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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 COMPEL
CITY OF SAN DIEGO TO COMPLY
WITH COURT ORDER**

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2 Plaintiff's submission on April 7, 2005, which is hereby withdrawn.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.

6 **Issue**

7 Under the stipulation and Order of the Court dated February 22, 2005, the City was
8 required to, among other things, hire Overland, Pacific & Cutler to conduct a
9 comprehensive Tenant Impact Report. Yet, almost two months after the Order was
10 issued, the City has yet to hire Overland to begin the Tenant-Impact-Report process.
11 Should the Court compel the City, within seven calendar days, to hire Overland,
12 Pacific & Cutler and initiate the Tenant Impact Report process as delineated in the
13 prior Order?

15 **Statement of Facts**

16 On December 10, 2004—less than a month away from the Court's anticipated ruling on
17 Plaintiff's Summary Adjudication Motion—the City informed Plaintiff and the Court of the City's
18 change in strategy towards the litigation¹ and sought a stay of litigation to move towards resolution
19 of various issues. The City represented to the Court that this was not a stall tactic.² Plaintiff
20 welcomed the opportunity to communicate, negotiate, and potentially resolve a number of
21 outstanding issues.

22 During the months of December 2004, January and February 2005, counsel discussed a number
23 of litigation issues and various concerns of the residents regarding the management of the park.
24 During negotiations, the City and plaintiff discussed whether—in exchange for Plaintiff agreeing to
25 stay the case and as the City's show of good faith that this wasn't a stall tactic—the City would

27 ¹ Dec. 10, 2004 Transcript, p. 2, Ex. 55 to NOL.

28 ² Dec. 10, 2004 Transcript, p. 6, Ex. 55 to NOL.

1 commission a Tenant Impact Report in compliance with State law.³

2 The preparation of a Tenant Impact Report for a large mobilehome park such as De Anza Cove
3 requires special expertise. On behalf of the City, Frank Devaney of the City Attorney's Office
4 suggested that the parties use Overland, Pacific & Cutler.⁴ Given Overland's recent experience
5 preparing a Tenant Impact Report for the City of Vista when Vista closed its mobilehome park,
6 Overland's demonstrated understanding of the technical requirements of the report under the
7 Mobilehome Residency Law, and Overland's past work for the City of San Diego on other projects,
8 both Plaintiff and the City agreed to hire Overland.⁵ The parties negotiated back and forth and
9 carefully crafted a formal stipulation.⁶

10 In accord with the parties' stipulation that had been unanimously approved by the City Council,
11 the Court, on February 22, 2005, ordered the City of San Diego to hire Overland, Pacific & Cutler
12 to conduct the Tenant Impact Report.⁷ As discussed in Plaintiff's companion motions—Motion to
13 Appoint Receiver for De Anza Cove, Motion for Protective Order to Prohibit Defendant's Ex Parte
14 Contact with Plaintiff Class Members, and Ex Parte Application for Order to Show Cause re: City
15 of San Diego's Contempt of Court—the City was also supposed to: (1) discuss park management
16 issues and revisit the issue of appointing an independent third-party management company;
17 (2) refurnish the mobilehome park's common areas; (3) stay all case-related matters and cease ex
18 parte communication with park residents, except for non-payment of rent.⁸ But now, the City,
19 without any justification refuses to proceed with the Tenant Impact Report with Overland. The
20 City has violated—and continues to violate this Court's February 22, 2005 order.

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22 _____
23 ³ Decl. of Zamoyski in Support of Motion to Compel City of San Diego to Comply with Court
24 Order, ¶ 3; See Ltr. from Frank Devaney dated Dec. 20, 2004, Ex. 84 to NOL.

25 ⁴ Zamoyski Decl., ¶ 3.

26 ⁵ Zamoyski Decl., ¶ 3.

27 ⁶ Zamoyski Decl., ¶ 3.

28 ⁷ Order dated Feb. 22, 2005, p. 2, ¶ 2, Ex. 8 to NOL.

⁸ Order dated Feb. 22, 2005, Ex. 8 to NOL.

Argument

The Court should compel the City to comply with its February 22, 2005 Order and immediately hire Overland to begin the Tenant-Impact-Report process.

Courts have the power to compel obedience to their orders and amend them as necessary to make them “conform to law and justice.”⁹ Case law also recognizes that all courts have inherent supervisory or administrative powers that enable them to carry out their duties and oversee and enforce execution of its decrees.¹⁰

Here, the main reason that Plaintiff agreed to a stay of the litigation was the City’s agreement to commission a Tenant Impact Report with Overland, Pacific & Cutler. The stipulation and Order required that the City and Plaintiff meet jointly with Overland to discuss and initiate the Tenant-Impact-Report process.¹¹ Plaintiff contacted the City immediately upon hearing of the City Council’s approval of the Stipulation and requested a joint meeting be set with Overland, per the Court’s Order, to initiate the Tenant Impact Report.¹² Plaintiff repeatedly asked to proceed, but the City’s representatives simply responded that they would look into it and get back to us.

Plaintiff was informed for the first time on March 7, 2005, that—although the City agreed to commission Overland to prepare the Tenant Impact Report—the City now required *an additional 4 months* since it unilaterally decided to solicit other companies to perform the Tenant Impact Report and unilaterally decided how it would do so. The City’s outside counsel alleged that the City suddenly desired to “comply with its administrative regulations which require that it issue a Request for Proposal (“RFP”) and solicit bids.... Real Estate Assets staff has been working on the RFP package and **it is anticipated that it will go out in the next 30-40 days**. The RFP response period will need to be **a minimum of 60 days** and negotiations and selection will require **an**

⁹ Civ. Proc. Code, §§ 128, 177.

¹⁰ See, e.g., *Asbestos Claims Facility v. Berry & Berry* (1990) 219 Cal.App.3d at p. 19; *Brown v. Brown* (1971) 22 Cal.App.3d 82.

¹¹ See Order dated Feb. 22, 2005, p.2, ¶4, Ex 8 to NOL.

¹² See Letter from HOA’s Counsel to City, Ex. 72 to NOL.

1 additional 30 days.”¹³ Of course, this “process” was *never* mentioned during the prior 3 months of
2 negotiations, Plaintiff *never* agreed to any company or “process” beyond hiring Overland as stated
3 in the Stipulation and Order, and Plaintiff *never* entertained such a notion. When questioned why
4 Overland was not being hired, the City would not reveal why it can’t or won’t proceed with hiring
5 Overland exactly as it is required to do in the Court’s Order.¹⁴

6 Plaintiff, therefore, respectfully requests that the Court order that the City of San Diego and
7 Plaintiff’s counsel jointly contact Overland, Pacific & Cutler within seven calendar days, the City
8 formally retain Overland within seven calendar days, and that the parties immediately comply in
9 full with the procedures that are fully delineated in the Court’s February 22, 2005.

11 Conclusion


12 The City agreed to, among other things, commission Overland to prepare the Tenant Impact
13 Report in exchange for Plaintiff’s agreement to stay the litigation. After this Court’s Order, the
14 City has just stonewalled and stonewalled, frustrating months of negotiations and agreements, and
15 unjustifiably delaying the reporting process.

16 Therefore, the Court should compel the City to hire Overland, Pacific & Cutler to conduct the
17 comprehensive Tenant Impact Report as delineated in the Court’s February 22, 2005 Order.

19 Respectfully Submitted,

20 DATE: April 20, 2005

TATRO & ZAMOYSKI, LLP

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22 By: 
23 Timothy J. Tatro, Esq.
24 Peter A. Zamoyski, Esq.
25 Attorneys for Plaintiff DE ANZA COVE
26 HOMEOWNERS ASSOCIATION, INC.

27 ¹³ See Letter from City to HOA’s Counsel, Ex. 73 to NOL.

28 ¹⁴ Zamoyski Decl., ¶¶ 4-6; E-mail from HOA counsel to City, Ex. 74 to NOL; Letter from City to HOA’s Counsel, Ex. 78 to NOL.