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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 EX PARTE
APPLICATION FOR ORDER TO
SHOW CAUSE RE: CITY OF SAN
DIEGO'S CONTEMPT OF COURT**

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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11 **1. The City, with full knowledge of the Court’s order, admonitions, and intent, willfully**

12 **acted in contempt of the Court’s authority, despite the City’s capacity to preserve the**

13 **status quo on the property it owns and controls**.....29

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1 “The care of human life and happiness, and not their destruction,
2 is the first and only object of good government.”

3 —*Thomas Jefferson* (1809)
4
5

6 **Introduction**¹

7 The City of San Diego has consistently failed to abide by the Court’s mandate that the status
8 quo be preserved at De Anza Cove. This Court repeatedly ordered the City of San Diego to
9 preserve and maintain *the rights and obligations of all parties and the common areas and services*
10 at De Anza Cove. Rather than halting its “transition plan,” the City unilaterally closed and fenced-
11 off common areas, removed laundry facilities, demolished storage areas, towed residents’ cars,
12 brought in armed guards, put up klieg lights and barbed-wire fencing, changed the park’s rules, and
13 continued threatening eviction. And the City’s apparent purpose for maintaining control over the
14 people at De Anza Cove is so that its on-site management company and attorneys can: (1) continue
15 to force people to leave De Anza by making their living environment miserable; (2) communicate
16 ex parte with members of the plaintiff class; and (3) coerce residents to sign settlement agreements
17 that waive all of their rights.
18

19 **Issue**

20 In the face of this Court’s clear mandate to preserve the status quo, the City has continued with
21 its transition plan, repeatedly violating the Court’s admonitions not to tear things down, change the
22 rules, or alter the rights of the parties in any way. Given the City’s deliberate disobedience of the
23 Court’s orders, should the City be found guilty of civil contempt?
24

25 _____
26 ¹ This application and supporting papers have been significantly revised and reformatted from
27 plaintiff’s prior submission on April 7, 2005, which is hereby withdrawn. Plaintiff requests,
28 therefore, that the Court, parties, and counsel rely exclusively on these points and authorities,
declarations, exhibits, and the other papers identified in the accompanying Notice of Ex Parte
Application and Ex Parte Application. **Before reading further, Plaintiff requests that His Honor
first insert and watch the video attached as Exhibit 1 to the Notice of Lodgment.**

Law Governing Contempt

The Court has the power to punish contempt of court, and remediate the harm caused by the contemner.² Disobedience of any lawful court order constitutes contempt of the authority of the court.³ Where the contempt occurs outside the immediate view of the court, civil contempt proceedings may be initiated with a charging affidavit or declaration.⁴ The court may order the alleged contemner to appear and show cause as to why he should not be found in contempt of court.⁵ Upon a proper showing of contempt, beyond a reasonable doubt, after a trial on the merits of the charges, the court has the authority to punish the contemner and order the contemner to, among other things, pay the attorney's fees and costs incurred by the moving party in bringing the contempt proceedings.⁶

To establish indirect contempt of court, the moving party bears the burden of establishing each of the following:

- the rendition of a valid court order;
- the respondent's actual knowledge of the order;
- the respondent's ability to comply with the order; and
- the respondent's willful disobedience of the order.⁷

Factual Support

The following summary of events compliments the factual evidence contained in the Charging Declaration of Timothy J. Tatro, and the Charging Declaration of Peter A. Zamoyski, filed concurrently herewith.

² *Hicks v. Feiock* (1988) 485 U.S. 624, 624.

³ Civ. Proc. Code, § 1209(a)(5).

⁴ Civ. Proc. Code, § 1211(a).

⁵ Civ. Proc. Code, § 1212.

⁶ Civ. Proc. Code, § 1218(a).

⁷ *Conn. v. Sup.Ct. (Farmers Group)* (1987) 196 Cal. App.3d 774, 784.

1 **1. Rendition of valid court orders.**

2 **A. Temporary Restraining Order.**

3 On November 20, 2003—three days before the City took possession of the property—the Court
4 reviewed the Homeowners Association’s request for a Temporary Restraining Order and heard oral
5 argument. Later that afternoon, the Court issued the Temporary Restraining Order. The Court
6 enjoined the City from evicting residents and from “discontinuing or diminishing any previously-
7 provided services to the Park and its residents and from closing down any common areas.”⁸ It
8 defined the parties protected by the TRO as “the residents of De Anza Harbor Resort, located at
9 2727 De Anza Road.”⁹

10 Only a few days later, the City sought to dissolve the TRO and move forward with its
11 “transition plan,” or alternatively, to close some common areas and diminish the services provided
12 to residents. The City’s director of real estate assets declared under penalty of perjury that the
13 City’s “transition plan” was for “Residents to confirm that they are not entitled to relocation or
14 other assistance and to agree to move out.”¹⁰ He also told the court: “Nearly 75 spaces...have
15 signed the settlement agreement.”¹¹ The Court denied the City’s attempt to dissolve or amend the
16 TRO, close the common areas, and diminish services.

17 The Court then reiterated to all counsel and parties—including the City’s director of real estate
18 assets who was present¹²—that, except for non-payment of rent, the status quo was to be
19 maintained for the duration of the case:

20 Well, rest assured, politics and outside interests and whatever may be assertedly
21 going on has absolutely no bearing upon this Court. I don’t care. I’m concerned
22 about preserving the rights of the parties until we can have everything adjudicated
23 fully and determined and finalize those rights and obligations.... To preserve the
24 status quo with the pool, or with the lights at the entry, or something such as

23 ⁸ Temporary Restraining Order, pp. 2-3, attached as Ex. 2 to Plaintiff’s Notice of Lodgment of
24 Exhibits in Support of Ex Parte Application for Order to Show Cause re: City of San Diego’s
25 Contempt of Court (hereinafter “NOL”).

26 ⁹ Temporary Restraining Order, p. 2, lines 24-25, Ex. 2 to NOL.

27 ¹⁰ Ex. 12 to NOL, Griffith Decl., p. 4, ¶ 10.

28 ¹¹ Ex. 12 to NOL, Griffith Decl., p. 4, ¶ 11.

¹² Nov. 25, 2003 Transcript, p. 1, Ex. 4 to NOL.

1 that...the City is being ordered and has been ordered to conduct itself in a certain
2 fashion.... **What I want to do is ensure that the status quo as between these**
3 **parties...is maintained.**¹³

4 The Court then summed up:

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

7 * * *

8 Evict people if they don't pay rent. **Everything else, we're going to preserve the**
9 **status quo.**¹⁴

10 **B. Preliminary Injunction.**

11 A few weeks later, the Court granted the Preliminary Injunction after finding that the HOA had
12 “established a reasonable probability of success on the merits,” meaning that the City continued to
13 violate state law by attempting to close the park without complying with the Mobilehome
14 Residency Law. The Injunction prevented any legal action against the “residents of Mission Bay
15 Park, formerly known as De Anza Harbor Resort” and mandated the continuation of services and
16 common areas at De Anza Cove.¹⁵

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

19 I want communication.... You should be communicating with them, not as
20 advocates necessarily, but as human beings trying to make their lives a little bit more
21 understandable, a little bit better. So you do that, please. Okay?¹⁶

22 When it heard allegations that the City was beginning to make wholesale changes at De Anza
23 Cove, the Court responded quickly and unequivocally when it told all attorneys and parties—
24 including the City’s director of real estate assets who was again in attendance¹⁷—that the City was
25 ordered to maintain the status quo: **“Is it clear what I had in mind, that the status quo was going**

26 ¹³ Nov. 25, 2003 Transcript, p. 14, Ex. 4 to NOL.

27 ¹⁴ Nov. 25, 2003 Transcript, pp. 18, 26, Ex. 4 to NOL.

28 ¹⁵ Preliminary Injunction, Ex. 7 to NOL.

¹⁶ Dec. 19, 2003 Transcript, p. 28, Ex. 5 to NOL.

¹⁷ Dec. 19, 2003 Transcript, p. 1, Ex. 5 to NOL.

1 **to be maintained, that things weren't going to be changed until we get this over with?"¹⁸**

2
3 **C. November 2004 hearings regarding the City's unilateral tree-cutting plans.**

4 In November 2004, the HOA sought to prevent the City from unilaterally clear-cutting
5 hundreds of trees in the park. At the hearing, the Court once again reiterated its mandate that the
6 status quo be preserved and that the City fully communicate all management issues to the HOA's
7 attorneys and residents:

8 I issued an injunction and I wanted the status quo to be preserved until we can deal
9 with these issues.... But these people who live there, it would seem from a
10 government standpoint, you'd want to ensure that they have trust and confidence in
11 the government, and the only way that they're going to have trust and confidence in
12 government is to provide information on a regular basis so that there's an exchange
13 of information.¹⁹

14 The City's counsel backpedaled and represented to the Court that, over the past year, the City
15 had been trying to "follow the spirit of the preliminary injunction...and to preserve the status
16 quo."²⁰ The Court reiterated once again for everyone present—including the Assistant to the City
17 Manager and Hawkeye Asset Management's director of operations²¹—what maintaining the status
18 quo means:

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

22 * * *

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

* * *

25 ¹⁸ Dec. 19, 2003 Transcript, p. 26, Ex. 5 to NOL.

26 ¹⁹ Nov. 8, 2004 Transcript, p. 73, Ex. 6 to NOL.

27 ²⁰ Nov. 8, 2004 Transcript, p. 81, Ex. 6 to NOL.

28 ²¹ Nov. 8, 2004 Transcript, p. 26, Ex. 6 to NOL.

1 Now, I'm not going to rewrite the injunction, and I gave some examples of the status
2 quo. **You understand the status quo. And I understand maintenance, but**
3 **maintenance isn't tearing things down....** But if there's not an emergency
4 situation, and you need to take a tree out, you need to do something on the property
5 to continue maintenance, come in and talk. That's why I'm here. That's why
6 they're there. **Don't send out unilateral notices. Okay? So enough said?**²²

7 The City's counsel then remarked that she foresaw that "the City will require the Court's leave
8 [and]... there will be delay necessitated by the City's inability to manage its property because it has
9 to now consult with the plaintiff in this case on issues that it would otherwise not consider
10 consultation a requirement."²³ The Court responded: "I think everybody understands what I had in
11 mind then, and to the extent that there was any ambiguity, you know now. The status quo is to be
12 preserved. You may be successful in the ultimate outcome of this lawsuit. That's fine. You may
13 not be successful. That's fine, too. Between now and that date of decision, the status quo has to be
14 preserved."²⁴

15 **D. Stipulation and Order to Stay Litigation.**

16 On February 22, 2005, in accord with the parties' stipulation that had been unanimously
17 approved by the City Council, the Court ordered the City of San Diego to—as it applies to this
18 application—stay all case-related matters and cease contacts with residents except for non-payment
19 of rent, and.²⁵ As discussed in detail below, the City has violated—and continues to violate—the
20 Court's order on all three prongs.

21 **2. The City had actual knowledge of the Court's orders.**

22 The City has been represented by counsel at all times in this matter. Counsel for the City was
23 present at each hearing related to the orders at issue. Counsel for the City prepared responsive
24 papers to each of Plaintiff's requests for injunctive relief. At two of the hearings in this matter, an

25 ²² Nov. 8, 2004 Transcript, pp. 87-90, Ex. 6 to NOL.
26 ²³ Nov. 8, 2004 Transcript, p. 92, Ex. 6 to NOL.
27 ²⁴ Nov. 8, 2004 Transcript, p. 92, Ex. 6 to NOL.
28 ²⁵ Order dated Feb. 22, 2005, p. 5, ¶ 12, Ex. 8 to NOL.

1 appearance was made by now-Judge Frank Devaney, then head of the Civil Division of the City
2 Attorney's Office. And, more recently, City Attorney Michael Aguirre appeared on behalf of the
3 City. (Tatro Decl., ¶ 6.)

4 On May 20, 2004, the City's Director of Real Estate Assets submitted a Manager's Report to
5 the Natural Resources and Culture Committee—a body comprised of several City Council
6 members. In his report, the Director explains the Preliminary Injunction in detail, including the
7 Court's requirement that all common areas and services be maintained. (Tatro Decl., ¶ 7.)

8 Moreover, the City Attorney's Office and outside counsel have jointly made presentations to
9 the City Council regarding the status of the City's transition plan, and the status of the pending
10 litigation with plaintiff. Plaintiff's counsel attended some of these open-session presentations at the
11 City Council chambers. During these presentations, the City Council was informed that the Court
12 had issued injunctive relief to preserve the status quo. Furthermore, plaintiff has been told by the
13 City's attorneys that the City Council was informed of these Orders—and their impact on the
14 pending litigation and on the City's transition plan—in much more detail during closed-session
15 hearings. The City Attorney's Office also informed plaintiff that the joint stipulation that was
16 ultimately entered as a Court Order on February 22, 2005, had been reviewed and approved by
17 every member of the City Council. (Tatro Decl., ¶ 8.)

18 Most importantly, at each of the hearings on November 25, 2003, December 19, 2003, and
19 November 8, 2004, a City representative was present while the Court's orders were issued and
20 discussed. In fact, at the latter hearing, which involved a particularly pointed discussion regarding
21 the City's unilateral decision to begin clear-cutting nearly 200 trees at De Anza, the Court
22 recognized the presence of the special assistant to the City Manager, Ms. Beth Murray. (Tatro
23 Decl., ¶ 9; Nov. 8, 2004 Transcript, pp. 87-90, Ex. 6 to NOL.)

24
25 **3. The City, as owner and operator of De Anza Cove, has the ability to maintain**
26 **the status quo and follow the Court's directives.**

27 The City owns the land, hand-picked the management company, controls access to the property,
28 dictates security protocols, and has authority over virtually every aspect of life at De Anza.

1 Moreover, the Court’s orders, themselves, relieve the City of any alleged contravening duty to
2 complete its “transition plan” during the period that the Injunction is in effect. The City has the
3 capacity to act lawfully.

4 In November 2003—and repeatedly thereafter—the Court ordered the City to preserve the
5 status quo. “Status quo” is defined by Webster’s Dictionary as “the existing state of affairs at a
6 particular time.”²⁶ Certainly, if the City had any lingering doubts as to what the Court intended—
7 though difficult to believe—the City always had the option of framing the issue for the Court’s
8 consideration. At any point, the City could have approached plaintiff’s counsel or the Court or
9 both, seeking to resolve any question as to whether the City’s plans to demolish buildings, strip
10 down and fence off common areas, close parking lots, or change park rules would contravene the
11 standing orders of the Court. Indeed, the Court invited the City to do just that on several
12 occasions.²⁷

13 Moreover, the City has the ability to retain Overland, Pacific & Cutler to begin the Tenant
14 Impact Report immediately. In fact, the City Council has already authorized it, but the City
15 Manager’s Office has yet to engage Overland, trying instead to undue the City’s prior
16 commitment—and Court order—to utilize Overland as the Tenant Impact Report consultant.
17 (Tatro Decl., ¶ 10.)

18 19 **4. The City willfully violated the Court’s orders.**

20 **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,²⁸ and a boardwalk teeming with joggers, cyclists, and people
23 out for a stroll. Public boaters and beachgoers.²⁹ Free access into the park for everyone. Two
24 clubhouses—the Bay Club and Pavilion—stocked with pool tables, couches, stoves, barbeque, and

25 _____
26 ²⁶ Webster’s New World College Dictionary, p. 1400 (4th Ed., 2000).

27 ²⁷ November 8, 2004 Transcript, p. 91, attached as Exhibit 6 to NOL.

28 ²⁸ See photographs of playground area, Ex. 13 to NOL.

29 ²⁹ See photographs of beach area before City’s possession, Ex. 15 to NOL.

1 bingo.³⁰ Storage, laundry, and shower facilities in “islands” in the median of the streets.³¹
2 Manicured lawns, gorgeous trees and bougainvillea. Assigned overflow parking for residents’ cars,
3 trucks, and trailers.³²

4 In fact, the park’s Rules and Regulations that were in effect at the time the Court ordered the
5 City to preserve the status quo—and thereby should still be in full effect today—confirm the
6 residents’ rights to their assigned storage areas, parking for their cars and trailers, guest parking,
7 street parking for routine loading and unloading their cars, the use of the Bay Club and Pavilion,
8 and public access to enjoy the beaches and shoreline.³³ About two months before the City took
9 over, the City asked for³⁴—and received³⁵—these Rules and Regulations. And, like mobilehome
10 owners everywhere, the residents of De Anza Cove were, of course, allowed to rent their
11 mobilehomes as they always had been under State law (Civil Code § 798.23.5(a)(1)), their lease
12 agreement with DHRG (the Long Term Rental Agreement),³⁶ and the park’s Rules &
13 Regulations.³⁷

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

15
16 **...and how the City maintained the status quo.**

17 **A. The City takes control.**

18 At the outset, the City hired Hawkeye Asset Management, Inc. (“Hawkeye”), an Orange
19 County-based company that markets itself as “the leader in helping mobilehome park owners...

20
21 ³⁰ See photographs of Bay Club and Pavilion before City’s possession, Ex. 17, Ex. 19 to NOL.

22 ³¹ 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 ³² Decl. of Ernie Abbit, ¶ 14.

25 ³³ 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 ³⁴ Letter from City to DHRG dated Sept. 17, 2003, p. 2, ¶ 4, Ex. 85 to NOL.

28 ³⁵ Letter from DHRG to City dated Oct. 3, 2003, p. 4, ¶ 9, Ex. 86 to NOL.

³⁶ The Long Term Rental Agreement, Article 15, p. 17, Ex. 10 to NOL.

³⁷ Rules and Regulations De Anza Harbor Resort, sections VIII.A.-F., p. 4, Ex. 9 to NOL.

1 *gain control over their assets.*”³⁸ Hawkeye’s principal—James Kosik—believes that “the only way
2 to maintain the quality of the asset and the quality of the community is *to watch it like a hawk.*”³⁹

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

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

9
10 **B. The City’s closures of common area facilities and services.**

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

12 Before the City took over, the Bay Club and Pavilion club house common areas had functioned
13 as the social hub and meeting place for park residents and were often used for bingo, holiday
14 parties, church services, and other group events.⁴⁰ Two days *after* the Court issued the temporary
15 restraining order, all furniture—chairs, tables, couches, pool tables, a big screen television, and
16 other amenities⁴¹—was stripped from these common areas. So was the pool-area furniture.⁴²

17 When these issues were raised to the Court on November 25, 2003, counsel for the City
18 forcefully explained that DHRG—the prior park operator—had simply reclaimed its personal
19 property. The City categorically denied to the Court that it had *any involvement* in stripping the
20 common areas clean:

21 ///

22 _____
23 ³⁸ Hawkeye Company Profile, p. SD004031, Ex. 11 to NOL (italics added).

24 ³⁹ Hawkeye Company Profile, p. SD004029, Ex. 11 to NOL (italics added).

25 ⁴⁰ 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 ⁴¹ 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 ⁴² See Pool Area photos before and after City took possession, Ex. 23 to NOL.

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

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

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

5 MS. ROPPO: No, Your Honor.⁴³

6 This, however, was not the case. DHRG’s attorney confirms that the City told DHRG to vacate
7 the property and remove all items during Fall 2003. As November 23, 2003 rapidly approached,
8 DHRG repeatedly asked the City if it could leave the furniture and amenities (listing them all in a
9 two-page spreadsheet) for the residents as a goodwill gesture.⁴⁴ Then, on November 21, 2003—the
10 day *after* the TRO was granted—DHRG’s counsel wrote again asking whether the City required the
11 furniture removal “in light of the temporary restraining order.”⁴⁵ **The City telephoned** back that
12 day and said **the City wanted DHRG to remove all its property, including all of the furniture**
13 **from the common areas.** (See Decl. of Mark Zebrowski, Esq.)

14 Without knowing that the City had ordered the removal, the HOA asked DHRG to return the
15 furniture as a good-will gesture. DHRG agreed to return the furniture to the HOA for the sum total
16 of \$1—provided that the City did not object. (Zebrowski Decl., ¶ 7.) But the City repeatedly
17 refused to allow the furniture back.⁴⁶

18 Until recently, only a handful of chairs remained in the common areas and, for HOA meetings,
19 residents were forced to carry a chair with them so that they have a place to sit. Since the City
20 refused to do *anything*, the HOA bought approximately 200 chairs out of its own funds. It’s too
21 late to get the furniture back—couches, tables, appliances, televisions—because DHRG could no
22 longer afford to keep it in storage and disposed of it.⁴⁷ Because of the City’s actions, the Bay Club

23 ⁴³ Nov. 25, 2003 Transcript, p. 8, Ex. 4 to NOL (emphasis added).

24 ⁴⁴ Nov. 18, 2003 letter from DHRG to City, Ex. 91 to NOL; See also letters from DHRG to
25 City, Ex. 87 (p. 3, ¶¶ 2-3), Ex. 89 (p. 2) to NOL; Letter from City to DHRG, Ex. 88 (p. 3) to NOL.

26 ⁴⁵ Letter from DHRG to City dated Nov. 21, 2003, Ex. 92 to NOL.

27 ⁴⁶ Zebrowski Decl., ¶ 7-8; E-mails between DHRG and City, Exs. 95-97 to NOL; Zamoyski
Decl., ¶ 3.

28 ⁴⁷ Zamoyski Decl., ¶ 3.

1 and Pavilion—once vibrant gathering places for the community—are now empty, dead space.⁴⁸

2
3 **2. *The City tears down the playground.***

4 Although the majority of De Anza residents are elderly, many have visiting grandchildren and
5 great-grandchildren that used to play on an area of the beach where a small playground stood.⁴⁹ It
6 was also used by those living at the park with younger children. This area was vital because there
7 are no sidewalks or other safe open areas within the park for kids to play. In March 2004, the City
8 tore the playground down.⁵⁰ Although the HOA asked that it be replaced, the City refused.⁵¹

9
10 **3. *The City demolishes storage and laundry facilities.***

11 The older section of the park has islands in the thoroughfare that house storage and laundry
12 facilities.⁵² Residents paid supplemental rent to use these storage areas which, in turn, helped keep
13 the neighboring streets free of clutter. The evenly-dispersed, nearby laundry rooms also provided a
14 long-cherished convenience for senior residents who would otherwise have to travel across the park
15 to do their laundry.⁵³

16 Right before the City destroyed the playground, the City also demanded that DHRG destroy the
17 residents' storage areas, even though it noted that the "storage units on the property appear to have
18 been intended for use by residents for storage, at a fee to be paid to DHRG."⁵⁴ DHRG's attorneys
19 responded quickly that it would not remove the units due to the Court's Preliminary Injunction:

20 ///

21 _____
22 ⁴⁸ See Bay Club and Pavilion photos after TRO, Ex. 18 and Ex. 20 to NOL.

23 ⁴⁹ Playground photos before City's destruction, Ex. 13 to NOL.

24 ⁵⁰ Playground photos during/after City's destruction, Ex. 14 to NOL; Abbit Decl., ¶¶ 17-18.

25 ⁵¹ See playground demolition photos, before and after, Exs. 13-14 to NOL; See letter requesting
26 replacement of playground, Ex. 35 to NOL; Zamoyski Decl., ¶ 5.

27 ⁵² De Anza Cove Map, Ex. 34 to NOL; Photo of island storage/laundry facility before City's
28 destruction, Ex. 21 to NOL.

⁵³ Decl. of Abbit, ¶ 15.

⁵⁴ E-mail from City to DHRG dated Mar. 10, 2004, ¶ 5, Ex. 96 to NOL.

1 You request DHRG remove certain storage units, playground equipment and plants.
2 As a preliminary matter, **we are concerned the HOA or court may view your**
3 **requests and any such removal of any improvements by DHRG as inconsistent**
4 **with the court’s preliminary injunction... DHRG is not willing to remove any**
5 **improvements** or other items used by residents **without the City obtaining** the
6 consent of the residents or **the express permission of the court.**⁵⁵

7 Nevertheless, the City impounded the items that residents had stored in these sheds⁵⁶ and then
8 unilaterally demolished almost every one of these 21 buildings,⁵⁷ eliminating the storage units and
9 laundry facilities. The City left what can only be described as bombed-out, crumbling relics with
10 exposed electrical wiring and now-abundant weeds and trash.⁵⁸

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

12 In the middle of the mobilehome park lays a large section that functioned as an R.V. park. It
13 has been non-operational since the City took over. The Pavilion—the residents’ other large club
14 house common area—sits right next to the R.V. park.⁵⁹ Without discussing the issue with the HOA
15 or counsel, the City embarked on a plan to renovate the R.V. park with an eye towards reopening it
16 sometime in Summer 2005.⁶⁰

17 Almost overnight **in mid-February 2005**, the City unilaterally closed and fenced-off the
18 Pavilion and laundry facility. It removed the little furniture remaining in the Pavilion. It removed
19 all of the washers and dryers. Residents tipped-off the HOA’s attorneys who then confirmed these
20 events with the City’s counsel.⁶¹ When the HOA asked that these common areas and facilities be
21 reopened, the City refused. Only after the HOA set an ex parte hearing for an Order to Show Cause

22 ⁵⁵ E-mail from DHRG to City dated Mar. 12, 2004, ¶ 3, Ex. 97 to NOL.

23 ⁵⁶ Abbit Decl., ¶ 25.

24 ⁵⁷ De Anza Cove Map, Ex. 34 to NOL.

25 ⁵⁸ See storage and laundry facility photos, Ex. 22 to NOL; Photos of De Anza on Mar. 17, 2005,
26 Ex. 33 to NOL (photos DSC 2859-2862, DSC 2853-2857, DSC 2877-2881, DSC 2891-2893).

27 ⁵⁹ De Anza Cove Map, Ex. 34 to NOL.

28 ⁶⁰ Zamoyski Decl., ¶ 4.

⁶¹ E-mail dated Feb. 17, 2005 to City, Ex. 68 to NOL; Zamoyski Decl., ¶ 13.

1 re: Contempt did the City reluctantly agree to remove the fencing and reopen the Pavilion and
2 laundry facility.⁶² As a condition to the OSC being taken off-calendar, the City was also required
3 to reveal and discuss with counsel and the residents the plans for the mobilehome park as a whole,
4 as well as the R.V. Park and the Pavilion.⁶³ This was designed to encourage discussion of ways to
5 minimize the impact on surrounding residents, including concerns about dust, noise, large truck
6 access, parking, and public safety. **To date, the City has not yet provided these plans or sat
7 down with the HOA to discuss these issues.**⁶⁴

8
9 **C. The City clamps down on park access and brings in armed security guards.**

10 The City replaced the old security company with armed guards and built a gated checkpoint at
11 the park entrance.⁶⁵ Every driver is stopped at the gate and asked for a driver's license and where
12 they are going, irrespective of how long they have been living there or how frequently they pass
13 through the gate. The armed guard takes the license and enters the information on a computer in
14 the guard shack. If you don't provide the information, the armed guard will not allow you to enter
15 the park.⁶⁶

16 In addition to hiring armed guards, the City installed a 10-foot tall chain link fence along the
17 park northern perimeter. Until recently, this fence was topped with barbed wire.⁶⁷ Additionally,
18 the City erected multiple, bright klieg-style lights at the gate entrance, along with a series of
19 6 severe speed bumps.⁶⁸ The City finally removed the speed bumps after residents, the local fire
20 department, and various senior organizations complained that it created access problems for
21

22 ⁶² See e-mails/letters dated Feb. 18, 2005 to/from City, Exs. 69-71 to NOL; Zamoyski Decl.,
23 ¶ 13.

24 ⁶³ E-mail to City dated Feb. 18, 2005, Ex. 71 to NOL; Zamoyski Decl., ¶ 13.

25 ⁶⁴ Zamoyski Decl., ¶ 35.

26 ⁶⁵ See park entrance/guard photos, Exs. 24, 25 to NOL, and Ex. 33 (DSC 2997-3016) to NOL.

27 ⁶⁶ Geeck Decl., ¶¶ 2-18; Logan Decl., ¶¶ 3-9; Rose Decl., ¶¶ 10-17; and Dyer Decl., ¶ 5.

28 ⁶⁷ See photos of chain-link and barbed-wire fencing, Ex. 26 to NOL.

⁶⁸ See photos of park entrance with City-installed speed bumps, Ex. 24 to NOL.

1 emergency vehicles and was extremely jarring to elderly residents forced to traverse the bumps. In
2 fact, the Braille Institute refuses to allow its transport van to enter the park because of the speed
3 bumps, armed guards at the checkpoint, and the attendant delays. (See Declaration of Mildred
4 Rubin, ¶¶ 3-7, and letter from Braille Institute, Ex. 36 to NOL.) The City also posted ominous
5 signs throughout the park declaring that residents are under video and audio surveillance.⁶⁹

6 Moreover, these heightened “security” measures have created problems for residents and their
7 visitors, many of whom are forced to wait long periods of time at the front gate while the driver in
8 the lead vehicle is being questioned—or refuse to come to the park to visit their friends anymore.⁷⁰

9 The collective impact of these “security” measures is palpable. Residents and guests alike feel
10 like the park has been militarized and they are always under scrutiny.⁷¹ The vast majority of them
11 do not believe that the guards are there for their protection, but to increase the discomfort level
12 within the park.

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

17 This issue was addressed by Assistant Chief Maheu of the San Diego Police Department when
18 he met Ernie Abbit—President of the HOA and a long-time resident of De Anza—to discuss the
19 City’s portrayal of the park as a crime-ridden place. At that meeting in November 2004, Assistant
20 Chief Maheu confirmed that the City’s statistics were not limited to the mobilehome park and,
21 therefore, vastly overstated the degree of criminal activity within the mobilehome park. (See Abbit
22 Decl., ¶¶ 2-9, and confirming letter to Assistant Chief Maheu, Ex. 37 to NOL.) The City’s crime
23 statistics—being relied upon by the City’s “management” team—had apparently incorporated
24 sections of Mission Bay Park, which skirt along the banks of Mission Bay *outside* the borders of
25

26 ⁶⁹ See photos of signs, Ex. 33 to NOL (DSC 2974, DSC 2981, DSC 3004-3009).

27 ⁷⁰ Abbit Decl., ¶ 10.

28 ⁷¹ Greaves Decl. (visitor from East Coast); Logan Decl., ¶¶ 3-9; and Dyer Decl.

1 the mobilehome park.⁷² To the extent police respond to criminal activity in these public beach and
2 park areas, they had been apparently noting the location simply as “2727 De Anza Road.”⁷³
3 Although, over the past several months, plaintiff’s counsel has repeatedly requested the underlying
4 source documents supporting the City’s alleged statistics—such as the actual police reports of the
5 crime occurring within the mobilehome park as opposed to Mission Bay Park in general⁷⁴—the
6 City produced *nothing*.

7 The City’s management team also claimed that the extensive security enhancements—the
8 barbed wire fence, armed guards, speed bumps, and surveillance cameras—were specifically
9 recommended by the SDPD. Assistant Chief Maheu addressed this point and conceded that these
10 oppressive measures were **not recommended by the SDPD**.⁷⁵

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

16 For example, Hawkeye told Mr. Hand and his guards that the mobilehome park was no longer
17 public land and was now “Private Property.”⁷⁶ The City and Hawkeye **never told the security**
18 **guards about any of the Court orders protecting the status quo**.⁷⁷ He and his guards “simply
19 accepted as true that the mobilehome park had been converted to Private Property and that
20 Hawkeye could create whatever rules it decided and could enforce those rules as it chose.”⁷⁸

21 **National Security was castigated by Hawkeye for not being aggressive enough with residents,**

22 _____
23 ⁷² Abbit Decl., ¶ 6.

24 ⁷³ Abbit Decl., ¶ 6.

25 ⁷⁴ Letters from HOA counsel to City, Exs. 72, 79 to NOL; Zamoyski Decl., ¶ 35.

26 ⁷⁵ Abbit Decl., ¶ 5; Letter to Assistant Chief Maheu, Ex. 37 to NOL.

27 ⁷⁶ Hand Decl., ¶ 6.

28 ⁷⁷ Hand Decl., ¶ 16.

⁷⁸ Hand Decl., ¶ 16.

1 **for not stopping every vehicle entering the park, for not taking more photographs of people in**
2 **each car, and for not ticketing more cars within the park.**⁷⁹ Mr. Kasic of Hawkeye told
3 Mr. Hand that “even if there was a line of cars out to the road along Mission Bay, he didn’t care—
4 we were to stop every car and take all this information down.” In addition, National Security was
5 never consulted regarding the City’s decision to install klieg lights or speed bumps.

6 The City ultimately replaced National Security with armed guards—even though there hadn’t
7 been a single incident at the park involving a weapon.⁸⁰ Mr. Hand observed: “Hawkeye Asset
8 Management was and is being too aggressive with park residents. It appears that the over-
9 aggressiveness is purposely designed to make the residents upset and want to move out.”⁸¹

10
11 **D. The City unilaterally decides to prohibit parking and tow residents’ vehicles.**

12 De Anza Cove always had ample parking for residents and guests, both at each home and in
13 overflow lots near the common areas and next to the boat ramp. The boat ramp parking lot area is
14 huge and, in accordance with the park’s Rules and Regulations, residents paid an extra fee for
15 assigned parking of their cars, trucks, trailers, and boats there.⁸² Rent rolls provided to the City by
16 DHRG confirm residents’ payments for these and other services.⁸³

17 When the City took over, it unilaterally decided to: close the boat ramp, prohibit parking in the
18 adjoining overflow lots, slap extremely adhesive citation notices on vehicle windshields, and then
19 start towing away the cars, trucks, trailers, and boats.⁸⁴ The City told their security guards:

20 [V]isitor parking was no longer permitted in the mobilehome park, unless the visitor
21 could park at the mobilehome space where they were visiting. Parking in the
22 overflow parking areas was no longer allowed by Hawkeye. We were told that

22 _____
23 ⁷⁹ Hand Decl., ¶ 14.

24 ⁸⁰ Hand Decl., ¶ 18.

25 ⁸¹ Hand Decl., ¶ 18-19.

26 ⁸² 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.

28 ⁸³ Rent rolls showing parking fees assessed and paid, Ex. 38 to NOL.

⁸⁴ Towing photos, Ex. 27 to NOL, Ex. 33 to NOL (DSC 2975-2980, DSC 2984-2985; Decl. of
James Lewan, ¶¶ 10-11.

1 people would have to park in the Mission Bay parking lot, then walk into the
2 mobilehome park through the entrance, and walk to a resident’s home.⁸⁵

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

5 One woman’s trailer was towed away and impounded, and much of her personal belongings
6 within the trailer were damaged or destroyed.⁸⁶ A single mother on a tight budget, she could ill
7 afford to pay the towing company to bring her trailer back. Moreover, since the TRO had been
8 granted less than one week before, she felt that her trailer was safe in the parking lot where it had
9 always been. To her surprise, however, when she spoke to the police officers who were
10 coordinating the mass removal of cars, trucks, and trailers, they claimed that they were never
11 informed about the Court’s order. (Novak Decl., ¶¶ 3-11.)

12 Not only did the towing and property impounding violate the Court’s status quo orders and the
13 park’s existing Rules and Regulations, it also violated the Mobilehome Residency Law. Civil Code
14 section 798.28.5 states unequivocally: “Management may not cause the removal of a vehicle
15 from...a homeowner’s designated parking space except if management has first posted on the
16 windshield of the vehicle a notice stating management’s intent to remove the vehicle in **seven days**
17 and **stating the specific rule that the vehicle has violated that justifies its removal.**”⁸⁷ Of
18 course, the vehicle owners had never violated any such rule since the park’s rules expressly
19 *permitted* parking, and the City never bothered to give the mandatory seven days’ notice either.

20 On a related parking issue, when removing neighboring homes, the City confined residents’
21 parking spaces so severely with orange fencing that many residents cannot open their car doors⁸⁸ or
22 access their vehicles at all—which is particularly demeaning for those with disabilities. (See
23 Weber Decl., ¶¶ 2-11; Gianetti Decl., ¶ 4.) Moreover, Hawkeye instructed demolition crews to cut

24 _____
25 ⁸⁵ Hand Decl., ¶¶ 9, 12.

26 ⁸⁶ Photos of storage unit and damage to contents, Ex. 28 to NOL; Novak Decl., ¶¶ 3-11.

27 ⁸⁷ Civil Code, § 798.28.5 (emphasis added).

28 ⁸⁸ Photos of fencing constraining parking, Ex. 33 to NOL (DSC 2894-2901); See also Disher
Decl., ¶¶ 2-8.

1 away and destroy neighboring driveways—even if they were still in use. (See Decl. of Beth
2 Dederian, ¶¶ 3-8; and Decl. of Jason Arzola, ¶¶ 3-5.)

3
4 **E. The City begins clear-cutting the trees.**

5 In late October 2004, the City sent out unilateral notices that it was going to cut down trees
6 park-wide starting in a few days.⁸⁹ The heavy-handedness with which the City executed its mass
7 tree cutting was felt by everyone in the park, as police and armed guards were sent to flank the
8 crews wielding chainsaws. (See Decl. of Mrs. Turoski, and photos of homes and armed guards,
9 Exs. 25, 29 to NOL.) As residents held up copies of the Preliminary Injunction, pleading for a
10 moment to be heard, Hawkeye representatives and the armed guards said “call your lawyers,” then
11 laughed as the tree cutting continued.⁹⁰

12 The heart of the issue brought to the Court’s attention was the City’s secrecy, utter lack of
13 communication, failure to disclose information about alleged natural gas leaks (apparently known
14 since February 2004) and sewage spills, and its overall heavy-handed approach to park
15 “management.”⁹¹ During the hearing, the City confirmed that **it was intentionally opting not to**
16 **communicate with the HOA’s counsel or park residents:**

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

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

22 THE COURT: The City has the absolute right to act in any way that it wishes,
23 unilaterally without any communication with the residents? That’s what I’m
24 hearing.⁹²

25 ⁸⁹ City’s Notice, Ex. 39 to NOL.

26 ⁹⁰ Turoski Decl., ¶ 7.

27 ⁹¹ Abbit Decl., ¶ 13; See Req. for Judicial Notice of Court file re: Nov. 5 & 8, 2004 ex parte
28 hearing re: tree cutting.

⁹² 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 11th 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.⁹³ 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.⁹⁴ But the City
11 refused, forcing the County to send out 500 individual assessments.⁹⁵ 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 2004.⁹⁶ 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.⁹⁷

20 Of course, the City made it difficult for residents. March 1st 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 ⁹³ Letter from County Tax Assessor to William Griffith, Ex. 40 to NOL.

25 ⁹⁴ Decl. of Michael Gelfand, ¶¶ 3-5.

26 ⁹⁵ Decl. of Butler from County Tax Assessor’s Office, ¶¶ 3-9.

27 ⁹⁶ 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 ⁹⁷ 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.⁹⁸ 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.⁹⁹

9 On March 8th, 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
11 error.”¹⁰⁰ 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.¹⁰¹ 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.¹⁰² 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 payment¹⁰³—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*.¹⁰⁴ Again, this is a new tax that had never been
21

22 ⁹⁸ Zamoyski Decl., ¶ 8.

23 ⁹⁹ Zamoyski Decl., ¶ 7.

24 ¹⁰⁰ Letter from City dated Mar. 8, 2005, Ex. 73 to NOL.

25 ¹⁰¹ Coughlin Decl., ¶¶ 2-4.

26 ¹⁰² Coughlin Decl., ¶¶ 2, 4; Ex. 41 to NOL.

27 ¹⁰³ See, e.g., Letters from City to residents who already paid, collectively Ex. 42; Zamoyski
Decl., ¶¶ 10-11.

28 ¹⁰⁴ 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.¹⁰⁵

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.¹⁰⁶—and are not told the reason for the
8 shut off. The City simply tells all residents: “Please plan accordingly.”¹⁰⁷ 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.¹⁰⁸ 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.¹⁰⁹

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.¹¹⁰ 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
24 ¹⁰⁵ Zamoyski Decl., ¶ 12.

25 ¹⁰⁶ Water shut-off notice dated Mar. 17, 2004, Ex. 44 to NOL.

26 ¹⁰⁷ Multiple water shut-off notices, collectively Ex. 44 to NOL.

27 ¹⁰⁸ Zamoyski Decl., ¶ 6.

28 ¹⁰⁹ Civil Code, § 798.29.5.

¹¹⁰ Zamoyski Decl., ¶ 6.

1 agree to do anything further.¹¹¹

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.¹¹²

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
27 ¹¹¹ Zamoyski Decl., ¶ 6.

28 ¹¹² 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 (6) Lisa Bock tried to help resurrect the rose garden near the Bay Club that had become

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

9
10 **I. Health and safety issues.**

11 The City’s park management tactics have exposed residents and the public to numerous
12 hazards. The ongoing demolition work stirs into the air dust, concrete, asbestos, insulation fibers,
13 and other harmful compounds¹¹³—all of which are particularly dangerous for neighboring residents
14 suffering from asthma, emphysema, and other respiratory problems. (See Decl. of Donna Jones,
15 ¶¶ 2-10; and Decl. of Judy Polge, ¶¶ 2-12.)

16 Moreover, the City has been cited by the California Regional Water Quality Control Board for
17 allowing debris and pollutants to run into Mission Bay.¹¹⁴ This runoff is exacerbated by the City’s
18 insistence that the concrete slabs underneath each home be removed once the home is gone,
19 disturbing the demolition byproducts and creating swampy pools of mud without proper
20 drainage.¹¹⁵

21 In addition, the City claimed to have discovered active gas leaks at the park as early as February
22 2004—yet chose not to bring this to the attention of the HOA, its attorneys, or the Court until
23 almost 9 months later. Even the Court expressed its concern over the City’s delay in disclosing
24 such an important public safety issue: “As I said earlier, I have concerns regarding management

25 ¹¹³ 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).

27 ¹¹⁴ Notices of Violation, Oct. 1, 2004 and Dec. 9, 2004, collectively Ex. 45 to NOL.

28 ¹¹⁵ 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 raising issues in a timely fashion that concern health and safety.”¹¹⁶

2
3 **J. Rampant utility statement errors.**

4 Since the time the City took over De Anza Cove, residents have seen their utility bills skyrocket
5 and fluctuate wildly. For months, residents have complained to the City about the situation, only to
6 be told either nothing at all or that there was no problem. If residents didn’t pay the exorbitant
7 utility bills invoiced on their rent statements, the City refused to accept their rent at all and
8 threatened eviction. (See, e.g., Stark Decl., ¶ 4.) But the City finally admits that there are errors.¹¹⁷

9
10 **K. What is so special about Hawkeye?**

11 Despite repeated requests from the HOA and De Anza Cove’s residents, the City refuses to
12 replace Hawkeye with an independent company and has, in fact, opted to enter into an extended
13 contract based on the City’s express satisfaction with Hawkeye’s performance.¹¹⁸

14 Curiously, Hawkeye’s contract—valued at more than **\$300,000 per year plus expenses** and
15 5.5% of gross proceeds from the R.V. park—was not the product of a public or open selection
16 process.¹¹⁹ It was a “single source contract,” which meant that the City did not even entertain *any*
17 competitive bids. Hawkeye was, in effect, handed a silver-platter contract, evident from the fact
18 that the City pays it over \$300,000 per year, compared to only roughly \$62,400—1.3% of annual
19 rent revenue—plus expenses for the management company recommended by the proposed
20 Receiver. (See Decl. of Richard Kipperman, ¶ 5 (assuming \$4.8 million in annual revenue).)

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

24
25 ¹¹⁶ Nov. 8, 2004 Transcript, p. 87, Ex. 6 to NOL.

26 ¹¹⁷ Notice from City, Ex. 46 to NOL.

27 ¹¹⁸ City Council Minutes dated July 13, 2004, Ex. 47 to NOL.

28 ¹¹⁹ Hawkeye contract, Ex. 52 to NOL.

1 **and-crossbones T-shirt that reads, “Trailer Park Trash.”**¹²⁰ 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.”**¹²¹ 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.”**¹²² The City’s
25 real estate assets department added: “Many residents at De Anza have accepted the city’s offer and

26 ¹²⁰ Decl. of James Lewan, ¶¶ 2-9 and Decl. of Chris Lewan, ¶¶ 2-4.

27 ¹²¹ Daily Transcript article, Ex. 53 to NOL.

28 ¹²² 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.”¹²³ 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.¹²⁴

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.”

10
11 **M. The City has failed to retain Overland, Pacific & Cutler as the TIR consultant.**

12 Despite the clear dictate of the February 22, 2005 Order to retain Overland, Pacific & Cutler to
13 prepare the Tenant Impact Report—an Order that is now two months old—the City has yet to hire
14 Overland. This delay has needlessly wasted two months. The report, itself, will likely take
15 4-6 months to complete, so the added delay caused by the City’s intransigence compounds the
16 problem. This is particularly troubling given that the Honorable Frank Devaney—then head of the
17 Civil Division of the City Attorney’s Office—is the one who suggested the parties use Overland to
18 do the report. (See Charging Declaration of Peter Zamoyski, ¶¶ 63-66.)

19
20 **Argument**

21 **1. The City, with full knowledge of the Court’s orders, admonitions, and intent,**
22 **willfully acted in contempt of the Court’s authority, despite the City’s**
23 **capacity to preserve the status quo on the property it owns and controls.**

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

26
27 ¹²³ Daily Transcript article, Ex. 53 to NOL.

28 ¹²⁴ Zamoyski Decl., ¶ 14.

- 1 • Removed common area furniture and amenities
- 2 • Torn down the playground and refused to replace it
- 3 • Impounded all items from residents’ storage areas
- 4 • Prohibited parking in assigned parking spots in the overflow parking area
- 5 • Towed and impounded residents’ cars, trucks, and trailers
- 6 • Destroyed the residents’ storage facilities and refused to replace it
- 7 • Destroyed laundry facilities and refused to replace it
- 8 • Closed the Pavilion clubhouse and main laundrymat
- 9 • Destroyed the De Anza Mart market and refused to replace it
- 10 • Erected chain-link and barbed-wire fencing
- 11 • Clear-cut existing flower gardens, shrubs, trees, and lush landscaping—replaced by
- 12 the City’s “flourishing weeds” and ubiquitous orange construction fencing¹²⁵
- 13 • Removed the entrance fountain and landscaping
- 14 • Constructed a guard shack checkpoint and gate
- 15 • Prohibited free access to the park
- 16 • Demanded all who enter the park to provide personal information
- 17 • Failed to inform guards of the Court’s TRO and Injunction orders
- 18 • Instructed its guards to act more aggressively towards residents
- 19 • Brought in armed guards
- 20 • Failed to timely disclose alleged health and safety issues, like natural gas leaks
- 21 • Contacted the County Assessor secretly to have residents taxed like never before
- 22 • Sent unilateral notices to cut trees and shut off water
- 23 • Threatened and physically intimidated residents and their guests.¹²⁶

24 ///

25 ///

27 ¹²⁵ City’s Orange Flyer to Residents, Ex. 49 to NOL; Green Flyer to Residents, Ex. 50 to NOL.

28 ¹²⁶ See sections 3.A.-3.L. of this brief, above, and all facts and evidence cited therein.

1 **Conclusion**

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

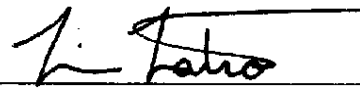
6 But seeing is believing.

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

13 No one is above the law. Not the City, not its Real Estate Assets Department, and not Hawkeye
14 Management. It hardly needs to be stated that those entrusted with the public welfare should be
15 held to at least the same standard as everyone else—if not a higher one. Plaintiff will show, beyond
16 a reasonable doubt, that there were valid Court Orders, the City knew the Orders and had an ability
17 to comply with them, but instead willfully disobeyed them. An Order to Show Cause is
18 appropriate, therefore, to address the City's ongoing contemptuous conduct and the harm it has
19 caused.

20
21
22 DATE: April 21, 2005

Respectfully Submitted,
TATRO & ZAMOYSKI, LLP

23
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27
28