lease to develop the mobilehome park and authorized
12 construction of 384 permanent units, 126 vacation units, and 12 transient units. The City reviewed
13 and approved permits for carports, decks, room additions, and other permanent structures. (Third
14 Amended Complaint (TAC) at ¶ 17.)

15 When the City’s lessee changed hands to a newly-formed entity, De Anza Harbor Resort &
16 Golf, LLC (DHRG), the City insisted that DHRG propose a plan to redevelop De Anza Cove for
17 “new uses” within one year. The City’s contractual requirement to kick-start the redevelopment
18 process highlighted its agenda—begun more than 30 years ago—to close its mobilehome park.
19 (TAC, ¶¶ 19-20.)

20
21 **B. The early 1980’s and the Kapiloff Bill era.**

22 After months of consideration and staff reports, the City Council passed a resolution in
23 June 1981 to plan redevelopment and partial or complete closure of the Park—even though the
24 Master Lease still had more than 20 years to run. The City’s redevelopment plans caused the State
25 Legislature to draft legislation that became known as the Kapiloff Bill. (TAC, ¶¶ 21-22.)

26 The Kapiloff Bill (Assembly Bill 447 (1981)) was passed by the State Legislature as a
27 permissive bill. It could not become law unless the City expressly ratified its terms. *See* Kapiloff
28 Bill § 4. Under the Kapiloff Bill, the Legislature wanted to protect residents and ensure that the

1 City kept the Park open at least until November 2003. The Kapiloff Bill also mandated that
2 residents be treated fairly and in accordance with the law, the City was required to obtain fair rental
3 value in future lease amendments, and all parties maintained their rights as landlord and tenant. *See*
4 Kapiloff Bill §§ 1(d)-(f), 3(e). **Contrary to the City’s arguments made in this case, nowhere in**
5 **the Kapiloff Bill is there any language purporting to exempt the City from the MRL or any**
6 **State law. And nowhere in the Kapiloff Bill is there any language purporting to waive**
7 **residents’ rights to relocation assistance or benefits. Assemblyman Kapiloff—who authored**
8 **the Bill—testified that if the Legislature had wanted to exempt De Anza Cove or the City**
9 **from the Mobilehome Residency Law’s mandates, “we would have specifically written that**
10 **into the Kapiloff Bill. We did not.”** (TAC, ¶¶ 22-23, 25.)

11 State Legislators warned the City that if it did not ratify the bill, the State would reclaim the
12 land and keep residents’ rent for itself. The City knew that “if the State reclaimed the land, the City
13 would not only lose control over the land, but it would lose the valuable revenue stream from rents
14 that it was then enjoying and would continue to enjoy for the next 20 years.” Even more
15 importantly, it “would lose the right to develop the land for a potentially more lucrative use in the
16 future.” (TAC, ¶ 23.)

17 With its deadline looming whether to ratify the Kapiloff Bill, the City considered what it would
18 owe to residents at the end of 2003 with regard to residents’ relocation benefits. In Report
19 No. 81-160, the City Manager detailed that “if displacement were to occur at the end of the lease in
20 2003, the relocation costs could be on the order of \$7 million.” This meant that the City’s
21 anticipated amount of relocation costs owed to residents in 1981 dollars was less than the projected
22 revenues generated, even if the property remained a mobilehome park through 2003. (TAC, ¶ 24.)

23 **On January 25, 1982—facing the prospect of losing land use authority, losing untold**
24 **millions of dollars from development after November 2003, losing upwards of \$50 million**
25 **anticipated from rental revenue through 2003, and having to pay only \$7 million for**
26 **relocation benefits (at that time)—the City Council voted to ratify the Kapiloff Bill. (TAC,**
27 **¶ 24.) Because of the City’s action, the Kapiloff Bill became law.**

28 ///

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

2 In June 1991, the City considered a plan to develop an 800-room hotel complex at De Anza
3 Cove after it closed the Park. This proposal was significant because, if the plan were approved, the
4 City hoped to shift the financial commitment of relocating more than 500 households from itself to
5 DHRG—a commitment by then estimated at about \$25 million. (TAC, ¶¶ 31-32.)

6 Throughout the 1990's, DHRG continued to present various redevelopment plans to the City.
7 (TAC, ¶ 32.) But on May 7, 2003, DHRG notified the City and Park residents that it had
8 abandoned its efforts to develop a hotel. When DHRG's redevelopment plans died, "full
9 responsibility for all costs associated with closing the mobilehome park" reverted back to the City.
10 (TAC, ¶ 33.)

11
12 **D. The City tries to bulldoze homeowners with its take-it-or-leave-it "transition plan."**

13 With time running out, the City appeared at a resident meeting at De Anza Cove on October 22,
14 2003, to talk with Park residents for the first time about its long-awaited "transition plan."
15 Presenting the "plan" was the City's Director of Real Estate Assets, **who was flanked by four**
16 **armed policemen.** The message was clear: waive all of your statutory rights—including those
17 under the MRL—and sign the City's take-it-or-leave-it settlement agreement or the City will evict
18 you. The City sent documents to residents in the following days, accompanied by a cover letter
19 stating: "Please be advised that if you do not accept the offer, eviction proceedings will be
20 commenced against you and all other occupants of your mobilehome beginning November 24,
21 2003." (TAC, ¶ 34.)

22 The City used the last 20 years to collect rent from the residents and make redevelopment plans.
23 The City of San Diego had over 20 years to prepare for its closure of the Park, to follow the
24 provisions of the Mobilehome Residency Law, to prepare a Tenant Impact Report, to hold public
25 hearings, and to gather and distribute financial resources to help relocate the owners and residents
26 of the Park. But the City refused to follow its statutory duties and decided, instead, to bully and
27 force the residents out. (TAC, ¶ 35.)

28 **The City, its attorneys, and its new park management company initiated Gestapo-like**

1 **tactics to pressure Park residents to leave the Park.** Despite this Court’s Temporary Restraining
2 Order and Preliminary Injunction mandating the preservation of the status quo, the City plowed
3 forward with its “transition plan.” The City erected tall barbed-wire fences, installed klieg lights
4 and a guard shack, brought in armed guards, destroyed the park’s playground, storage, and other
5 facilities, removed the furniture from the community’s common-area clubhouses, towed cars,
6 surreptitiously got the County to levy taxes against residents, changed the Park’s rules and
7 regulations, and misrepresented to residents the Court’s rulings, California law, and the status of
8 this case. (TAC, ¶ 42.) (Previously, Plaintiffs provided the Court with a video disk evidencing this
9 conduct by the City.) All of this was designed by the City to force people to give up, desert their
10 homes, and waive their relocation rights via the City’s settlement agreements that forced residents
11 to pay for the cost of demolishing their own homes and left them unable to secure alternative
12 housing. (TAC, ¶ 44.)

13
14 **2. State law protects California’s mobilehome owners and**
15 **residents—including De Anza Cove’s residents—when an**
16 **owner seeks to close or change the use of a mobilehome park.**

17 The State Legislature passed extensive measures to protect mobilehome owners and residents,
18 recognizing that mobilehome parks are one of the last vestiges of affordable housing, particularly
19 for the elderly.

20 For this reason, State law requires among other things that, prior to park closure or any change
21 of use of the land, the City *must* conduct a Tenant Impact Report, *must* hold open session hearings,
22 and *must* take affirmative steps to mitigate the harm resulting from park closure, taking into
23 account the scarcity of alternate housing and actual relocation costs, including payment of
24 relocation costs. These are mandatory duties imposed on the City. (TAC, ¶¶ 62-72, 82-84; Gov’t
25 Code § 65863.7; Civ. Code § 798.56.)

26 In October 2005, plaintiffs filed a Third Amended Complaint, couching their property claims as
27 a class action to achieve the finality of judgment that the City stated it sought as to all putative class
28 members. If the MRL applies here—as it does in every mobilehome park in California—it will

1 apply to all class members: the De Anza Cove homeowners and residents.

3 **Certification Discovery**

4 All parties have had a reasonable opportunity to conduct relevant pre-certification discovery. In
5 fact, discovery in this matter began nearly three years ago.

6 Plaintiffs propounded written discovery to the City, and the City asserts that it has over
7 100 *boxes* of responsive documents. The City produced over 27,000 pages of resident information
8 (14 boxes) maintained by its former management company, Hawkeye. These documents alone
9 revealed that the Master Class is certainly ascertainable, since the City has in its possession literally
10 dozens of boxes of information about the class members: Title and Registration documents from
11 the California Department of Housing & Community Development showing the names of the
12 registered owners of the Park's homes, types of homes, sales dates and prices, and much more (*e.g.*,
13 Exs. 1, 2, 3), the City's Resident Questionnaires sent out in late 2003 showing owner and occupant
14 names and much more information (Exs. 4, 5), County of San Diego tax bills and information
15 (Ex. 6), the City's Vehicle Registration Forms showing owners and occupants and other personal
16 information (Ex. 7)—even copies of owners and occupants' drivers licenses (Bates-label pages
17 SD68485, SD68371). Although the City has yet to make available to Plaintiffs the resident files
18 maintained by its current management company, Newport Pacific, Plaintiffs contend that those files
19 will contain similar and even more current resident information. As to Subclass A—all people who
20 signed the City's settlement agreements—all of that information is in the City's possession. For
21 example, it has a list of residents who signed (Ex. 8) as well as the actual settlement agreements
22 themselves (Bates-label pages SD34491-41073, SD48260-51626).

23 The City deposed 6 class representatives, as well as the Person Most Knowledgeable for the De
24 Anza Cove Homeowners Association regarding membership issues. Each of the Plaintiff class
25 representatives provided further documents as the City requested. Plaintiffs also sent
26 questionnaires to class members, at the class members' expense, in late Fall 2004 to verify contact
27 and basic housing information. Over 280 households responded to the questionnaires, which were
28 all provided to the City, along with related leases, documents, and registration information that

1 those residents produced.

2 Although, spanning back to last year, Plaintiffs attempted to hash out issues pertinent to class
3 certification as required under Rule 1854(e) of the California Rules of Court, such as class
4 definitions, membership in the class, and the like (Exs. 21-22), the City never provided any input—
5 its representatives merely stated that they had no authority to stipulate or object. Then, just *this*
6 *week*, the City served supplemental discovery responses, but once again, the City claims throughout
7 that it does not have sufficient information to state its contentions or supporting facts about the
8 issues pertinent to class certification. (Exs. 23-25.) For example, when asked to admit that the
9 identity of members of Subclass A—the people who signed the City’s settlement agreements—can
10 be ascertained by reference to the settlement agreements in the City’s possession, the City
11 responded: “After a good faith reasonable inquiry, the City is unable to admit or deny this request
12 as discovery as to class members is incomplete and ongoing.” (Ex. 23, Req. for Admission No. 6,
13 p. 5.) This is a far cry from the substantive responses required by the Code. (Ex. 26.)

14 The reality is that over the course of the last three years of litigation, the City has—by itself and
15 through its management companies and other agents—collected mountains of information on class
16 members through various surveys, applications, and rent rolls culled from the current and past Park
17 management companies, the County of San Diego, and the Department of Housing & Community
18 Development, which is responsible for registration and titling of California’s mobilehomes. Ample
19 pre-certification discovery has been completed by the parties to identify class members and
20 ascertain the Class.

21 22 **Argument**

23 **1. California’s judicial policy favors class certification.**

24 Judicial policy in this State expressly favors maintaining class actions where the claims apply to
25 the class as a whole. *State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 471; *Union*
26 *Carbide Corp. v. Sup. Ct.* (1984) 36 Cal.3d 15, 21-22; *Richmond v. Dart Industries, Inc.* (1981)
27 29 Cal.3d 462, 473; *La Sala v. American Sav. & Loan Ass’n* (1971) 5 Cal.3d 864, 875-876; *America*
28 *Online, Inc. v. Sup. Ct.* (2001) 90 Cal.App.4th 1, 17. This case is ideally suited for class

1 certification since the threshold legal issue is uniform for all class members, as discussed herein.

2 Pursuant to Code of Civil Procedure section 382, “when the question is one of common or
3 general interest, of many persons, or when the parties are numerous, and it is impractical to bring
4 them all before the court, one or more may sue or defend for the benefit of all.” Our State Supreme
5 Court has noted that class actions are an admirable vehicle for righting wrongs to class members,
6 one that relieves the judiciary and the parties of the tremendous burden of multiple litigations
7 involving the same issues or claims. *Vasquez v. Sup. Ct. (Karp)* (1971) 4 Cal.3d 800, 808.

9 **2. Legal standards for determining class certification.**

10 As class certification is a favored method of adjudication in California, certification should be
11 granted wherever the primary requirements can be demonstrated. In determining whether to grant a
12 motion for class certification, California courts, for over 100 years, have focused on two primary
13 requirements:

- 14 • Whether the class is ascertainable; and
- 15 • Whether a well-defined community of interest exists.

16 *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347; *Daar v. Yellow*
17 *Cab Co.* (1967) 67 Cal.2d 695, 704; *Jellen v. O'Brien* (1928) 89 Cal.App. 505; *Gieske v. Anderson*
18 (1888) 77 Cal. 247; *See also* Civil Code § 382.

19 At the certification stage, the substantive allegations of the complaint are assumed to be true,
20 *La Sala v. American Sav. & Loan Ass'n* (1971) 5 Cal.3d 864, 869; *Blackie v. Barrack* (9th Cir.
21 1975) 524 F.2d 891, 901, and the court should not “make any determination of the merits or the
22 validity of the claim.” *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 829.
23 Plaintiffs need only show the elements for class certification are satisfied. So long as the elements
24 have been met, the class must be certified. *Stevens v. Montgomery Ward* (1987) 193 Cal.App.3d
25 411, 418; *Green v. Obledo* (1981) 29 Cal.3d 126, 146. Moreover, **any doubts as to the**
26 **appropriateness of certification should be resolved in favor of certifying the class.**
27 *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 473-475.

28 ///

1 **3. The proposed Master Class and its subclasses are**
2 **ascertainable because all members can be identified from City**
3 **documents, rent rolls, property tax records, lease agreements,**
4 **questionnaires, and management files.**

5 A class is ascertainable if the class definition is unambiguous, the class size is large, and some
6 verifiable means of identifying class members exists. *Reyes v. Board of Supervisors of San Diego*
7 *County* (1987) 196 Cal.App.3d 1263, 1271; *Vasquez v. Sup. Ct. (Karp)* (1971) 4 Cal.3d 800, 821-
8 822; *Miller v. Woods* (1983) 148 Cal.App.3d 862, 873. Should the Court perceive any flaw in the
9 proposed class definitions—one that must be corrected as a prerequisite to certification—the Court
10 can and should modify the class description to permit certification in accordance with California
11 public policy. *Woolsey v. State of California* (1992) 3 Cal.4th 758, 795.

12 Here, the Master Class is defined as follows:

13 As of October 22, 2003, and thereafter, all homeowners, tenants, residents, other
14 occupants—and their heirs and assigns—of the approximately 509 homes within the
15 mobilehome park now known as Mission Bay Park and formerly known as De Anza
Harbor Resort, located at 2727 De Anza Road, San Diego, California. (Third
Amended Complaint (TAC) at ¶ 48.)

16 The Master Class succinctly includes only De Anza Cove homeowners and residents for a
17 circumscribed period of time that is germane to the statutory relocation mandates. And the Class
18 clearly contains hundreds of putative members, averaging about 2 per home.

19 Moreover, the proposed Class is neatly circumscribed by the geography of the Park itself,
20 including **only those who have either owned a home or lived in a home at De Anza Cove** as of
21 October 22, 2003—the date on which the City announced its “Transition Plan”—and thereafter.
22 All class members can be easily ascertained and placed on notice through mailing lists based on
23 HCD registration and title records, rent rolls, property tax rolls, lease agreements, rental
24 applications, questionnaires, and the like. “Class members are ‘ascertainable’ where they may be
25 readily identified without unreasonable expense or time by reference to official records.” *Rose v.*
26 *City of Hayward* (1981) 126 Cal.App.3d 926, 932.

27 **In addition, the City filed a cross-complaint against more than 800 individual residents at**
28 **De Anza—which the Court wisely stayed. But the fact that the City was even able to identify**

1 **who the residents were and place them in the caption by name underscores the fact that the**
2 **Class can be identified.** (See Ex. 9, Caption of City’s First Amended Cross-Complaint.)
3 **Therefore, the ascertainability of the Master Class is hardly disputable.**

4 Moreover, Plaintiffs have proposed two easily defined subclasses: one made up of those who
5 signed settlement agreements with the City, and one for those who are non-owners, such as renters.
6 California law supports the use of subclasses to expedite class treatment where appropriate.
7 Cal. Rules of Ct., Rule 1854(a). The goal in utilizing these subclasses is to streamline two key sub-
8 issues.

9
10 **A. Subclass A: Class members who signed settlement agreements with the City at any**
11 **time after October 22, 2003.**

12 The City’s bullying tactics resulted in settlement agreements from numerous class members
13 even though the MRL expressly prohibits any waiver of a resident’s statutory rights. Therefore,
14 Subclass A of the Master Class, which is defined as “[a]ll homeowners, tenants, residents, and other
15 occupants who signed release agreements with the City of San Diego regarding De Anza Cove,”
16 seeks declaratory relief that the settlement agreements are unenforceable as a matter of law. As the
17 **City**, itself, is in possession of each of those signed settlement agreements, it **knows precisely**
18 **which members belong to Subclass A.** (Ex. 8, list, and the actual settlement agreements (Bates-
19 label pages SD34491-41073, SD48260-51626).)

20
21 **B. Subclass B: Class members who rent a home at De Anza Cove.**

22 Although residents who rent homes at De Anza are entitled to smaller benefits under the MRL
23 than homeowners, their claims nevertheless turn on the same question of law regarding the
24 applicability of the MRL. For this reason, their claims are likewise well suited to class treatment.
25 Each member of Subclass B has an agreement with the respective homeowner (Master Class
26 member) and can be easily identified for the purposes of giving appropriate notice. Moreover,
27 Plaintiffs and the City both have robust lists of these subclass members and can compile same
28 through tenant files, rental applications, subleasing agreements, rent rolls, and questionnaires.

1 (Tatro Decl., ¶ 2; Exs. 1-9.)

2 Thus, Plaintiffs have established the first of two elements for class certification—
3 ascertainability of the class.

4
5 **4. A well-defined community of interest exists.**

6 In addressing the existence of a community of interest—the second element—the Court should
7 consider the following factors: (1) whether common questions of law or fact predominate over
8 individual questions; (2) whether the class representatives have claims typical of the class; and
9 (3) whether the class representatives can adequately represent the class. *Sav-On Drugstores v. Sup.*
10 *Ct.* (2004) 34 Cal.4th 319; *Lockheed Martin Corp. v. Sup. Ct.* (2003) 29 Cal.4th 1096; *Reyes v.*
11 *Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263, 1271. These requirements
12 are generally more broadly expressed as the elements of:

- 13 A. Predominance of common questions of law or fact;
14 B. Numerosity of class members;
15 C. Typicality of claims;
16 D. Adequacy of representation by the named Plaintiffs; and
17 E. Superiority of the class action vehicle.

18 These five elements have been expressly adopted by the California Supreme Court for use by trial
19 courts in determining whether the requirements for certification under Code of Civil Procedure
20 section 382 have been met. *Vasquez v. Sup. Ct. (Karp)* (1971) 4 Cal.3d 800, 821. As shown
21 below, Plaintiffs have established all requisite elements.

22
23 **A. Common issues predominate over individual ones.**

24 In class certification jurisprudence, common issues “predominate” when they constitute a
25 significant part of the individual cases. *Jenkins v. Raymark* (5th Cir. 1991) 782 F.2d 468, 472. In
26 assessing whether common issues predominate over individual ones, it is not necessary that the
27 class members’ claims or circumstances be identical. *L.A. Fire and Police Protective League v.*
28 *Los Angeles* (1972) 23 Cal.App.3d 67, 74 (19 different sub-groups of employees did not preclude

1 finding that common issues predominate). A “common nucleus of operative facts is usually enough
2 to satisfy the commonality requirement....” *Rosario v. Livaditis* (7th Cir. 1992) 963 F.2d 1013,
3 1018. This common nucleus of operative facts usually occurs where “the defendants have engaged
4 in standardized conduct towards members of the proposed class.” *Ellis v. Elgin River Boat Resort*
5 (N.D. Ill. 2003) 217 F.R.D. 415, 422. Precise, identical situations are not necessary. “The very
6 definition of the requirement of predominance of common questions contemplates that individual
7 issues will usually remain after common issues are adjudicated.” 1 NEWBERG ON CLASS ACTIONS
8 (3d ed. 1992) § 4.25.

9 The common issues of law and fact in this case are:

- 10 • Whether the MRL applies to the closure of the De Anza Cove mobilehome park;
- 11 • Whether the City of San Diego—like all other California cities and
12 landowners—is bound by the MRL;
- 13 • Whether the City's “transition plan”—dismantling the De Anza community
14 without doing a Tenant Impact Report, holding hearings, or providing even the
15 minimum relocation benefits required by law—violates the MRL;
- 16 • The availability of permanent injunctive relief; and
- 17 • Whether the City can, by contract or otherwise, lawfully require Class members
18 to waive their statutory rights under the MRL.

19 These overriding issues predominate over any isolated individual interests related to this matter.
20 (Some class members are also plaintiffs in a lawsuit filed separately related to losses suffered
21 through lost rents, emotional distress, and other claims arising out of the City and its agents’
22 tortious acts and abuses after the City took over Park management in November 2003. Those
23 claims are *not* at issue here and, therefore, do not provide a proper basis for objecting to
24 commonality.) If the City is required to comply with State law as to any one class member, it is
25 required to comply as to *all* class members. Similarly, if one class member is entitled to relief, then
26 *all* class members are entitled to relief because the MRL specifically addresses the landlord’s
27 *parkwide* responsibilities before closing the park. *See* Civ. Code § 798.56; Gov’t Code § 65863.7.

28 **The Court should not be misled into believing that, merely because each class member
may be entitled to varying sums of money, the class cannot be certified. In fact, once the
City’s liability is established on a class basis, the court has broad flexibility to devise a means**

1 **of qualifying class members for recovery and quantifying that recovery.** *Hicks v. Kaufman &*
2 *Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916; *Reyes*, 196 Cal.App.3d at 1278; *See also* Decl.
3 of Patrick Kennedy, Ph.D.

4 Whether common issues predominate is a question focusing, not on plaintiffs' conduct or
5 recovery, but on defendant's liability—"if the defendant's liability can be determined by facts
6 **common to all members of the class, a class will be certified even if the members must**
7 **individually prove their damages.**" *Hicks*, 89 Cal.App.4th at 916. Here, the proposed class can
8 prove the City's liability through facts common to *all* class members and without reference to
9 individual class member issues.

10 A requirement that each class member must, at some time, make an individual showing as to his
11 or her right to recovery or as to the amount of damages does not render a class action inappropriate.
12 *Employment Dev. Dept. v. Sup. Ct.* (1981) 30 Cal.App.3d 256, 262; *Acree v. General Motors*
13 *Acceptance Corp.* (2001) 92 Cal.App.4th 385, 397; *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*
14 (1987) 191 Cal.App.3d 1341, 1354 ("presence of individual damage issues cannot bar
15 certification"); *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934 ("each class member may
16 establish damages independently without threatening the integrity of the class action").

17 Simply put, there are numerous ways to establish damages after class certification has been
18 granted. For example, the Court's February 22, 2005 Stipulation and Order requires a Tenant
19 Impact Report to be performed which will calculate all class members' damages:

20 The Tenant Impact Report shall address, among other things, relocation needs,
21 relocation costs, relocation assistance, relocation benefits, replacement housing
22 needs, replacement housing availability, appraisal of existing mobilehomes, and
replacement housing payments.

23 The Tenant Impact Report will address all homeowners, tenants, and other
24 occupants of the mobilehome park as of October 22, 2003, as well as any and all
25 homeowners, tenants, and other occupants of the mobilehome park who may have
entered the mobilehome park after October 22, 2003. (Ex. 20, Order dated Feb. 22,
2005, ¶¶ 2-3.)

26 **This stipulation demonstrates that, well in advance of certification, the parties had**
27 **already contemplated a method for calculating damages, one that provides a manageable**
28 **framework and that was included in the Court's Order.**

1 Furthermore, the parties can agree to, or the Court may appoint, a claims administrator or a
2 special master, if necessary, to determine the precise relocation package for each class member.
3 Most importantly, as stated by the Supreme Court, any doubts as to the propriety of class
4 certification must be resolved in favor of certification. *Richmond*, 29 Cal.3d 462, 473.

5
6 **B. The Class is numerous because it includes homeowners and renters of over**
7 **500 homes.**

8 The proposed Class must be sufficiently numerous to render joinder of its members
9 impracticable. *Richmond*, 29 Cal.3d at 470. Plaintiffs need not allege the exact number and
10 identities of the class members, but must only establish that joinder is impracticable. This is a
11 rather straight-forward showing, since courts have certified classes with even less than 40 members.
12 *Rose v. City of Hayward* (1981) 126 Cal.App.3d at 934 (as few as 30 to 40 class members satisfy
13 the numerosity requirement); *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030 (certification
14 appropriate when case involves as few as 28 class members).

15 Here, about 1,000 past and current residents fit the class definition. Joining 1,000 individual
16 plaintiffs would place a tremendous strain on the parties, on the Court, and on the taxpayers of San
17 Diego who would have to fund the defense of 1,000 claims.

18
19 **C. The class representatives are pressing claims that are typical of those held by the**
20 **Class because Plaintiffs are all homeowners and/or residents of De Anza Cove.**

21 To satisfy the typicality prong, the named Plaintiffs' interest in the action must be similar to that
22 of the other members of the proposed Class. *Richmond*, 29 Cal.3d at 475. However, the claims of
23 each class member need not be identical. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47;
24 *Rosack v. Volvo of America Corp.* (1982) 131 Cal.App.3d 741. The class representatives need only
25 demonstrate that their claims are similar to the claims of the other class members and are based on
26 the same legal theories. *Id.* at 763. No further showing is required.

27 Here, a strong community of interest is unmistakable. At all relevant times, all class
28 representatives lived at the Park. They represent the interests of the Master Class and have claims

1 that are identical to every other class member. Five of the class representatives are homeowners at
2 the Park—Murphy, Turoski, Rubin, Ruffato, and Giacolli. Two of the class representatives signed
3 the City’s contested settlement agreement—Rubin and Giacolli—representing the interests of
4 Subclass A. Two of the class representatives are non-owner occupants—Cofer and Bock—
5 representing the interests of Subclass B. A class representative's claim is "typical" insofar as it is
6 not merely a personal claim unique to the class representative. *See Baltimore Football Club, Inc. v.*
7 *Sup. Ct.* (1985) 171 Cal.App.3d 352, 359.

8 Here, the named Plaintiffs hold typical claims and represent a fair cross-section of the class
9 community. For example, United States Census data specific to De Anza Cove confirms that more
10 than half of the Park residents sampled are age 65 or older, and a quarter of Park residents are age
11 75 or older. Moreover, about 17% are renters and 83% are homeowners. (Ex. 10, U.S. Census
12 Report for De Anza Cove (2000).) There are also two sections of the Park, the older family section
13 with mostly single-wide homes on small lots, and the newer section with double- and triple-wide
14 homes on larger lots.

15 Consistent with these parameters, the class representatives share similar characteristics with the
16 Class. For example, Dorcas Turoski is 79 years old and owns her home. (Ex. 11, Turoski Dep. Tr.,
17 pp. 37-38.) Mildred Rubin is 85 years old, owns her home, and is disabled by blindness. She is
18 also one of the subclass members who signed the City’s contested settlement agreement. (Ex. 12,
19 Rubin Dep. Tr., pp. 9-10, 17-18, 21-22, 24, 84-89.) Lisa Bock is 43 years old and rents her home.
20 (Ex. 13, Bock Dep. Tr., pp. 12-18.) Robert Ruffato is 83 years old and owns his home. (Ex. 14,
21 Ruffato Dep. Tr., p. 35; Tatro Decl., ¶ 15.) Eileen Cofer is 71 years old and lives at De Anza but
22 does not own her home. (Ex. 15, Cofer Dep. Tr., pp. 5, 13; Tatro Decl., ¶ 15.) James Giacolli is
23 61 years old, owns his home, and signed the City’s contested settlement agreement. (Tatro Decl.,
24 ¶ 14.) Ethel Murphy is 96 years young, owns her home, and has lived at De Anza Cove for
25 decades. (Ex. 16, Murphy Dep. Tr., pp. 7, 16, 23, 14, 118.) Additionally, as shown on the
26 accompanying map, Plaintiffs hail from both the older and newer sections of the Park, representing
27 all walks of life. (Ex. 17.)

28 Like all class members, these Plaintiffs will lose their homes when the City closes the Park.

1 (See Decl. of Green.) Like all class members, the City threatened Plaintiffs with eviction if they
2 did not agree with the City’s unlawful “transition plan.” (TAC, ¶ 34; Ex. 18, ¶ 5.) As it has with
3 all class members, the City has refused to recognize the statutory rights of these class
4 representatives under State law. Like all class members, plaintiffs seek to permanently enjoin the
5 City from closing the park until the City has complied with state relocation laws, including the pre-
6 closure requirements of the MRL. (TAC, ¶ 71.) In every sense, the claims of the named Plaintiffs
7 parallel those of the putative class members. Plaintiffs, therefore, satisfy the typicality requirement.
8

9 **D. The class representatives can adequately represent the Class.**

10 The adequacy requirement is met by fulfilling two conditions. First, the named Plaintiffs must
11 be represented by counsel qualified to conduct the litigation and, secondly, the named Plaintiffs’
12 interests must not be antagonistic to the Class. They must have no disabling conflict that might
13 hinder the prosecution of the action. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451.

14 Here, Plaintiffs are represented by counsel qualified to conduct the litigation and have no
15 conflicts with the Class. Plaintiffs have been cooperative and helpful throughout the litigation.
16 They have assisted in review of voluminous documents, have helped chronicle the City’s actions,
17 and have submitted to depositions taken by the Defendants. (Tatro Decl., ¶¶ 2, 8.)

18 As the courts have reasoned, “adequacy” for class purposes does not mean “identical”—it
19 simply means sharing common legal or factual positions:

20 With respect to the adequacy of the representative, the traditional approach has been
21 to consider whether the interest of the named party is co-extensive with the interest
22 of the other members of the class, whether his interests are antagonistic in any ways
23 to the interests of those whom he represents, and any other facts bearing on the
24 ability of the named party to speak for the rest of the Class. **Coextensiveness of
interest does not mean** that the positions of the representative and the class
members have to be **identical; rather it means** that the representative and class
members should **share common objectives and legal or factual positions.**
Edmondson v. Simon (N.D. Ill. 1980) 86 F.R.D. 375, 381 (emphasis added).

25 In this case, Plaintiffs’ interests are entirely co-extensive with the interests of the other members
26 of the Class, for if it is shown that the MRL applies to the City’s closure of De Anza Cove, then
27 Plaintiffs must prevail, and so must the entire Class.

28 Class counsel must be “qualified, experienced and generally able to conduct the proposed

1 litigation.” *Miller v. Woods* (1983) 148 Cal.App.3d 862, 875. Absent a showing to the contrary,
2 adequacy must be assumed. *Guarantee Insurance Agency Co. v. Mid-Continental Rlty. Co.* (N.D.
3 Ill. 1972) 57 F.R.D. 555, 564. When evaluating this factor, the court looks to whether the attorneys
4 will vigorously prosecute the litigation. A review of the litigation of this case and the conduct of
5 Plaintiffs and their counsel to help all De Anza Cove residents over the past two-and-a-half years
6 establishes this element. (See Tatro Decl., ¶¶ 3-13; Req. for Jud. Notice, ¶ 4.) Additionally,
7 Plaintiffs’ counsel has a long history of involvement in complex and class litigation. (Decl. of
8 Vincent J. Bartolotta, Jr., Esq.) This experience, combined with the absence of any conflict
9 between the class representatives and the class, results in a finding that the class representatives,
10 here, can adequately represent the Class.

11
12 **E. Proceeding as a class action is far superior to litigating over 1000 individual lawsuits.**

13 At the inception of this case, the City challenged the standing of the De Anza Cove
14 Homeowners Association to bring suit on behalf of its members. Plaintiffs always rebuffed this
15 challenge in light of the ample case law supporting representative actions brought by tenant
16 associations. However, the City apparently believed that one way to achieve finality of judgment
17 was to file a cross complaint against the Park’s residents on an individual basis, an act which led
18 this Court to observe the disadvantages of proceeding down that path:

19 What I would like to do is to try to avoid the 900 lawsuits that are sitting on the desk
20 waiting to be served. That’s an extraordinary number of lawsuits, and every suit is
21 going to have to be individually served. Every suit is going to have to be
22 individually responded to when someone calls the City and says, “Hey, I just got
23 this. What’s this all about? And what do I do?” You’re dealing with parties, if that
24 were the case, and I’m assuming, and I hope it doesn’t come to that, that these
25 lawsuits are ultimately filed. That’s going to be very costly and very expensive to
26 the City and to the individuals. (Ex. 19, Rptr’s Tr., June 30, 2005, p. 39, ll. 5-16.)

24 To eliminate any question as to the finality of the case—and to avoid the needless expense of
25 defending against the City’s nearly 900 cross-suits—Plaintiffs amended the complaint to plead a
26 traditional class action.

27 Class actions provide the best method to resolve controversies where there is the likelihood of
28 repetitious litigation and a risk of inconsistent or varying results, which could establish

1 incompatible standards of conduct for the City. *See, e.g., Sav-On Drugstores v. Sup. Ct.* (2004)
2 34 Cal.4th 319; Fed. R. Civ. Proc., Rule 23(b)(1)(A). A class action is plainly superior to other
3 methods available for the fair and efficient adjudication of this controversy. *Richmond*,
4 29 Cal.3d 462, 469. The California Supreme Court has repeatedly emphasized the importance of
5 the class action device for vindication of the rights asserted by large groups of persons. *Keating v.*
6 *Sup. Ct.* (1982) 31 Cal.3d 584, 609.

7 From a practical standpoint, it just makes sense to resolve the fundamental legal questions on a
8 class-wide basis. The efficiency of proceeding as a class cannot be denied, particularly, here,
9 where the Court has already had a glimpse of the alternative: a massive wave of individual property
10 claims that would be extremely costly, difficult to manage, and likely to congest the Court's
11 calendar for years. Additionally, class certification will help protect the potential rights of those
12 members who would otherwise be unlikely to pursue litigation on their own. In this manner,
13 certification actually corrects a problem created by the City's mistreatment of residents early on in
14 this case. Over 100 homes are already gone, and those people left before their rights were
15 determined. **In fact, those who left because they were told by the City and its agents that they**
16 **had no relocation rights are precisely the class members who would be the least likely to even**
17 **know that they could pursue a claim on their own. In other words, by certifying the class, the**
18 **Court at least ensures that no one falls through the cracks.** If members want to opt out, they
19 can; but everyone gets the opportunity to make an informed choice based on *truthful* information.

20 21 **Conclusion**

22 In a case where the Court has been asked to make difficult decisions, this Motion is a breath of
23 fresh air. Certifying the Class will save everyone time and money, preserve residents' rights, and
24 avoid inconsistent results stemming from 1000 individual relocation-benefit claims. Given that the
25 claims of all class members turn on the determination of *one* question of law, this case presents a
26 textbook example of why class treatment works here: one issue, one determination that will equally
27 affect all class members and avoid the need for 1,000 individual trials. Thus, Plaintiffs respectfully
28 request that the Court grant this Motion and certify the Master Class and Subclasses A and B.

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DATE: August __, 2006

Respectfully Submitted,
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