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7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 DE ANZA COVE HOMEOWNERS  
ASSOCIATION, INC., a California non-profit  
11 corporation,

12 Plaintiff,

13 v.

14 CITY OF SAN DIEGO, a California  
municipality; and DOES 1-100, inclusive,

15 Defendants.  
16

Case No. GIC 821191

**PLAINTIFF'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION TO APPOINT  
RECEIVER FOR DE ANZA COVE**

DATE: May 13, 2005  
TIME: 2:00 p.m.  
DEPT: 66  
I/C JUDGE: Hon. Charles Hayes

17 AND RELATED CROSS ACTION  
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1 \*This motion and moving papers have been significantly revised and reformatted from  
2 Plaintiff's submission on April 7, 2005, which is hereby withdrawn. Plaintiff requests, therefore,  
3 that the Court, parties, and counsel rely exclusively on these points and authorities, declarations,  
4 exhibits, and the other papers identified in the accompanying Notice of Motion and Motion.  
5 **Before reading further, Plaintiff requests that His Honor first insert and watch the video**  
6 **attached as Exhibit 1 to the Notice of Lodgment.**

7  
8  
9 **Issue**

10 The main issue in this receivership motion concerns the City of San Diego's management of the  
11 De Anza Cove mobilehome park and its treatment of the people who live there:

12  
13 **Maintaining the *status quo*?** This Court repeatedly ordered the City of San Diego  
14 to preserve and maintain the *status quo* at De Anza Cove. Rather than halting its  
15 "transition plan," the City unilaterally closed and fenced-off common areas,  
16 removed laundry facilities, demolished storage areas, towed residents' cars, brought  
17 in armed guards, put up klieg lights and barbed-wire fencing, changed the park's  
18 rules, and continued threatening eviction. And the City's apparent purpose for  
19 maintaining control over the people at De Anza Cove is so that its on-site  
20 management company and attorneys can: (1) continue to force people to leave De  
21 Anza by making their living environment miserable; (2) communicate *ex parte* with  
22 members of the plaintiff class; and (3) coerce residents to sign settlement  
23 agreements that waive all of their rights. Has the City followed the Court's order to  
24 maintain the *status quo*? Should the Court appoint a receiver to manage and operate  
25 De Anza Cove until this litigation is concluded?

26 ///

27 ///

28 ///

## Procedural History and Facts

### 1. Review of the Court's orders and admonitions.

#### A. Temporary Restraining Order.

On November 20, 2003—three days before the City took possession of the property—the Court reviewed the Homeowners Association's request for a Temporary Restraining Order and heard oral argument. Later that afternoon, the Court issued the Temporary Restraining Order. The Court enjoined the City from evicting residents and from “discontinuing or diminishing any previously-provided services to the Park and its residents and from closing down any common areas.”<sup>1</sup>

Only a few days later, the City sought to dissolve the TRO and move forward with its “transition plan,” or alternatively, to close some common areas and diminish the services provided to residents. The City's director of real estate assets declared under penalty of perjury that the City's “transition plan” was for “Residents to confirm that they are not entitled to relocation or other assistance and to agree to move out.”<sup>2</sup> He also told the court: “Nearly 75 spaces...have signed the settlement agreement.”<sup>3</sup> The Court denied the City's attempt to dissolve or amend the TRO, close the common areas, and diminish services.

The Court then reiterated to all counsel and parties—including the City's director of real estate assets who was present<sup>4</sup>—that, except for non-payment of rent, the status quo was to be maintained for the duration of the case:

Well, rest assured, politics and outside interests and whatever may be assertedly going on has absolutely no bearing upon this Court. I don't care. I'm concerned about preserving the rights of the parties until we can have everything adjudicated fully and determined and finalize those rights and obligations.... To preserve the status quo with the pool, or with the lights at the entry, or something such as that...the City is being ordered and has been ordered to conduct itself in a certain fashion.... **What I want to do is ensure that the status quo as between these parties...is maintained.**<sup>5</sup>

<sup>1</sup> Temporary Restraining Order, pp. 2-3, attached as Ex. 2 to Plaintiff's Notice of Lodgment of Exhibits in Support of Motion to Appoint Receiver for De Anza Cove (hereinafter “NOL”).

<sup>2</sup> Ex. 12 to NOL, Griffith Decl., p. 4, ¶ 10.

<sup>3</sup> Ex. 12 to NOL, Griffith Decl., p. 4, ¶ 11.

<sup>4</sup> Nov. 25, 2003 Transcript, p. 1, Ex. 4 to NOL.

<sup>5</sup> Nov. 25, 2003 Transcript, p. 14, Ex. 4 to NOL.

1 The Court then summed up:

2 I really do expect that the spirit of the TRO preserving the status quo is to be  
3 accomplished between these parties in good faith as much as is humanly possible.

4 \* \* \*

5 Evict people if they don't pay rent. **Everything else, we're going to preserve the  
6 status quo.**<sup>6</sup>

## 7 **B. Preliminary Injunction**

8 A few weeks later, the Court granted the Preliminary Injunction after finding that the HOA had  
9 "established a reasonable probability of success on the merits," meaning that the City continued to  
10 violate state law by attempting to close the park without complying with the Mobilehome  
11 Residency Law. The Injunction prevented any legal action against park residents and mandated the  
12 continuation of services and common areas at De Anza Cove.<sup>7</sup>

13 During oral argument in mid-December 2003, the Court reiterated many times the need for  
14 proper communication about park operations from the City's management team. For example:

15 I want communication.... You should be communicating with them, not as  
16 advocates necessarily, but as human beings trying to make their lives a little bit more  
17 understandable, a little bit better. So you do that, please. Okay?<sup>8</sup>

18 When it heard allegations that the City was beginning to make wholesale changes at De Anza  
19 Cove, the Court responded quickly and unequivocally when it told all attorneys and parties—  
20 including the City's director of real estate assets who was again in attendance<sup>9</sup>—that the City was  
21 ordered to maintain the status quo: **"Is it clear what I had in mind, that the status quo was going  
22 to be maintained, that things weren't going to be changed until we get this over with?"**<sup>10</sup>

## 23 **C. November 2004 hearings regarding the City's unilateral tree-cutting plans.**

24 In November 2004, the HOA sought to prevent the City from unilaterally clear-cutting

25 <sup>6</sup> Nov. 25, 2003 Transcript, pp. 18, 26, Ex. 4 to NOL.

26 <sup>7</sup> Preliminary Injunction, Ex. 7 to NOL.

27 <sup>8</sup> Dec. 19, 2003 Transcript, p. 28, Ex. 5 to NOL.

28 <sup>9</sup> Dec. 19, 2003 Transcript, p. 1, Ex. 5 to NOL.

<sup>10</sup> Dec. 19, 2003 Transcript, p. 26, Ex. 5 to NOL.

1 hundreds of trees in the park. At the hearing, the Court once again reiterated its mandate that the  
2 status quo be preserved and that the City fully communicate all management issues to the HOA's  
3 attorneys and residents:

4 I issued an injunction and I wanted the status quo to be preserved until we can deal  
5 with these issues.... But these people who live there, it would seem from a  
6 government standpoint, you'd want to ensure that they have trust and confidence in  
7 the government, and the only way that they're going to have trust and confidence in  
8 government is to provide information on a regular basis so that there's an exchange  
9 of information.<sup>11</sup>

10 The City's counsel backpedaled and represented to the Court that, over the past year, the City  
11 had been trying to "follow the spirit of the preliminary injunction...and to preserve the status  
12 quo."<sup>12</sup> The Court reiterated once again for everyone present—including the Assistant to the City  
13 Manager and Hawkeye Asset Management's director of operations<sup>13</sup>—what maintaining the status  
14 quo means:

15 As I said earlier, I have concerns regarding management raising issues in a timely  
16 fashion.... **When I issued the injunction preserving the status quo, I meant it....**  
17 Treatment is important. Communication is important.

18 \* \* \*

19 No more, in the absence of good cause. You don't go out and send a notice to take  
20 out trees. You don't go out and send a notice to take out trees. You don't send a  
21 notice to take out rose bushes. You don't take light bulbs out of lights standards.  
22 You don't take light standards down. You don't knock walls down. You maintain  
23 the status quo. **I'm not going to set and OSC at this point as to whether or not a  
24 receiver should come in and take over the property because I'm confident that  
25 the City is in a position to deal with this,** and we have Ms. Murray [Assistant to  
26 City Manager] present.

27 \* \* \*

28 Now, I'm not going to rewrite the injunction, and I gave some examples of the status  
29 quo. **You understand the status quo. And I understand maintenance, but  
30 maintenance isn't tearing things down....** But if there's not an emergency  
31 situation, and you need to take a tree out, you need to do something on the property  
32 to continue maintenance, come in and talk. That's why I'm here. That's why  
33 they're there. **Don't send out unilateral notices. Okay? So enough said?**<sup>14</sup>

34 \_\_\_\_\_  
35 <sup>11</sup> Nov. 8, 2004 Transcript, p. 73, Ex. 6 to NOL.

36 <sup>12</sup> Nov. 8, 2004 Transcript, p. 81, Ex. 6 to NOL.

37 <sup>13</sup> Nov. 8, 2004 Transcript, p. 26, Ex. 6 to NOL.

38 <sup>14</sup> Nov. 8, 2004 Transcript, pp. 87-90, Ex. 6 to NOL.

1 The City’s counsel then remarked that she foresaw that ‘the City will require the Court’s leave  
2 [and]... there will be delay necessitated by the City’s inability to manage its property because it has  
3 to now consult with the plaintiff in this case on issues that it would otherwise not consider  
4 consultation a requirement.’<sup>15</sup> The Court responded: ‘I think everybody understands what I had in  
5 mind then, and to the extent that there was any ambiguity, you know now. The status quo is to be  
6 preserved. You may be successful in the ultimate outcome of this lawsuit. That’s fine. You may  
7 not be successful. That’s fine, too. Between now and that date of decision, the status quo has to be  
8 preserved.’<sup>16</sup>

9  
10 **D. Stipulation and Order to Stay Litigation.**

11 On February 22, 2005, in accord with the parties’ stipulation that had been unanimously  
12 approved by the City Council, the Court ordered the City of San Diego to—as it applies to this  
13 receivership motion— (1) revisit the issue of appointing an independent third-party management  
14 company, address residents’ concerns about park management, and create a set of written protocols  
15 and rules regarding the management issues;<sup>17</sup> (2) refurbish the common area clubhouses;<sup>18</sup> and  
16 (3) stay all case-related matters and cease contacts with residents except for non-payment of rent.<sup>19</sup>  
17 As discussed in detail below, the City has violated—and continues to violate—the Court’s order on  
18 all three prongs.

19  
20 **2. What the status quo was...**

21 Right before the City took possession in November 2004, De Anza Cove was a vibrant, lively  
22 community: beaches, a playground,<sup>20</sup> and a boardwalk teeming with joggers, cyclists, and people

23  
24 <sup>15</sup> Nov. 8, 2004 Transcript, p. 92, Ex. 6 to NOL.

25 <sup>16</sup> Nov. 8, 2004 Transcript, p. 92, Ex. 6 to NOL.

26 <sup>17</sup> Order dated Feb. 22, 2005, p. 4, ¶ 7, Ex. 8 to NOL.

27 <sup>18</sup> Order dated Feb. 22, 2005, p. 4, ¶ 8, Ex. 8 to NOL.

28 <sup>19</sup> Order dated Feb. 22, 2005, p. 5, ¶ 12, Ex. 8 to NOL.

<sup>20</sup> See photographs of playground area, Ex. 13 to NOL.

1 out for a stroll. Public boaters and beachgoers.<sup>21</sup> Free access into the park for everyone. Two  
2 clubhouses—the Bay Club and Pavilion—stocked with pool tables, couches, stoves, barbeque, and  
3 bingo.<sup>22</sup> Storage, laundry, and shower facilities in “islands” in the median of the streets.<sup>23</sup>  
4 Manicured lawns, gorgeous trees and bougainvillea. Assigned overflow parking for residents’ cars,  
5 trucks, and trailers.<sup>24</sup>

6 In fact, the park’s Rules and Regulations that were in effect at the time the Court ordered the  
7 City to preserve the status quo—and thereby should still be in full effect today—confirm the  
8 residents’ rights to their assigned storage areas, parking for their cars and trailers, guest parking,  
9 street parking for routine loading and unloading their cars, the use of the Bay Club and Pavilion,  
10 and public access to enjoy the beaches and shoreline.<sup>25</sup> About two months before the City took  
11 over, the City asked for<sup>26</sup>—and received<sup>27</sup>—these Rules and Regulations. And, like mobilehome  
12 owners everywhere, the residents of De Anza Cove were, of course, allowed to rent their  
13 mobilehomes as they always had been under State law (Civil Code § 798.23.5(a)(1)), their lease  
14 agreement with DHRG (the Long Term Rental Agreement),<sup>28</sup> and the park’s Rules &  
15 Regulations.<sup>29</sup>

16 De Anza Cove was a jewel of a place to live.

17 ///

18 ///

19 \_\_\_\_\_  
20 <sup>21</sup> See photographs of beach area before City’s possession, Ex. 15 to NOL.

21 <sup>22</sup> See photographs of Bay Club and Pavilion before City’s possession, Ex. 17, Ex. 19 to NOL.

22 <sup>23</sup> See photographs of laundry and storage buildings before City’s possession, Ex. 21 to NOL;  
23 Map of De Anza Cove, Ex. 34 to NOL.

24 <sup>24</sup> Decl. of Ernie Abbit, ¶ 14.

25 <sup>25</sup> Rules and Regulations De Anza Harbor Resort, Ex. 9 to NOL (*e.g.*, section VII.B., p. 4;  
26 section VII.D., p. 4; section VII.G., p. 4; section VII.H., p. 4; section X, p. 10-11).

27 <sup>26</sup> Letter from City to DHRG dated Sept. 17, 2003, p. 2, ¶ 4, Ex. 85 to NOL.

28 <sup>27</sup> Letter from DHRG to City dated Oct. 3, 2003, p. 4, ¶ 9, Ex. 86 to NOL.

29 <sup>28</sup> The Long Term Rental Agreement, Article 15, p. 17, Ex. 10 to NOL.

<sup>29</sup> Rules and Regulations De Anza Harbor Resort, sections VIII.A.-F., p. 4, Ex. 9 to NOL.

1 **3. ...and how the City maintained the status quo.**

2 **A. The City takes control.**

3 At the outset, the City hired Hawkeye Asset Management, Inc. (“Hawkeye”), an Orange  
4 County-based company that markets itself as “the leader in helping mobilehome park owners...  
5 *gain control over their assets.*”<sup>30</sup> Hawkeye’s principal—James Kosik—believes that “the only way  
6 to maintain the quality of the asset and the quality of the community is *to watch it like a hawk.*”<sup>31</sup>

7 On November 24, 2003, the City took control of De Anza Cove with a flourish of might,  
8 launching an aggressive “transition” plan that was designed to accelerate park closure and wear  
9 down resident opposition. The City immediately began instituting changes to the park that affected  
10 residents on multiple levels.

11 For the sake of clarity, these changes are sometimes grouped by issue, rather than  
12 chronologically.

13  
14 **B. The City’s closures of common area facilities and services.**

15 **1. Bay Club and Pavilion furniture removed.**

16 Before the City took over, the Bay Club and Pavilion club house common areas had functioned  
17 as the social hub and meeting place for park residents and were often used for bingo, holiday  
18 parties, church services, and other group events.<sup>32</sup> Two days *after* the Court issued the temporary  
19 restraining order, all furniture—chairs, tables, couches, pool tables, a big screen television, and  
20 other amenities<sup>33</sup>—was stripped from these common areas. So was the pool-area furniture.<sup>34</sup>

21 When these issues were raised to the Court on November 25, 2003, counsel for the City

22 \_\_\_\_\_  
23 <sup>30</sup> Hawkeye Company Profile, p. SD004031, Ex. 11 to NOL (italics added).

24 <sup>31</sup> Hawkeye Company Profile, p. SD004029, Ex. 11 to NOL (italics added).

25 <sup>32</sup> See Bay Club and Pavilion photos before City took possession, Ex. 17 and Ex. 19 to NOL;  
26 Abbit Decl., ¶ 14; See also Rules and Regulations De Anza Harbor Resort (section X, p. 10-11),  
Ex. 9 to NOL.

27 <sup>33</sup> Letter from HOA’s counsel to City’s attorneys dated Nov. 24, 2003 listing items removed,  
Ex. 93 to NOL; Bay Club and Pavilion photos *after* City took possession, Ex. 18, Ex. 20 to NOL.

28 <sup>34</sup> See Pool Area photos before and after City took possession, Ex. 23 to NOL.

1 forcefully explained that DHRG—the prior park operator—had simply reclaimed its personal  
2 property. The City categorically denied to the Court that it had *any involvement* in stripping the  
3 common areas clean:

4 THE COURT: The City is not involved in removing any of those items?

5 MS. ROPPO: **Absolutely not, Your Honor.**

6 THE COURT: The City has not entered into any type of an agreement  
7 concerning those items post the issuance of the TRO?

8 MS. ROPPO: No, Your Honor.<sup>35</sup>

9 This, however, was not the case. DHRG’s attorney confirms that the City told DHRG to vacate  
10 the property and remove all items during Fall 2003. As November 23, 2003 rapidly approached,  
11 DHRG repeatedly asked the City if it could leave the furniture and amenities (listing them all in a  
12 two-page spreadsheet) for the residents as a goodwill gesture.<sup>36</sup> Then, on November 21, 2003—the  
13 day *after* the TRO was granted—DHRG’s counsel wrote again asking whether the City required the  
14 furniture removal “in light of the temporary restraining order.”<sup>37</sup> **The City telephoned** back that  
15 day and said **the City wanted DHRG to remove all its property, including all of the furniture**  
16 **from the common areas.** (See Decl. of Mark Zebrowski, Esq.)

17 Without knowing that the City had ordered the removal, the HOA asked DHRG to return the  
18 furniture as a good-will gesture. DHRG agreed to return the furniture to the HOA for the sum total  
19 of \$1—provided that the City did not object. (Zebrowski Decl., ¶ 7.) But the City repeatedly  
20 refused to allow the furniture back.<sup>38</sup>

21 Until recently, only a handful of chairs remained in the common areas and, for HOA meetings,  
22 residents were forced to carry a chair with them so that they have a place to sit. Since the City  
23 refused to do *anything*, the HOA bought approximately 200 chairs out of its own funds. It’s too

24 <sup>35</sup> Nov. 25, 2003 Transcript, p. 8, Ex. 4 to NOL (emphasis added).

25 <sup>36</sup> Nov. 18, 2003 letter from DHRG to City, Ex. 91 to NOL; See also letters from DHRG to  
26 City, Ex. 87 (p. 3, ¶¶ 2-3), Ex. 89 (p. 2) to NOL; Letter from City to DHRG, Ex. 88 (p. 3) to NOL.

27 <sup>37</sup> Letter from DHRG to City dated Nov. 21, 2003, Ex. 92 to NOL.

28 <sup>38</sup> Zebrowski Decl., ¶ 7-8; E-mails between DHRG and City, Exs. 95-97 to NOL; Zamoyski  
Decl., ¶ 3.

1 late to get the furniture back—couches, tables, appliances, televisions—because DHRG could no  
2 longer afford to keep it in storage and disposed of it.<sup>39</sup> Because of the City’s actions, the Bay Club  
3 and Pavilion—once vibrant gathering places for the community—are now empty, dead space.<sup>40</sup>

4  
5 **2. *The City tears down the playground.***

6 Although the majority of De Anza residents are elderly, many have visiting grandchildren and  
7 great-grandchildren that used to play on an area of the beach where a small playground stood.<sup>41</sup> It  
8 was also used by those living at the park with younger children. This area was vital because there  
9 are no sidewalks or other safe open areas within the park for kids to play. In March 2004, the City  
10 tore the playground down.<sup>42</sup> Although the HOA asked that it be replaced, the City refused.<sup>43</sup>

11  
12 **3. *The City demolishes storage and laundry facilities.***

13 The older section of the park has islands in the thoroughfare that house storage and laundry  
14 facilities.<sup>44</sup> Residents paid supplemental rent to use these storage areas which, in turn, helped keep  
15 the neighboring streets free of clutter. The evenly-dispersed, nearby laundry rooms also provided a  
16 long-cherished convenience for senior residents who would otherwise have to travel across the park  
17 to do their laundry.<sup>45</sup>

18 Right before the City destroyed the playground, the City also demanded that DHRG destroy the  
19 residents’ storage areas, even though it noted that the “storage units on the property appear to have  
20

21 \_\_\_\_\_  
22 <sup>39</sup> Zamoyski Decl., ¶ 3.

23 <sup>40</sup> See Bay Club and Pavilion photos after TRO, Ex. 18 and Ex. 20 to NOL.

24 <sup>41</sup> Playground photos before City’s destruction, Ex. 13 to NOL.

25 <sup>42</sup> Playground photos during/after City’s destruction, Ex. 14 to NOL; Abbit Decl., ¶¶ 17-18.

26 <sup>43</sup> See playground demolition photos, before and after, Exs. 13-14 to NOL; See letter requesting  
27 replacement of playground, Ex. 35 to NOL; Zamoyski Decl., ¶ 5.

28 <sup>44</sup> De Anza Cove Map, Ex. 34 to NOL; Photo of island storage/laundry facility before City’s  
destruction, Ex. 21 to NOL.

<sup>45</sup> Decl. of Abbit, ¶ 15.

1 been intended for use by residents for storage, at a fee to be paid to DHRG.<sup>46</sup> DHRG's attorneys  
2 responded quickly that it would not remove the units due to the Court's Preliminary Injunction:

3       You request DHRG remove certain storage units, playground equipment and plants.  
4       As a preliminary matter, **we are concerned the HOA or court may view your**  
5       **requests and any such removal of any improvements by DHRG as inconsistent**  
6       **with the court's preliminary injunction... DHRG is not willing to remove any**  
7       **improvements** or other items used by residents **without the City obtaining** the  
8       consent of the residents or **the express permission of the court.**<sup>47</sup>

9 Nevertheless, the City impounded the items that residents had stored in these sheds<sup>48</sup> and then  
10 unilaterally demolished almost every one of these 21 buildings,<sup>49</sup> eliminating the storage units and  
11 laundry facilities. The City left what can only be described as bombed-out, crumbling relics with  
12 exposed electrical wiring and now-abundant weeds and trash.<sup>50</sup>

#### 13 ***4. The City closes the Pavilion clubhouse and main laundrymat.***

14       In the middle of the mobilehome park lays a large section that functioned as an R.V. park. It  
15 has been non-operational since the City took over. The Pavilion—the residents' other large club  
16 house common area—sits right next to the R.V. park.<sup>51</sup> Without discussing the issue with the HOA  
17 or counsel, the City embarked on a plan to renovate the R.V. park with an eye towards reopening it  
18 sometime in Summer 2005.<sup>52</sup>

19       Almost overnight **in mid-February 2005**, the City unilaterally closed and fenced-off the  
20 Pavilion and laundry facility. It removed the little furniture remaining in the Pavilion. It removed  
21 all of the washers and dryers. Residents tipped-off the HOA's attorneys who then confirmed these

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22 <sup>46</sup> E-mail from City to DHRG dated Mar. 10, 2004, ¶ 5, Ex. 96 to NOL.

23 <sup>47</sup> E-mail from DHRG to City dated Mar. 12, 2004, ¶ 3, Ex. 97 to NOL.

24 <sup>48</sup> Abbit Decl., ¶ 25.

25 <sup>49</sup> De Anza Cove Map, Ex. 34 to NOL.

26 <sup>50</sup> See storage and laundry facility photos, Ex. 22 to NOL; Photos of De Anza on Mar. 17, 2005,  
27 Ex. 33 to NOL (photos DSC 2859-2862, DSC 2853-2857, DSC 2877-2881, DSC 2891-2893).

28 <sup>51</sup> De Anza Cove Map, Ex. 34 to NOL.

<sup>52</sup> Zamoyski Decl., ¶ 4.

1 events with the City's counsel.<sup>53</sup> When the HOA asked that these common areas and facilities be  
2 reopened, the City refused. Only after the HOA set an ex parte hearing for an Order to Show Cause  
3 re: Contempt did the City reluctantly agree to remove the fencing and reopen the Pavilion and  
4 laundry facility.<sup>54</sup> As a condition to the OSC being taken off-calendar, the City was also required  
5 to reveal and discuss with counsel and the residents the plans for the mobilehome park as a whole,  
6 as well as the R.V. Park and the Pavilion.<sup>55</sup> This was designed to encourage discussion of ways to  
7 minimize the impact on surrounding residents, including concerns about dust, noise, large truck  
8 access, parking, and public safety. **To date, the City has not yet provided these plans or sat**  
9 **down with the HOA to discuss these issues.**<sup>56</sup>

10  
11 **C. The City clamps down on park access and brings in armed security guards.**

12 The City replaced the old security company with armed guards and built a gated checkpoint at  
13 the park entrance.<sup>57</sup> Every driver is stopped at the gate and asked for a driver's license and where  
14 they are going, irrespective of how long they have been living there or how frequently they pass  
15 through the gate. The armed guard takes the license and enters the information on a computer in  
16 the guard shack. If you don't provide the information, the armed guard will not allow you to enter  
17 the park.<sup>58</sup>

18 In addition to hiring armed guards, the City installed a 10-foot tall chain link fence along the  
19 park northern perimeter. Until recently, this fence was topped with barbed wire.<sup>59</sup> Additionally,  
20 the City erected multiple, bright klieg-style lights at the gate entrance, along with a series of  
21

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22 <sup>53</sup> E-mail dated Feb. 17, 2005 to City, Ex. 68 to NOL; Zamoyski Decl., ¶ 13.

23 <sup>54</sup> See e-mails/letters dated Feb. 18, 2005 to/from City, Exs. 69-71 to NOL; Zamoyski Decl.,  
24 ¶ 13.

25 <sup>55</sup> E-mail to City dated Feb. 18, 2005, Ex. 71 to NOL; Zamoyski Decl., ¶ 13.

26 <sup>56</sup> Zamoyski Decl., ¶ 35.

27 <sup>57</sup> See park entrance/guard photos, Exs. 24, 25 to NOL, and Ex. 33 (DSC 2997-3016) to NOL.

28 <sup>58</sup> Geeck Decl., ¶¶ 2-18; Logan Decl., ¶¶ 3-9; Rose Decl., ¶¶ 10-17; and Dyer Decl., ¶ 5.

<sup>59</sup> See photos of chain-link and barbed-wire fencing, Ex. 26 to NOL.

1 6 severe speed bumps.<sup>60</sup> The City finally removed the speed bumps after residents, the local fire  
2 department, and various senior organizations complained that it created access problems for  
3 emergency vehicles and was extremely jarring to elderly residents forced to traverse the bumps. In  
4 fact, the Braille Institute refuses to allow its transport van to enter the park because of the speed  
5 bumps, armed guards at the checkpoint, and the attendant delays. (See Declaration of Mildred  
6 Rubin, ¶¶ 3-7, and letter from Braille Institute, Ex. 36 to NOL.) The City also posted ominous  
7 signs throughout the park declaring that residents are under video and audio surveillance.<sup>61</sup>

8 Moreover, these heightened “security” measures have created problems for residents and their  
9 visitors, many of whom are forced to wait long periods of time at the front gate while the driver in  
10 the lead vehicle is being questioned—or refuse to come to the park to visit their friends anymore.<sup>62</sup>

11 The collective impact of these “security” measures is palpable. Residents and guests alike feel  
12 like the park has been militarized and they are always under scrutiny.<sup>63</sup> The vast majority of them  
13 do not believe that the guards are there for their protection, but to increase the discomfort level  
14 within the park.

15 For its part, the City allegedly bases these measures on what it believes are crime statistics  
16 identifying De Anza Cove as a cesspool of crime. Relying on this “data,” the City claims that De  
17 Anza Cove mobilehome park—where the average resident is 64-years-old—is second only to the  
18 border crossing in the level of police response required.

19 This issue was addressed by Assistant Chief Maheu of the San Diego Police Department when  
20 he met Ernie Abbit—President of the HOA and a long-time resident of De Anza—to discuss the  
21 City’s portrayal of the park as a crime-ridden place. At that meeting in November 2004, Assistant  
22 Chief Maheu confirmed that the City’s statistics were not limited to the mobilehome park and,  
23 therefore, vastly overstated the degree of criminal activity within the mobilehome park. (See Abbit  
24 Decl., ¶¶ 2-9, and confirming letter to Assistant Chief Maheu, Ex. 37 to NOL.) The City’s crime

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25 <sup>60</sup> See photos of park entrance with City-installed speed bumps, Ex. 24 to NOL.

26 <sup>61</sup> See photos of signs, Ex. 33 to NOL (DSC 2974, DSC 2981, DSC 3004-3009).

27 <sup>62</sup> Abbit Decl., ¶ 10.

28 <sup>63</sup> Greaves Decl. (visitor from East Coast); Logan Decl., ¶¶ 3-9; and Dyer Decl.

1 statistics—being relied upon by the City’s “management” team—had apparently incorporated  
2 sections of Mission Bay Park, which skirt along the banks of Mission Bay *outside* the borders of  
3 the mobilehome park.<sup>64</sup> To the extent police respond to criminal activity in these public beach and  
4 park areas, they had been apparently noting the location simply as “2727 De Anza Road.”<sup>65</sup>  
5 Although, over the past several months, plaintiff’s counsel has repeatedly requested the underlying  
6 source documents supporting the City’s alleged statistics—such as the actual police reports of the  
7 crime occurring within the mobilehome park as opposed to Mission Bay Park in general<sup>66</sup>—the  
8 City produced *nothing*.

9 The City’s management team also claimed that the extensive security enhancements—the  
10 barbed wire fence, armed guards, speed bumps, and surveillance cameras—were specifically  
11 recommended by the SDPD. Assistant Chief Maheu addressed this point and conceded that these  
12 oppressive measures were **not recommended by the SDPD.**<sup>67</sup>

13 Finally, the truest indication of the City’s motivation for ratcheting up security comes from  
14 those asked to carry out the City’s plans. Chris Hand was the regional manager for National  
15 Security—the company that provided security at De Anza for the first 5 months after the City took  
16 over. Mr. Hand’s attached declaration is an eye-opening, first-hand, and comprehensive recital of  
17 the City’s management practices at De Anza Cove.

18 For example, Hawkeye told Mr. Hand and his guards that the mobilehome park was no longer  
19 public land and was now “Private Property.”<sup>68</sup> The City and Hawkeye **never told the security**  
20 **guards about any of the Court orders protecting the status quo.**<sup>69</sup> He and his guards “simply  
21 accepted as true that the mobilehome park had been converted to Private Property and that  
22

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23 <sup>64</sup> Abbit Decl., ¶ 6.

24 <sup>65</sup> Abbit Decl., ¶ 6.

25 <sup>66</sup> Letters from HOA counsel to City, Exs. 72, 79 to NOL; Zamoyski Decl., ¶ 35.

26 <sup>67</sup> Abbit Decl., ¶ 5; Letter to Assistant Chief Maheu, Ex. 37 to NOL.

27 <sup>68</sup> Hand Decl., ¶ 6.

28 <sup>69</sup> Hand Decl., ¶ 16.

1 Hawkeye could create whatever rules it decided and could enforce those rules as it chose.”<sup>70</sup>  
2 **National Security was castigated by Hawkeye for not being aggressive enough with residents,**  
3 **for not stopping every vehicle entering the park, for not taking more photographs of people in**  
4 **each car, and for not ticketing more cars within the park.**<sup>71</sup> Mr. Kasic of Hawkeye told  
5 Mr. Hand that “even if there was a line of cars out to the road along Mission Bay, he didn’t care—  
6 we were to stop every car and take all this information down.” In addition, National Security was  
7 never consulted regarding the City’s decision to install klieg lights or speed bumps.

8 The City ultimately replaced National Security with armed guards—even though there hadn’t  
9 been a single incident at the park involving a weapon.<sup>72</sup> Mr. Hand observed: “Hawkeye Asset  
10 Management was and is being too aggressive with park residents. It appears that the over-  
11 aggressiveness is purposely designed to make the residents upset and want to move out.”<sup>73</sup>  
12

13 **D. The City unilaterally decides to prohibit parking and tow residents’ vehicles.**

14 De Anza Cove always had ample parking for residents and guests, both at each home and in  
15 overflow lots near the common areas and next to the boat ramp. The boat ramp parking lot area is  
16 huge and, in accordance with the park’s Rules and Regulations, residents paid an extra fee for  
17 assigned parking of their cars, trucks, trailers, and boats there.<sup>74</sup> Rent rolls provided to the City by  
18 DHRG confirm residents’ payments for these and other services.<sup>75</sup>

19 When the City took over, it unilaterally decided to: close the boat ramp, prohibit parking in the  
20 adjoining overflow lots, slap extremely adhesive citation notices on vehicle windshields, and then  
21 start towing away the cars, trucks, trailers, and boats.<sup>76</sup> The City told their security guards:

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22 <sup>70</sup> Hand Decl., ¶ 16.

23 <sup>71</sup> Hand Decl., ¶ 14.

24 <sup>72</sup> Hand Decl., ¶ 18.

25 <sup>73</sup> Hand Decl., ¶ 18-19.

26 <sup>74</sup> Rules and Regulations De Anza Harbor Resort, Ex. 9 to NOL (p. 4, sections VII.B., VII.G.,  
27 VII.H.); Decl. of James Lewan, ¶¶ 10-11.

27 <sup>75</sup> Rent rolls showing parking fees assessed and paid, Ex. 38 to NOL.

28 <sup>76</sup> Towing photos, Ex. 27 to NOL, Ex. 33 to NOL (DSC 2975-2980, DSC 2984-2985; Decl. of

1 [V]isitor parking was no longer permitted in the mobilehome park, unless the visitor  
2 could park at the mobilehome space where they were visiting. Parking in the  
3 overflow parking areas was no longer allowed by Hawkeye. We were told that  
4 people would have to park in the Mission Bay parking lot, then walk into the  
5 mobilehome park through the entrance, and walk to a resident's home.<sup>77</sup>

6 No explanation was given for these new policies. Residents were irate. (See Towing Photos,  
7 attached as Ex. 27 to NOL; Hoopes Decl., ¶¶ 2-9; Novak Decl., ¶¶ 3-11; Ranck Decl., ¶¶ 2-8.)

8 One woman's trailer was towed away and impounded, and much of her personal belongings  
9 within the trailer were damaged or destroyed.<sup>78</sup> A single mother on a tight budget, she could ill  
10 afford to pay the towing company to bring her trailer back. Moreover, since the TRO had been  
11 granted less than one week before, she felt that her trailer was safe in the parking lot where it had  
12 always been. To her surprise, however, when she spoke to the police officers who were  
13 coordinating the mass removal of cars, trucks, and trailers, they claimed that they were never  
14 informed about the Court's order. (Novak Decl., ¶¶ 3-11.)

15 Not only did the towing and property impounding violate the Court's status quo orders and the  
16 park's existing Rules and Regulations, it also violated the Mobilehome Residency Law. Civil Code  
17 section 798.28.5 states unequivocally: "Management may not cause the removal of a vehicle  
18 from...a homeowner's designated parking space except if management has first posted on the  
19 windshield of the vehicle a notice stating management's intent to remove the vehicle in **seven days**  
20 and **stating the specific rule that the vehicle has violated that justifies its removal.**"<sup>79</sup> Of  
21 course, the vehicle owners had never violated any such rule since the park's rules expressly  
22 *permitted* parking, and the City never bothered to give the mandatory seven days' notice either.

23 On a related parking issue, when removing neighboring homes, the City confined residents'  
24 parking spaces so severely with orange fencing that many residents cannot open their car doors<sup>80</sup> or  
25 access their vehicles at all—which is particularly demeaning for those with disabilities. (See

26 James Lewan, ¶¶ 10-11.

27 <sup>77</sup> Hand Decl., ¶¶ 9, 12.

28 <sup>78</sup> Photos of storage unit and damage to contents, Ex. 28 to NOL; Novak Decl., ¶¶ 3-11.

<sup>79</sup> Civil Code, § 798.28.5 (emphasis added).

<sup>80</sup> Photos of fencing constraining parking, Ex. 33 to NOL (DSC 2894-2901); See also Disher  
Decl., ¶¶ 2-8.

1 Weber Decl., ¶¶ 2-11; Gianetti Decl., ¶ 4.) Moreover, Hawkeye instructed demolition crews to cut  
2 away and destroy neighboring driveways—even if they were still in use. (See Decl of Beth  
3 Dederian, ¶¶ 3-8; and Decl. of Jason Arzola, ¶¶ 3-5.)

4  
5 **E. The City begins clear-cutting the trees.**

6 In late October 2004, the City sent out unilateral notices that it was going to cut down trees  
7 park-wide starting in a few days.<sup>81</sup> The heavy-handedness with which the City executed its mass  
8 tree cutting was felt by everyone in the park, as police and armed guards were sent to flank the  
9 crews wielding chainsaws. (See Decl. of Mrs. Turoski, and photos of homes and armed guards,  
10 Exs. 25, 29 to NOL.) As residents held up copies of the Preliminary Injunction, pleading for a  
11 moment to be heard, Hawkeye representatives and the armed guards said “call your lawyers,” then  
12 laughed as the tree cutting continued.<sup>82</sup>

13 The heart of the issue brought to the Court’s attention was the City’s secrecy, utter lack of  
14 communication, failure to disclose information about alleged natural gas leaks (apparently known  
15 since February 2004) and sewage spills, and its overall heavy-handed approach to park  
16 “management.”<sup>83</sup> During the hearing, the City confirmed that **it was intentionally opting not to**  
17 **communicate with the HOA’s counsel or park residents:**

18 THE COURT: From May until October 19<sup>th</sup> when you sent the letter to counsel,  
19 how many communications in written form were there about this topic or how many  
20 telephone calls or how many meetings? That’s the communication I’m interested in.

21 COUNSEL: **There was no need for communication at that point.... The**  
22 **City owns the land. The City owns the trees.... There is nothing before the**  
23 **Court showing that there is an obligation with the City to meet with the**  
24 **residents and discuss how it is going to manage the park.** It is the obligation and  
the right of the City to do that [manage the park as it wants].

25 THE COURT: The City has the absolute right to act in any way that it wishes,  
26 unilaterally without any communication with the residents? That’s what I’m  
27 hearing.<sup>84</sup>

28  
29 <sup>81</sup> City’s Notice, Ex. 39 to NOL.

30 <sup>82</sup> Turoski Decl., ¶ 7.

31 <sup>83</sup> Abbit Decl., ¶ 13; See Req. for Judicial Notice of Court file re: Nov. 5 & 8, 2004 ex parte  
32 hearing re: tree cutting.

33 <sup>84</sup> Nov. 8, 2004 Transcript, pp. 57-58, Ex. 6 to NOL.

1 The above exchange in open court highlighted the City’s approach to park management,  
2 paraphrased as: “This is City property and no one is going to tell us how to run this park.”

3 Although the City claimed that tree removal was essential to protect the underground utilities  
4 and sewer lines, the City did not even remove most of the tree stumps or roots, some of which are  
5 actually showing regrowth. (See Carlson Decl., ¶¶ 2-4.) If the roots were truly posing a risk to the  
6 underground pipes, why are the roots still allowed to grow? And why did the City cut down *potted*  
7 trees that could not possibly have interfered with underground utilities because they weren’t even  
8 touching the topsoil? (See Anderson Decl., ¶¶ 3-7, photos therein, and photo of potted tree, Ex. 30  
9 to NOL.)

10 When questioned about the roots that were still obviously growing, the City began spraying  
11 some of the tree stumps with Round-Up weed poison—long after the trees had been cut. But the  
12 tree stumps and roots are still there and some are once again sprouting fresh growth. (See Carlson  
13 Decl., ¶ 4, and photos of tree stump regrowth, Ex. 31 to NOL.)

14 In sum, the City destroyed nearly 200 trees in the mobilehome park. But the City touched nary  
15 a leaf in the R.V. park, which is just as old, but which is not populated by residents. The beautiful,  
16 lush trees still stand there tall and majestic.

17 Moreover, the timing was suspicious given that the City supposedly discovered the alleged  
18 utility problems—portrayed by the City as an imminent threat to health and safety—many, many  
19 months before they acted, and never notified the HOA, its counsel, the Court, or park residents  
20 about these alleged safety hazards until the 11<sup>th</sup> hour—after the HOA’s counsel set an emergency  
21 ex parte hearing. As Your Honor will recall, the City even purposely decided *not* to file their  
22 already-prepared motion that asked for the Court’s permission to cut down the trees—instead, they  
23 just started cutting.

24 The brute force with which this plan was carried out, marked by armed guards, police, and  
25 insensitive remarks by park management, illustrates the City’s true intent: to remind the residents  
26 who is in absolute control—regardless of the status of the litigation—and to emotionally intimidate  
27 those who dare challenge the legitimacy of the City’s unilateral actions.

28 ///

1 **F. Imposition of New Taxes/Rent Increases.**

2 In the fall of 2004, residents began receiving tax assessments—called a Possessory Interest  
3 Tax—directly from the County. Residents were confused and concerned because they had never  
4 received this assessment before.

5 The HOA then learned that the City—for over a year—had been secretly contacting the County  
6 of San Diego Tax Assessor’s office. There was even a letter from the Assessor himself, Gregory  
7 Smith, asking that the City pay the tax.<sup>85</sup> The Assessor recognized the utter confusion and  
8 logistical difficulty of assessing each homeowner individually and requested that the City just pay  
9 the tax, as DHRG had done before. DHRG had always paid the tax as a lump sum as part of the  
10 cost of doing business, which was paid through residents’ regular monthly rent.<sup>86</sup> But the City  
11 refused, forcing the County to send out 500 individual assessments.<sup>87</sup> Since each resident had  
12 already paid their pro-rata share of the tax through their monthly space rent, the City’s attempt to  
13 force them to pay the possessory interest tax on top of their monthly rent amounted to double  
14 taxation and a rent increase in violation of the Preliminary Injunction.

15 The HOA asked the City to pay the tax or issue a rent credit for those that had paid the tax  
16 already. The City refused and the HOA was forced to seek *ex parte* relief in December 2004.<sup>88</sup> In  
17 the wake of that Court hearing, the City finally agreed to pay the tax. That concession was part of  
18 the stipulation and Order to stay the case. The City agreed that if it hadn’t paid the taxes by  
19 March 1, 2005, each resident could deduct their pro-rata share of the tax from March rent.<sup>89</sup>

20 Of course, the City made it difficult for residents. March 1<sup>st</sup> passed, the City had not yet  
21 reimbursed residents, so residents dutifully went to the management office or sent in their reduced  
22 rent for that month. The management company turned many of them away, refusing to accept

23 \_\_\_\_\_  
24 <sup>85</sup> Letter from County Tax Assessor to William Griffith, Ex. 40 to NOL.

25 <sup>86</sup> Decl. of Michael Gelfand, ¶¶ 3-5.

26 <sup>87</sup> Decl. of Butler from County Tax Assessor’s Office, ¶¶ 3-9.

27 <sup>88</sup> See Req. for Judicial Notice of Court file re: Dec. 8, 2004 ex parte hearing re: taxes; See also  
Decl. of Newell from County Tax Assessor’s Office, ¶ 5.

28 <sup>89</sup> Order dated Feb. 22, 2005, Ex. 8 to NOL.

1 reduced rent checks unless the resident showed a bank-cancelled check, credit card statement, or a  
2 receipt from the County showing proof of payment of the tax. Resident phone calls and e-mails  
3 poured into Plaintiff counsel’s office.<sup>90</sup> To avoid exactly this situation, the HOA had asked the  
4 City in late February to make sure that it had a copy of the County’s spreadsheet list of residents  
5 who had paid the tax and were entitled to deduct that amount from their rent. As the days passed  
6 and the resident phone calls continued, Plaintiff counsel reiterated the request—telling the City’s  
7 lawyers that the County Tax Collector said it had e-mailed the spreadsheet to someone in the Real  
8 Estate Assets Department.<sup>91</sup>

9 On March 8<sup>th</sup>, the City’s lawyers responded: “We do not have a spreadsheet of who has paid  
10 and who has not. If you received this information from the County, then you received it in error.”<sup>92</sup>  
11 But the City’s assertion proved, once again, to be untrue.

12 After submitting a Public Records Act request to the County, we learned that on January 31,  
13 2005, the County Tax Collector had indeed provided the City a complete spreadsheet showing  
14 every resident in the park who had already paid the tax.<sup>93</sup> In fact, as confirmed in the Declaration  
15 of Ms. Coughlin of the Tax Collector’s Office, she sent the e-mail and spreadsheet directly to the  
16 City’s Director of Real Estate Assets, William Griffith.<sup>94</sup> Thus, for over a month, the City knew  
17 exactly which residents had paid the tax, but still insisted that each resident provide additional  
18 proof of payment<sup>95</sup>—proof that many residents did not readily have when they went in to pay rent.

19 To make matters worse, residents just received a new tax assessment, this time for a “Rental  
20 Unit Business Tax” *from the City of San Diego*.<sup>96</sup> Again, this is a new tax that had never been  
21

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22 <sup>90</sup> Zamoyski Decl., ¶ 8.

23 <sup>91</sup> Zamoyski Decl., ¶ 7.

24 <sup>92</sup> Letter from City dated Mar. 8, 2005, Ex. 73 to NOL.

25 <sup>93</sup> Coughlin Decl., ¶¶ 2-4.

26 <sup>94</sup> Coughlin Decl., ¶¶ 2, 4; Ex. 41 to NOL.

27 <sup>95</sup> See, e.g., Letters from City to residents who already paid, collectively Ex. 42; Zamoyski  
Decl., ¶¶ 10-11.

28 <sup>96</sup> Rental Unit Business Tax bill, Ex. 43 to NOL.

1 assessed against residents before, and represents a change in the status quo. And, again, the City  
2 took this action unilaterally, never notifying the HOA or its counsel in advance.<sup>97</sup>

3  
4 **G. The City shuts off water to the entire park.**

5 The City has shut off everyone’s water—for the entire day—at least 5 times since taking control  
6 of the park. Residents are rarely given more than a few days’ notice—one City notice states that  
7 water will be shut off the *next morning* starting at 7:45 a.m.<sup>98</sup>—and are not told the reason for the  
8 shut off. The City simply tells all residents: “Please plan accordingly.”<sup>99</sup> On these occasions—as  
9 recently as **March 15, 2005**—there is no water for drinking, cooking, showering, or toiletry, often  
10 for 8-10 hours at a time. Emergency repairs are one thing, but the reason for the most recent  
11 shutoffs is to accommodate the City’s efforts to renovate the R.V. park located within the  
12 mobilehome park.<sup>100</sup> So the hardships that the City is unilaterally imposing on residents have  
13 nothing to do with benefiting the residents or their well being. And the City also violated section  
14 798.29.5 of the Mobilehome Residency Law by failing to give the required minimum 72 hours’  
15 notice of the non-emergency utility shutoff.<sup>101</sup>

16 The HOA requested mitigation measures to take into account the impact on, and the needs of,  
17 the elderly and disabled residents who cannot go a whole day without water.<sup>102</sup> The City responded  
18 that a water truck would be parked near the boat ramp. Even though Plaintiff’s counsel noted that  
19 few elderly or disabled residents have the ability to walk across the park to the water truck, fill up a  
20 5-gallon bucket, and then carry the heavy bucket all the way back to their home—let alone be able  
21 to lift the bucket to pour water into toilets and the like—and asked the City to consider easy  
22 solutions like delivering bottled water or giving assistance to needy residents, the City would not

23 \_\_\_\_\_  
<sup>97</sup> Zamoyski Decl., ¶ 12.

24 <sup>98</sup> Water shut-off notice dated Mar. 17, 2004, Ex. 44 to NOL.

25 <sup>99</sup> Multiple water shut-off notices, collectively Ex. 44 to NOL.

26 <sup>100</sup> Zamoyski Decl., ¶ 6.

27 <sup>101</sup> Civil Code, § 798.29.5.

28 <sup>102</sup> Zamoyski Decl., ¶ 6.

1 agree to do anything further.<sup>103</sup>

2  
3 **H. The City's bully tactics.**

4 The City brought in armed guards and the SDPD to convey a strong, authoritarian presence. As  
5 the following examples show, the City has intentionally created an environment of uncertainty,  
6 intimidation, and misinformation. These are only a few examples:

7 (1) Dion Dyer, a 61-year-old attorney, arrived at the park to meet with his client, Judy Asbury, a  
8 long-time resident of De Anza. At the front gate, the armed guard interrogated Mr. Dyer as to who  
9 he was, where he was going, who he was meeting with, and the purpose of his meeting. Mr. Dyer  
10 explained that he was meeting with Ms. Asbury at her house, but that the subject of their meeting  
11 was confidential. The guard refused to give Mr. Dyer a parking pass and then followed him to the  
12 Asbury's house. While Mr. Dyer was inside with his client, the guards called a tow truck to take  
13 his car away. Mr. Dyer heard the truck approaching, went outside, saw what was happening, and  
14 proposed that the guards call the police so that the matter could be sorted out before towing his car  
15 away. The guards threw Mr. Dyer on the ground and **broke two of his ribs**. He was held face-  
16 down on the asphalt with a knee in his back for over 20 minutes before the police arrived and  
17 instructed the guards to get off of him. His injuries took months to heal and exacerbated his bad  
18 back. (See Dyer Declaration, ¶¶ 2-13.) Other residents witnessed the scene.<sup>104</sup>

19 (2) In the process of demolishing a neighboring unit, a worker began jack hammering the  
20 driveway that belonged to Jason Arzola. Mr. Arzola pointed out the property line to Jim Kosik—  
21 the president of Hawkeye—who promptly called for an armed guard. The guard arrived and was  
22 told by Mr. Kosik to call the police and report that “terrorist threats were being made against them  
23 by a man with a baseball bat.” Mr. Arzola did not have a bat and was not threatening anyone, much  
24 less making terrorist threats. The police arrived, interrogated Mr. Arzola, but released him when  
25 the demolition workers refused to corroborate Mr. Kosik's allegations. (See Arzola Decl., ¶¶ 3-10.)

26  
27 <sup>103</sup> Zamoyski Decl., ¶ 6.

28 <sup>104</sup> See, e.g., Abbit Decl., ¶¶ 11-12.

1 (3) More than a half-dozen County Sheriff deputies swarmed the home of David William Rose  
2 seeking to take him into custody under an arrest warrant. Mr. Rose was not home, and his wife and  
3 three-year-old daughter were shaken by the appearance of so many deputies and being told that  
4 David was under arrest. Only after speaking with Mrs. Rose did the officers realize that they had  
5 the wrong man and, in fact, were looking for David Wesley Rose. Upon investigating the issue,  
6 Mr. Rose found out from the Sheriff’s department that **Metro Security had provided them with**  
7 **his personal information.** Metro collects personal information from each resident as they enter  
8 the park. It appears that Metro forwarded Mr. Rose’s personal information to the police—and  
9 apparently without checking to make sure he was the right man. This is one of the many reasons  
10 Mr. Rose, and other residents, are hesitant to provide the guards or Hawkeye with any of their  
11 personal information. They just have no assurance of how it is going to be used—or misused. (See  
12 Rose Decl., ¶¶ 2-9.)

13 (4) After her son, James, was harassed at the front gate and told to “shut the hell up,” Kathleen  
14 Norton spoke to the armed guards to find out why the guards were stopping her son at the entrance  
15 checkpoint. The guard asked her what concern it was to her how they treated James. When she  
16 identified herself as his mother, the guard said, “Good . . . now I know where you live.” Since  
17 then, Ms. Norton has seen the guards following her when she walks her dogs around the park.  
18 (Norton Decl., ¶¶ 2-7.) Her son is also anxious whenever he approaches the guard gate now  
19 because one of the guards tried to provoke him into a fight and told him he was “nothing but a  
20 twenty-one year old punk kid.” (Souza Decl., ¶¶ 3-14.)

21 (5) Kyle Steele has lived at De Anza for ten years. For family reasons, he moved from one  
22 home within the park to another home within the park last year. Jim Kosik approached him in his  
23 home and told him to get out. Mr. Steele explained that he had the owner’s permission to rent the  
24 home. Kosik said it didn’t matter, he had to leave. Mr. Steele responded that he wanted to consult  
25 with his lawyer about the issue, and Kosik said that, by the time Mr. Steele got ahold of a lawyer,  
26 Kosik would already have him evicted by the Sheriffs. Kosik also **threatened to shut off his**  
27 **utilities.** (Steele Decl., ¶¶ 2-6.)

28 ///

1 (6) Lisa Bock tried to help resurrect the rose garden near the Bay Club that had become  
2 dilapidated under the City's maintenance. After work, she visited the garden, and a little at a time,  
3 pruned and fertilized the rose bushes. The garden began to spring back to life. One day, three  
4 security patrol cars swooped in around her. Armed guards demanded that she immediately get out  
5 of the garden. They told her she was committing "plant vandalism." Frustrated, she went to  
6 Hawkeye to tell them what she was doing and even provided them a signed liability waiver. She  
7 was later tending to the garden when Terre Catalano of Hawkeye saw her. Without reason,  
8 Catalano called an armed security guard who once again ordered her to leave. (See Bock Decl.,  
9 ¶¶ 3-10.)

10  
11 **I. Health and safety issues.**

12 The City's park management tactics have exposed residents and the public to numerous  
13 hazards. The ongoing demolition work stirs into the air dust, concrete, asbestos, insulation fibers,  
14 and other harmful compounds<sup>105</sup>—all of which are particularly dangerous for neighboring residents  
15 suffering from asthma, emphysema, and other respiratory problems. (See Decl. of Donna Jones,  
16 ¶¶ 2-10; and Decl. of Judy Polge, ¶¶ 2-12.)

17 Moreover, the City has been cited by the California Regional Water Quality Control Board for  
18 allowing debris and pollutants to run into Mission Bay.<sup>106</sup> This runoff is exacerbated by the City's  
19 insistence that the concrete slabs underneath each home be removed once the home is gone,  
20 disturbing the demolition byproducts and creating swampy pools of mud without proper  
21 drainage.<sup>107</sup>

22 In addition, the City claimed to have discovered active gas leaks at the park as early as February  
23 2004—yet chose not to bring this to the attention of the HOA, its attorneys, or the Court until  
24 almost 9 months later. Even the Court expressed its concern over the City's delay in disclosing

25 <sup>105</sup> See photos of airborne particles, Ex. 32 to NOL; See photos of destroyed mobilehome  
26 wreckage taken on Mar. 17, 2005, Ex. 33 to NOL (DSC 2958-2967).

27 <sup>106</sup> Notices of Violation, Oct. 1, 2004 and Dec. 9, 2004, collectively Ex. 45 to NOL.

28 <sup>107</sup> Notices of Violation, collectively Ex. 45 to NOL; Photos of water-logged vacant spaces and  
drainage issues seen on Mar. 17, 2005, Ex. 33 to NOL (DSC 2954-2956).

1 such an important public safety issue: “As I said earlier, I have concerns regarding management  
2 raising issues in a timely fashion that concern health and safety.”<sup>108</sup>

3  
4 **J. Rampant utility statement errors.**

5 Since the time the City took over De Anza Cove, residents have seen their utility bills skyrocket  
6 and fluctuate wildly. For months, residents have complained to the City about the situation, only to  
7 be told either nothing at all or that there was no problem. If residents didn’t pay the exorbitant  
8 utility bills invoiced on their rent statements, the City refused to accept their rent at all and  
9 threatened eviction. (See, e.g., Stark Decl., ¶ 4.) But the City finally admits that there are errors.<sup>109</sup>

10  
11 **K. What is so special about Hawkeye?**

12 Despite repeated requests from the HOA and De Anza Cove’s residents, the City refuses to  
13 replace Hawkeye with an independent company and has, in fact, opted to enter into an extended  
14 contract based on the City’s express satisfaction with Hawkeye’s performance.<sup>110</sup>

15 Curiously, Hawkeye’s contract—valued at more than **\$300,000 per year plus expenses** and  
16 5.5% of gross proceeds from the R.V. park—was not the product of a public or open selection  
17 process.<sup>111</sup> It was a “single source contract,” which meant that the City did not even entertain *any*  
18 competitive bids. Hawkeye was, in effect, handed a silver-platter contract, evident from the fact  
19 that the City pays it over \$300,000 per year, compared to only roughly \$62,400—1.3% of annual  
20 rent revenue—plus expenses for the management company recommended by the proposed  
21 Receiver. (See Decl. of Richard Kipperman, ¶ 5 (assuming \$4.8 million in annual revenue).)

22 In justifying Hawkeye’s lucrative contract as the sole bidder, Real Estate Assets lauded  
23 Hawkeye’s “unique” skill in managing parks “in transition.” This “unique” skill evidenced itself  
24 again, for example, when Hawkeye’s director of operations proudly displayed **her black skull-**

25 <sup>108</sup> Nov. 8, 2004 Transcript, p. 87, Ex. 6 to NOL.

26 <sup>109</sup> Notice from City, Ex. 46 to NOL.

27 <sup>110</sup> City Council Minutes dated July 13, 2004, Ex. 47 to NOL.

28 <sup>111</sup> Hawkeye contract, Ex. 52 to NOL.

1 **and-crossbones T-shirt that reads, “Trailer Park Trash.”**<sup>112</sup> Hawkeye’s lauded skills has  
2 revealed itself as an ability to make life as difficult as possible for park residents in an effort to  
3 “encourage” a voluntary exodus from the property.

4 This kind of behavior is something that another court found more than troubling. A jury  
5 specifically found that, while he was running a mobilehome park in Orange County, **Hawkeye’s**  
6 **president—James Kosik—and his management company had acted with malice, fraud, and**  
7 **oppression in violating a key section of the Mobilehome Residency Law**, warranting punitive  
8 damages. (See Decl. of Richard Farnell, Esq., ¶¶ 2-4, and Ex. 48, p. 3, lines 19-26, to NOL.)

9  
10 **L. The City keeps up the pressure, and Settlement Agreements mushroom.**

11 Although the Court issued the TRO on November 20, 2003, stopping the City’s threatened mass  
12 evictions—a time when the City had 75 settlement agreements—the City secretly continued its  
13 plans despite the Court’s status quo orders. Without informing Plaintiff’s counsel, the City’s  
14 lawyers and on-site management continued to: communicate *ex parte* with members of the  
15 representative class, misstate the law and the governing rules and regulations to residents, and  
16 actively encourage residents to leave De Anza Cove or sign settlement agreements with the City.  
17 (For a detailed analysis of the applicable law and relief requested regarding the City’s *ex parte*  
18 contacts, please see Plaintiff’s separate Motion For Protective Order to Prohibit Defendant’s *Ex*  
19 *Parte* Contacts with Plaintiff Class Members, filed and served concurrently herewith.)

20 Plaintiff’s counsel was surprised when the March 16, 2005 edition of the San Diego Daily  
21 Transcript was published. The *Daily Transcript* reported: **“The moveouts at the De Anza Harbor**  
22 **Resort Mobile Home Park on Mission Bay are moving along as planned.”**<sup>113</sup> The City revealed  
23 that **it now had “no fewer than 181 settlement agreements”** and had caused 115 homes to be  
24 vacated. The City’s lawyer proclaimed, **“The city views this as very successful.”**<sup>114</sup> The City’s  
25 real estate assets department added: “Many residents at De Anza have accepted the city’s offer and

26 <sup>112</sup> Decl. of James Lewan, ¶¶ 2-9 and Decl. of Chris Lewan, ¶¶ 2-4.

27 <sup>113</sup> Daily Transcript article, Ex. 53 to NOL.

28 <sup>114</sup> Daily Transcript article, Ex. 53 to NOL.

1 have been very cooperative in **assisting the city in meeting its legal mandate to restore the**  
2 **property to park and recreational use.”** Interestingly, later in the article, the *Daily Transcript*  
3 reported that in “January 2004, the court issued a preliminary injunction that sought to preserve the  
4 status quo at the property until the issues could be sorted out.”<sup>115</sup> Presumably the City’s lawyers  
5 and the City’s Real Estate Assets Department were the exclusive sources of information gained by  
6 the *Daily Transcript*—Plaintiff’s counsel was not the source of *any* information in the article.<sup>116</sup>

7 Despite the City’s knowledge of the Court-ordered status quo, and despite the clear prejudice to  
8 residents, the City stepped up its ex parte communications so that it could surreptitiously continue  
9 its “transition plan.”

## 11 **Argument**

### 12 **A Receiver is Warranted Because the City Violated Both the Letter and Spirit** 13 **of the Court’s Status Quo Orders—and Continues to Do So.**

#### 14 **1. Legal authority regarding receivers.**

15 A court may appoint a receiver by statute or under equity principles.<sup>117</sup> For example, like here,  
16 the court may appoint a receiver “where necessary to preserve the property or rights of any  
17 party.”<sup>118</sup> The trial court has liberal discretion in appointing a receiver, which will not be disturbed  
18 on appeal absent a showing of actual abuse of discretion.<sup>119</sup> The court may independently choose  
19 the receiver, or a party may suggest suitable receivers to the court.<sup>120</sup> Under the control of the  
20 court, a receiver has the power to take and keep possession of property, receive rents, collect debts,  
21 make transfers, bring and defend actions, and “do such acts respecting the property as the court

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22 <sup>115</sup> Daily Transcript article, Ex. 53 to NOL.

23 <sup>116</sup> Zamoyski Decl., ¶ 14.

24 <sup>117</sup> Local Rule 2.47; See generally Civ. Proc. Code, §§ 564-578; C.R.C. Rules 354, 1900-1908.

25 <sup>118</sup> Civ. Proc. Code, § 564(b)(9); Weil & Brown, *The Rutter Group (Civil Proc. Before Trial)*  
26 p. 9(II)-48.10, ¶ 9:740.

27 <sup>119</sup> *City and County of San Francisco v. Daley* (1993) 16 Cal.App.4<sup>th</sup> 734; *Goes v. Perry* (1941)  
18 Cal.2d 373, 381.

28 <sup>120</sup> C.R.C., Rule 1902.

1 may authorize.”<sup>121</sup>

2 The order appointing a receiver should define the scope of the receivership, specify the  
3 receiver’s powers and duties, and adequately describe the property so the receiver can take  
4 possession of it.<sup>122</sup> Under Local Rule 2.47:

5 The proposed order appointing a receiver must set forth the powers of the receiver  
6 and shall designate as precisely as possible what real and personal property will be  
7 subject to the receivership estate.... Any money collected by the receiver and not  
8 expended pursuant to the receiver’s duties must be held in the receivership estate  
9 until the court approval of the receiver’s final report and discharge of the receiver....  
10 The receiver is neutral, acts for the benefit of all who may have an interest in the  
11 receivership property, and holds assets for the court.”

12 **2. A receiver is needed to manage De Anza Cove because of the City’s rampant**  
13 **changes and destruction in violation of this Court’s status quo orders.**

14 *During* the Court-ordered status quo, the City—using its on-site management company,  
15 security guards, and lawyers—has unilaterally:

- 16 • Removed all common area furniture and amenities
- 17 • Torn down the playground and refused to replace it
- 18 • Impounded all items from residents’ storage areas
- 19 • Prohibited parking in their assigned parking slots in the overflow parking area
- 20 • Towed and impounded residents’ cars, trucks, and trailers
- 21 • Destroyed the residents’ storage facilities and refused to replace it
- 22 • Destroyed laundry facilities and refused to replace it
- 23 • Closed the Pavilion clubhouse and main laundrymat
- 24 • Destroyed the De Anza Mart market and refused to replace it
- 25 • Erected chain-link and barbed-wire fencing
- 26 • Clear-cut existing flower gardens, shrubs, trees, and lush landscaping—replaced by  
27 the City’s “flourishing weeds” and ubiquitous orange construction fencing<sup>123</sup>

28 <sup>121</sup> Civ. Proc. Code, § 568; *See generally* Cal. Judges Benchbook: Civil Proceedings Before  
Trial, pp. 789-808, §§14.171-14.205 (1995) and pp. 538-545 (Update 2004).

<sup>122</sup> Cal. Judges Benchbook: Civil Proceedings Before Trial, p. 799, § 14.189 (1995).

<sup>123</sup> City’s Orange Flyer to Residents, Ex. 49 to NOL; Green Flyer to Residents, Ex. 50 to NOL.

- 1 • Removed the entrance fountain and landscaping
- 2 • Constructed a guard shack checkpoint and gate
- 3 • Prohibited free access to the park
- 4 • Demanded all who enter the park to provide personal information
- 5 • Failed to inform guards of the Court’s TRO and Injunction orders
- 6 • Instructed its guards to act more aggressively towards residents
- 7 • Brought in armed guards
- 8 • Failed to disclose alleged health and safety issues, like natural gas leaks
- 9 • Contacted the County Assessor secretly to have residents taxed like never before
- 10 • Sent unilateral notices to cut trees and shut off their water
- 11 • Threatened and even physically intimidated residents and their guests<sup>124</sup>

12

13 **3. A receiver is also needed because the City unlawfully and unilaterally**

14 **imposed its own new rules—but there were already Rules and Regulations**

15 **that had governed De Anza Cove for years.**

16 Even if no status quo Order existed—as it does here preserving the park’s existing Rules and

17 Regulations<sup>125</sup>—the Mobilehome Residency Law affirmatively prohibits the City from adopting

18 and imposing unilateral rules without residents’ consent unless: (1) the proposed rules are served on

19 residents, (2) a notice of meeting is served on residents at least 10 days before the meeting to

20 discuss the proposed rules, and then, (3) if residents still do not consent, management must serve a

21 minimum 6-month written notice of proposed rule changes.<sup>126</sup> And, to be enforceable under the

22 law, any unilateral rule change must still be reasonable.<sup>127</sup>

23 The City admitted under penalty of perjury during discovery that—contrary to the express

24 \_\_\_\_\_

25 <sup>124</sup> See sections 3.A.-3.L. of this brief, above, and all facts and evidence cited therein.

26 <sup>125</sup> Rules and Regulations De Anza Harbor Resort, Ex. 9 to NOL.

27 <sup>126</sup> Civil Code § 798.25; Freidman et al, *The Rutter Group (Landlord-Tenant)* pp. 11-44.1–

11-44.2, ¶¶ 11:121-11:123.

28 <sup>127</sup> *Rancho Santa Paula Mobilehome Park, Ltd. v. Evans* (1994) 24 Cal.App.4<sup>th</sup> 1139.

1 provisions of section 798.25 of the Mobilehome Residency Law—it didn’t meet and consult with  
2 the park’s residents and representatives before unilaterally creating and imposing new rules and  
3 regulations, and didn’t give lawful notice of those proposed new rules.<sup>128</sup> This is the *exact same*  
4 *section* of the Mobilehome Residency Law that an Orange County jury specifically found  
5 Hawkeye’s president—James Kosik—and his management company guilty of violating with  
6 “malice, fraud, and oppression.”<sup>129</sup> The rules are, by statute, unenforceable.

7 The City has also threatened evictions regardless of full rent payment. Even though  
8 homeowners had always been allowed to rent their mobilehomes under the prior operator,<sup>130</sup> the  
9 City unilaterally decreed that nobody could rent their homes—unless both the homeowner and  
10 tenant signed the City’s settlement agreement and waived all of their statutory rights and  
11 benefits.<sup>131</sup> If they didn’t, the City sent letters directly to them demanding that the homeowner  
12 remove their homes from De Anza Cove immediately—or the City would evict them.<sup>132</sup>

13 The City plowed forward with this aspect of its “transition plan” despite the Mobilehome  
14 Residency Law that expressly *permits* mobilehome owners to rent their homes: “Management shall  
15 permit a homeowner to rent his or her home that serves as the homeowner’s primary residence or  
16 sublet his or her space.”<sup>133</sup> And the courts have uniformly held that **management cannot**  
17 **unilaterally prohibit subleasing**:

18 A rule prohibiting subleasing goes to the very heart of ownership and residency.  
19 Because of the home’s immobility, an owner who finds living in the park no longer  
20 desirable, practical, or possible, would be forced to either sell his home or leave it  
21 vacant.... **A rule when applied retroactively—that is, against a homeowner  
whose lease contains no such restriction and who has not agreed to the  
restriction—is contrary to the stated purpose of the MRL and is therefore  
unenforceable.**<sup>134</sup>

22 \_\_\_\_\_  
23 <sup>128</sup> City’s verified responses to Req. for Admissions, nos. 32 & 33, Ex. 54 to NOL.

24 <sup>129</sup> Decl. of Richard Farnell, Esq., and Ex. 48, p. 3, lines 19-27, to NOL.

25 <sup>130</sup> Rules and Regulations De Anza Harbor Resort, Ex. 9 to NOL (section VIII, pp. 4-5).

26 <sup>131</sup> City’s unilaterally imposed rules & regulations post-TRO/Injunction, Ex. 56, ¶ 30, to NOL.

27 <sup>132</sup> E.g., Letters from City directly to residents, Exs. 61-67 to NOL.

28 <sup>133</sup> Civil Code § 798.23.5(a)(1).

<sup>134</sup> *Rancho Santa Paula Mobilehome Park, Ltd. v. Evans* (1994) 24 Cal.App.4<sup>th</sup> 1139, 1148.

1 The City not only violated both statutory and case law, it also violated the Court's status quo  
2 orders since residents are expressly permitted to rent their homes under their lease agreements (the  
3 Long Term Rental Agreement, Article 15), and the Rules & Regulations.<sup>135</sup>

4 All these threats and violations of the law happened perhaps because the City thinks that  
5 accepting rent from a tenant might somehow expose the City to new statutory claims. But the  
6 Preliminary Injunction—drafted by the City's counsel—states that the City *can* receive rent from  
7 the park's residents without creating any landlord-tenant relationship or a right to any statutory or  
8 other benefits:

9 The City may accept and expend monthly rent and other charges from all residents.  
10 **The City's acceptance and expenditure of monthly rent** and other charges from  
11 the residents, including those who are current participants in this litigation, **cannot**  
12 **be used by any party to support an argument that the City is** operating a  
mobilehome park, **creating a landlord/tenant relationship, creating any other**  
**relationship, any other rights, or any other benefits whatsoever.**<sup>136</sup>

13 The impact that the City's unilateral plans have had on residents is palpable. Like the story of  
14 Ms. Moriarty. After she split up with her fiancé, she needed to find a roommate to help defray the  
15 cost of rent. She was told by the City's lawyers—in writing—that that she would be evicted if she  
16 tried to bring in a roommate...and evicted if she couldn't pay her rent.<sup>137</sup> If she really wanted a  
17 roommate, the City's lawyers told her to sign a settlement agreement. Or vacate the property and  
18 remove her mobilehome from De Anza Cove. (Decl. of Bernadette Moriarty; See also Decl. of  
19 Rhonda Hascall, ¶¶ 3-10; Decl. of Kyle Steele, ¶¶ 2-8.)

20  
21 **4. The most effective way to preserve the parties' rights—and eliminate**  
22 **potential future abuses by the City and its on-site management team—is to**  
23 **appoint a receiver.**

24 The only way to prevent more of the City's abuses from recurring in the future—and to  
25

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26 <sup>135</sup> Rules and Regulations De Anza Harbor Resort, Ex. 9 to NOL (section VIII, pp. 4-5).

27 <sup>136</sup> Preliminary Injunction, ¶ 3, Ex. 7 to NOL (emphasis added).

28 <sup>137</sup> Letter from City, Ex. 59 to NOL.

1 preserve the property and rights of De Anza’s residents<sup>138</sup>—is to appoint an independent party to  
2 oversee the park’s management. The people at De Anza Cove will suffer further irreparable harm  
3 if a receiver isn’t appointed, and, due to the scope of the City’s actions, no other remedy is  
4 adequate.<sup>139</sup>

## 5 6 **5. Nomination of Receiver.**

7 Plaintiff has no vested interest in whom the Court elects to serve as a Receiver, only that the  
8 Receiver and property management company is sufficiently qualified and experienced to give the  
9 people at De Anza Cove what the Court has already ordered many times—the status quo for the  
10 duration of this litigation. As detailed in Richard M. Kipperman’s accompanying declaration,  
11 Mr. Kipperman has a wealth of experience as a court-approved receiver in the superior court as  
12 well as a trustee for the federal bankruptcy courts. He appears amply qualified to step in  
13 immediately to restore true communication, peace, and order to the community. The City would  
14 even save hundreds of thousands of dollars in management fees by appointing the receiver.  
15 Plaintiff therefore nominates Richard M. Kipperman as receiver and respectfully requests that the  
16 Court enter the [Proposed] Order Appointing Receiver immediately. If the Court does not deem  
17 Mr. Kipperman acceptable as Receiver, Plaintiff alternatively nominates Leslie Gladstone, whose  
18 accompanying declaration indicates her qualifications and experience as a receiver and trustee, and  
19 her ability to administer the park’s operations at a moment’s notice.

20 As delineated in the accompanying [Proposed] Order Appointing Receiver, the receiver’s  
21 powers should include among other things:

- 22 • Taking immediate possession, custody, and control of the entire Property at 2727 De  
23 Anza Road, as shown in the map provided in Exhibit 34;
- 24 • Collecting all rents, issues, profits, and income;
- 25 • Caring for, preserving, and maintaining the Property;

26  
27 <sup>138</sup> Civ. Proc. Code, § 564(b)(9).

28 <sup>139</sup> See, e.g., Weil & Brown, *The Rutter Group* (Civil Proc. Before Trial) p. 9(II)-48.15, ¶ 9:759.

- 1 • Incurring expenses necessary for the care, preservation, and maintenance of the Property;
- 2 • Operating and managing the Property under the applicable terms of the Long Term
- 3 Rental Agreements and the Rules and Regulations De Anza Harbor Resort dated July
- 4 1997 in accordance with the Court's status quo orders;
- 5 • Employing and compensating unlawful detainer attorneys or eviction services with
- 6 respect to the operation of the Property and ejecting tenants or occupants who fail to pay
- 7 rent or fail to follow the Rules and Regulations De Anza Harbor Resort dated July 1997
- 8 as decreed in the Court's prior orders;
- 9 • Making capital improvements and rehabilitating the Property—within commercial
- 10 reason and in the Receiver's discretion with residents' input—as needed to return the
- 11 property to its state prior to November 2003.

## 11 Conclusion

12 It was hard for residents to believe that an organization like the City of San Diego would act  
13 like it has here. It was even harder for them to fathom that the City would continue to act as it has  
14 after the Court directly told the City's representatives over and over again *to maintain the status*  
15 *quo, preserve residents' rights, stop destroying things, and cease acting unilaterally.*

16 But seeing is believing.

17 The before-and-after videos and photos do not and cannot lie: fencing-off common areas,  
18 destroying laundry facilities, demolishing storage areas, towing residents' cars, bringing in armed  
19 guards, erecting klieg lights and barbed-wire fencing, and allowing rampant dilapidation. Letters  
20 sent directly from the City's lawyers to the park's residents—which threaten evictions, encourage  
21 people to remove their homes from De Anza Cove, and improperly influence them to sign  
22 settlement agreements that waive all their rights—cannot lie either.

23 And now knowing the inescapable truth might be the most defeating: the City's purpose for  
24 maintaining control over the people at De Anza Cove was intentionally done to force them to  
25 knuckle-under and give up, to drive them out, and to sign settlement agreements so as to whittle  
26 away the plaintiff class. Treating people like this for almost a year-and-a-half was all about what?  
27 Grinding people down and forcing them to waive their statutory rights so the City can try to  
28 command a smaller relocation settlement—one that the City has known for over two decades it

1 would have to pay when it came time to close the park?<sup>140</sup>

2 Unfortunately for the people at De Anza Cove—and really for everyone involved—the City has  
3 chosen to act as it has. No matter what excuses the City throws at counsel and this Court in  
4 opposition to these motions, an independent receiver is needed to operate De Anza Cove until this  
5 litigation is concluded.

6  
7  
8 DATE: April 20, 2005

Respectfully Submitted,

TATRO & ZAMOYSKI, LLP

9  
10 By: 

Timothy J. Tatro, Esq.

Peter A. Zamoyski, Esq.

Attorneys for Plaintiff DE ANZA COVE  
HOMEOWNERS ASSOCIATION, INC.

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28 <sup>140</sup> See Plaintiff's Motion for Summary Adjudication, on file herein, set for hearing May 20, 2005.