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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN DIEGO**

12 DE ANZA COVE HOMEOWNERS
ASSOCIATION, INC., a California non-profit
13 corporation,

14 Plaintiff,

15 v.

16 CITY OF SAN DIEGO;
DE ANZA HARBOR RESORT AND GOLF,
17 LLC, a California limited liability company;
and DOES 1-100, inclusive,

18 Defendants.
19

Case No. GIC 821191

**PLAINTIFF'S REPLY BRIEF IN
SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION**

DATE: December 12, 2003

TIME: 2:00 p.m.

DEPT: 66

I/C JUDGE: Hon. Charles Hayes

(Telephone Ruling-No Appearance Required)

Complaint filed: Nov. 17, 2003

Trial Set: None set

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1 **Preface**

2 In its Opposition Brief, the City of San Diego relentlessly pounds the table with hyperbole
3 and uses scores of inflammatory words and phrases. Apparently trying to distract the Court from
4 the actual issues—and the CITY’s scarcity of legal authority and admissible evidence—the CITY
5 attacks Plaintiff by lobbing incendiary words and phrases like “obfuscates,” “inaccurately
6 represents,” “patently false” (one of the CITY’s favorites), “misinterpretations,” “ignores,”
7 “misleading,” “untrue,” “bizarre,” “audacity,” and “disingenuous.” Perhaps some see this as
8 zealous advocacy. But Plaintiff and its attorneys concede the ranting contest—a contest that
9 Plaintiff has not and will not enter—and will focus instead on the actual issues presented to the
10 Court in this Preliminary Injunction motion and the concessions and contradictions readily found in
11 the CITY’s brief.

12
13 **I. Introduction**

14 At first glance, it appears that the CITY’s Opposition Brief simply disputes everything. But
15 upon further review, the CITY actually does *not* oppose many of the key issues that support
16 Plaintiff’s Preliminary Injunction motion. By separating the wheat from the chaff, the Court can
17 see that the parties agree on at least five key areas pertinent to this Preliminary Injunction request.

18
19 **A. There are no vacant mobilehome spaces.**

20 First, the CITY does not oppose any of the factual findings of Plaintiff’s expert witness,
21 Charles Green, on *any* issue, including the unavailability of alternative mobilehome sites and the
22 enormous expense facing the Park’s mobilehome owners if evictions proceed. Thus, by failing to
23 offer any admissible evidence to the contrary, the CITY concedes the following facts with regard to
24 Plaintiff’s required showing of irreparable harm:

- 25 • There is **not one vacant mobilehome space available** within the County of San Diego;
- 26 • There is **only one known vacant mobilehome space** for rent elsewhere **in California**
27 **and Oregon**—in Hemet, California;
- 28 • Even if a vacant space were found, a great number of the Park’s **mobilehomes cannot**
be transported because they are too old;

- Even if a vacant space were found—and it were feasible to move the home—it would cost between **\$13,000 to \$18,000 to transport a “doublewide” mobilehome** within 100 miles of San Diego; and
- The **cost to simply demolish and dispose** of a home ranges from **\$8,000 to \$20,000** per home.

B. There is no alternative housing available.

Second, the CITY does not challenge any of the opinions of Plaintiff’s other expert witness, Gary London, on *any* issue, including the results of Mr. London’s comprehensive real estate market analysis and the unavailability of alternative housing. Thus, by failing to introduce any admissible evidence to the contrary, the City concedes the following with regard to Plaintiff’s required showing of irreparable harm:

- There is a **high percentage of mobilehome park residents who are elderly and disabled**, and who also have a generally **low-to-moderate income**;
- **Only 130 apartments are available—or only a 1.1% apartment vacancy rate—in** the nine communities surrounding the Park, which are either ground floor units or have elevator access;
- **Only 40 one-bedroom condominiums** and 108 two-bedroom condominiums—of unknown accessibility—**are available for sale** in the nine communities surrounding the Park;
- The average listing sales price for one-bedroom condominiums is \$280,642 and for two-bedroom condominiums is \$487,583;
- Due to the extremely tight housing market, as well as the sheer number of people who could be evicted in the coming weeks, it will be quite difficult for these displaced people to find adequate housing if they are evicted, even assuming they had adequate funds.

C. The residents have nowhere to go.

Third, the CITY does not dispute *any* of the assertions made in the various resident declarations, such as the undisputed fact that, if evicted, many residents will have nowhere to go.

D. Over 80% of the Park residents face immediate eviction.

Fourth, the CITY does not dispute that all non-settling Park residents—which represent over 80% of the lots in the Park—will be immediately evicted if this court denies the Preliminary Injunction. See Opposition Brief, p. 11, lns. 11-20 (residents of only 80 of the 509 lots (15.7%))

1 have apparently signed the CITY's Settlement Agreement). The irreparable harm facing these non-
2 settling residents is abundantly clear.

3
4 **E. If the State-mandated laws apply, the CITY admits violating the Mobilehome
5 Residency Law and the Mello Act in numerous respects.**

6 Fourth, the CITY admits that it knowingly decided not to comply with provisions of the
7 Mobilehome Residency Law and the Mello Act under the belief that these State laws do not apply
8 in this instance. Thus, assuming that these statutes *do* apply, the CITY concedes the following
9 violations, which support Plaintiff's required showing of a reasonable probability of success on the
10 merits:

11 **As to the Mobilehome Residency Law:**

- 12 • No Tenant Impact Report was ever done (Gov't Code § 65863.7(a));
- 13 • No Tenant Impact Report was served on the residents with the 6 or 12-month notices
14 (Civil Code § 798.56(h) and Gov't Code § 65863.7(c));
- 15 • No review hearing was held to allow for public comment on the Tenant Impact Report
16 (Gov't Code § 65863.7(d)); and
- 17 • No mitigation measures were ever publicly considered or discussed (Gov't Code
§65863.7(e),(i)).

18 **As to the Mello Act:**

- 19 • No threshold determination was made regarding what percentage of the residential units
20 to be demolished have been occupied by low or moderate income persons (Gov't Code
§ 65590 (b));
- 21 • No factual findings were made to determine whether the proposed new use for the Park
22 (*e.g.*, a 600-room hotel) is "coastal dependent" (Gov't Code § 65590(b)(2));
- 23 • No feasibility analysis was completed to evaluate the adequacy of low-income
24 replacement housing in the immediate area (Gov't Code § 65590(b)); and
- 25 • No attempt was ever made to reconcile the displacement of over 1,100 residents with the
State of Emergency recently declared by the San Diego Housing Commission.

26 Plainly stated, if either the Mobilehome Residency Law or the Mello Act applies, the CITY
27 cannot evict and it will be found liable in this case. And, aside from *one* appellate case from
28 1982—**which does not pertain to and never even mentions the Mobilehome Residency Law or**

1 **the Mello Act—the City has no other legal authority whatsoever** for its hard-line, take-it-or-
2 leave-it approach that would evict over one thousand Park residents. Not a single other case, not a
3 single statute, and not one sliver of legislative history supports the CITY’s position. Plaintiff, on
4 the other hand, has shown—and will further demonstrate below—that it has the facts, the law, the
5 legislative history, and the equities all in its favor.

6 Based on all of the above, one can see that the issue posed by Plaintiff at the outset of this
7 case remains unaffected:

8
9 **II. Issue**

10 Under California law, the City of San Diego is under an unwaivable statutory duty to
11 prepare a Tenant Impact Report and comply with other provisions of the Mobilehome Residency
12 Law (Civil Code §§ 798 *et seq.*, Gov’t Code §§ 65863.7, 67863.8) and the Mello Act (Gov’t Code
13 § 65590) before it can close a mobilehome park, destroy hundreds of homes, and evict Park tenants.
14 Here, the City has not prepared a Tenant Impact Report or addressed the lack of alternate housing,
15 yet, is threatening to evict over 80% of the Park’s nearly 1,200 residents—most of whom are
16 elderly or disabled—by December 2, 2003. Should the Court grant a Preliminary Injunction to
17 prevent any evictions and to continue Park maintenance and services until the factual and legal
18 issues in this case are resolved?

19
20 **III. Argument**

21 In this Reply Brief, plaintiff addresses the following issues: (a) the rationale for applying
22 the Mobilehome Residency Law to the De Anza Mobilehome Park; (b) the CITY’s violations of the
23 MRL and the Mello Act; (c) plaintiff’s legitimate standing; (d) the CITY’s failure to evidence any
24 harm to the CITY if an injunction is granted; and (e) establishing a trust account for “rent” deposits
25 which will resolve the concerns of both parties without burdening the Court.

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1 **A. The Mobilehome Residency Law applies to the CITY and this mobilehome park.**

2 Nothing in the CITY’s Opposition Brief refutes the letter or intent of the Mobilehome
3 Residency Law to alleviate the hardships suffered by residents when a mobilehome park is closed
4 for *any* reason. The statutes, Legislative history, case law, and facts of this case all point towards
5 the application of the Mobilehome Residency Law to the CITY and the De Anza Cove mobilehome
6 park. And, although the CITY repeatedly argues that the Mobilehome Residency Law does not
7 apply here, contradictions within its Opposition Brief and elsewhere, as detailed below, reveal that
8 these State mandates do indeed govern the CITY’s actions, and have for many years.

- 9
10 1. The CITY’s reliance on *Stephens* is misplaced because *Stephens* deals with a
11 general relocation statute that is not a basis for this motion.

12 The *only* case cited by the CITY in support of its contention that neither the Mobilehome
13 Residency Law nor the Mello Act apply in this instance is a 1982 appellate case that had **nothing**
14 **to do with either statute**. *Stephens v. Perry* (1982) 134 Cal.App.3d 748.

15 In *Stephens*, two individual homeowners sought a writ of mandate to compel the Santa
16 Maria Airport District to pay benefits to them under the California Relocation Assistance Law
17 (“CRAL”), codified at Government Code section 7260 *et seq.* The CRAL involves compensation
18 for the “taking” of real property for public use—essentially an act of eminent domain. With the
19 present motion, Plaintiff does not seek injunctive relief on an eminent domain theory or under the
20 CRAL, which explains why Plaintiff never referenced *Stephens*.

21 More critically, neither the Mobilehome Residency Law nor the Mello Act were even at
22 issue in *Stephens*. They weren’t part of that lawsuit and were never mentioned in *Stephens*. In fact,
23 many portions of the Mobilehome Residency Law and the Mello Act didn’t even exist at the time
24 *Stephens* was decided. Nevertheless, the CITY boldly asserts to this Court that *Stephens* essentially
25 absolves the CITY from having to comply with the various provisions of the Mobilehome
26 Residency Law and the Mello Act. The fact that *Stephens* happened to involve two mobilehome
27 park residents is incidental to the holding of the case which addressed whether there was a “taking”
28 within the context of the CRAL. *Stephens*, 134 Cal.App.3d at 756.

1 Since the CITY features *Stephens* so prominently—and since it is the CITY’s sole legal
2 authority on this threshold issue—it is worth noting two additional key points. First, plaintiffs to a
3 separate class action lawsuit involving the same mobilehome park mentioned in *Stephens* were
4 *successful* in obtaining a preliminary injunction against the City of Santa Barbara, which halted any
5 evictions. *Stephens*, 134 Cal.App.3d at 753-754 (citing *Soto v. Perry*, Santa Barbara Superior
6 Court No. SM 33904). Thus, even within the context of *Stephens*, injunctive relief was warranted
7 to prevent many of the same hardships faced by residents in the instant case.

8 Second, the *Stephens* court was interpreting the CRAL as it existed back in 1982, which
9 required “acquisition” of real property by the public entity before relocation assistance would be
10 mandated. *Stephens*, 134 Cal.App.3d at 755. The CRAL was amended in 1989, however, to *ease*
11 the criteria necessary for triggering benefits. The CRAL now mandates relocation assistance not
12 upon “acquisition,” but instead merely “[w]hensoever a program or project to be undertaken by a
13 public entity will result in the displacement of any person.” Gov’t Code § 7262(a). In light of the
14 Legislature’s decision to amend the CRAL and provide more expansive protections, the *Stephens*
15 case is of dubious precedential value and it is highly doubtful that *Stephens* would be decided the
16 same way today.

17 While the CITY proclaims that *Stephens* negates Government Code section 65863.7—the
18 most relevant provisions of which were enacted years after *Stephens* was decided—the CITY is
19 **unable to cite to a single authority supporting this inferential leap.**

20 It is enlightening to note that the only published case that actually interprets Government
21 Code section 65863.7 is *Keh v. Walters* (1997) 55 Cal.App.4th 1522, which plaintiff cited and
22 discussed in its opening brief. But the CITY opted not to address that case. The *Keh* court focused
23 on the result of park closure—as had the Legislature—and held that even though Notices to
24 Terminate were sent to mobilehome residents in anticipation of closing parts of the mobilehome
25 park, eviction proceedings were improper since the Mobilehome Residency Law applied and no
26 proper Tenant Impact Report had been filed with the City of Capitola:

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1 We therefore conclude that **the notice and reporting requirements** set forth in
2 Government Code sections 65863.7 and 65863.8 **apply whenever there is a change**
3 **in use** of the entire park or a functional portion thereof **which results in the**
4 **displacement of tenants.**

4 *Keh*, 55 Cal.App.4th at 1535.

5 *Keh* is critical to understanding the legislative intent behind this statute—and courts’
6 unwillingness to allow subversion of that intent. As the court explained, “the Legislature has acted
7 to protect mobilehome dwellers, not just from arbitrary and capricious conversions **but also from**
8 **the harsh effects of displacement resulting from legitimate conversions.** [¶] When a park
9 owner plans to convert or close a mobilehome park, he or she must comply with certain specific
10 notice and reporting requirements.” *Keh*, 55 Cal.App.4th at 1534 (emphasis added). “The purposes
11 of Government Code section 65863.7 are to ensure that the local legislative body reviews the
12 impact on the mobilehome park tenants of a change of use of the property, **that mitigation**
13 **measures are considered** and that the **tenants are involved in the process.** Since these
14 protections are dependent upon a meaningful review of the impact report, the language of the
15 statute makes this review **mandatory.**” *Keh*, 55 Cal.App.4th at 1535-1536 (emphasis added).

16 The respondent in *Keh* then argued that although he planned to close the park, he had no
17 particular development plan for the land and thus, no Tenant Impact Report was required. The
18 court rebuffed this assertion, stating:

19 This is precisely the situation that section 65863.7 was intended to prevent. Prior to
20 1985 that section required an impact report only when mobilehome parks were
21 converted to another use. In 1985, section 65863.7 was amended to include the
22 **closure of a park or the cessation of use of the property as a park....**
23 Respondent’s practice here is in direct conflict with the purpose and intent of
24 Government Code section 65863.7. *Keh*, 55 Cal.App.4th at 1539 (emphasis added).

25 Thus, even if the reasons for the park closure are facially legitimate—*e.g.*, to construct a
26 mammoth 600-room hotel on the banks of Mission Bay in order to increase the CITY’s revenues—
27 Government Code section 65863.7 still protects Park residents from the harsh effects of
28 displacement by focusing on advance planning, the preparation of a Tenant Impact Report, a public
review process, and adequate mitigation measures—none of which can occur when residents are
handed a “transition plan” under threat of eviction just before the holidays.

1 2. The CITY is estopped from arguing that the Mobilehome Residency Law does
2 not apply because it has invoked the Mobilehome Residency Law to its benefit.

3 The CITY’s argument—that the Mobilehome Residency Law does not apply to this
4 mobilehome park—withers under scrutiny of the CITY’s prior reliance on the very same statute.

5
6 a. The CITY uses the Mobilehome Residency Law to try to justify burdening residents
7 with home removal and disposal costs.

8 The CITY’s Settlement Agreement improperly seeks to hold park residents liable for
9 removing not only their mobilehome, but removing all landscaping and other improvements as
10 well—essentially leaving a clean dirt lot. To justify this imposition, the CITY asserts that the
11 Mobilehome Residency Law *is* a State mandate that delineates the rights and obligations of *both*
12 the Park residents and the CITY:

13 The Mobilehome Residency Law is clear that residents of mobilehome parks lease
14 the space upon which their mobilehomes sit. See e.g. Civil Code §§ 798.4, 798.31,
15 798.37.... The City is not compelling the Residents to destroy their mobilehomes.
Rather, **State law...mandates** that the mobilehomes be thereafter removed by their
owners.

16 Opposition Brief, p. 8, lns. 7-13 (emphasis added). In this passage, the CITY, itself, argues that **the**
17 **Mobilehome Residency Law applies to this Park and its residents.**

18 The Mobilehome Residency Law is a State mandate. It either applies in whole, or it does
19 not apply at all. The CITY can no longer claim that the Mobilehome Residency Law does not
20 apply. Nor can it pick and choose only those provisions of the Mobilehome Residency Law that
21 might benefit the CITY—it is bound by the benefits *and* the burdens of that State mandate.

22
23 b. Over the years, the CITY has expressly recognized that the Mobilehome Residency
24 Law applies to the De Anza Cove mobilehome park.

25 Even though discovery has yet to begin, Plaintiff has evidence that the CITY has known for
26 quite a while that the Mobilehome Residency Law applies to it. Plaintiff provides here two brief
27 examples.

28 In 1985, the CITY acknowledged that the Mobilehome Residency Law applies when it

1 evaluated the legality of CITY’s attempt to collect a commission on home sales within the Park.
2 The CITY concluded that the Mobilehome Residency Law applied and prohibited it from collecting
3 a commission. (See City of San Diego Memorandum of Law dated June 26, 1985, attached to
4 Suppl. Lewan Decl. as Exhibit 4.) As the CITY stated in its 1985 memorandum, **“This section [of**
5 **the MRL] would probably be determined by a court to be equally applicable to the City in the**
6 **City’s fact situation.”** (Lewan Suppl. Decl., Exh. 4, at p. 5.)

7 Next, the Memorandum of Understanding (“MOU”) between the CITY and DHRG, which
8 was signed in 1999, incorporated the hearing and notice requirements of the Mobilehome
9 Residency Law found in Government Code section 65863.7. (See MOU, previously attached as
10 Exhibit 3 to Lewan Decl.) The MOU rather clearly reads: **“City acknowledges and confirms that**
11 **any hearings and determinations required pursuant to Government Code Section 65863.7**
12 **shall be held and all required notices shall be given.”** (Exhibit 3, p. 4, to Lewan Decl.) Why
13 would the CITY have specifically acknowledged and confirmed the requirements of Mobilehome
14 Residency Law in its Memorandum of Understanding if the CITY honestly believed that the statute
15 did not apply?

16 Since the CITY has asserted in its Opposition Brief that the Mobilehome Residency Law
17 applies, admitted the same in its documents dating back to the 1980’s, and attempted to use the
18 Mobilehome Residency Law provisions to its benefit, basic principles of estoppel dictate that the
19 CITY cannot take two logically inconsistent positions.

- 20
21 3. The CITY made *several* planning decisions that triggered the reporting
22 requirements of Government Code section 65863.7.

23 Next, the CITY somehow contends that the threatened mass eviction of Park residents is not
24 the result of any proposal, decision, or planning action or inaction by the CITY within the meaning
25 of Government Code section 65863.7. (Opposition Brief, p. 18.) But the facts undercut that
26 contention.

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a. The Memorandum of Understanding.

The Memorandum of Understanding—signed by the CITY and DHRG—allowed DHRG to submit hotel development proposals for the mobilehome park and neighboring golf course. (See MOU, previously attached as Exhibit 3 to Lewan Decl.) In exchange for the CITY’s commitment to review these development proposals in good faith, DHRG agreed to assume from the CITY “full responsibility for all costs associated with closing the mobilehome park, including any sums to be paid to the mobilehome owners under the LTRAs [Long Term Rental Agreements]” in the event that the CITY approved DHRG’s development plan. (Exhibit 3, pp. 2-3, § II(A), to Lewan Decl.) Thus, the MOU clearly contemplated that relocation costs were required and the financial responsibility for such costs became consideration for the agreement. When no development agreement was reached in May 2003, “full responsibility for all costs associated with closing the mobilehome park” reverted back to the CITY.

More importantly, **the very purpose of the MOU was to convert the mobilehome park**—not to some philanthropic purpose like parkland for the public to enjoy—but **to a sprawling 600-room resort hotel**. This remains the CITY’s desire. Certainly, the CITY’s decision to enter into the MOU in 1999 to develop a hotel with DHRG was both a “planning decision” and an “action” within the meaning of Government Code section 65863.7(i). In fact, even the mere proposal of an alternate use triggers the tenant impact reporting requirements of Government Code section 65863.7(a), wherein the “entity proposing the change in use shall file a report on the impact of the conversion, closure, or cessation of use upon the displaced residents....” Gov’t Code § 65863.7(a).

Furthermore, the CITY made the affirmative planning decision not to approve any of the proposals submitted by DHRG, all of which—by the terms of the LTRAs—would have guaranteed Park residents additional relocation benefits, if not a longer tenancy at the Park.

b. DHRG’s Interim Transition Plan

In addition to various redevelopment proposals, in the last 12 months DHRG submitted proposals to the CITY that would have allowed:

////

1 [A] transitional use of the property following November 23, 2003. The
2 transitional use would include, subject to certain preconditions, a limited
3 continued occupancy by existing homeowners. To date [May 6, 2003], the
4 City has not indicated a willingness to agree to such a transitional use.

5 (Letter from DHRG dated May 6, 2003, attached as Exhibit 5 to Suppl. Decl. of James Lewan, filed
6 herewith.) Again, the CITY opted not to approve a plan that would have extended residential use
7 beyond November 23, 2003. This decision clearly resulted in park closure sooner than would have
8 occurred under the transition plan proposed by DHRG.

9 4. The CITY failed to challenge the ample legislative history that confirms the
10 application of the Mobilehome Residency Law in this instance.

11 As there is only one reported case—*Keh*—that interprets Government Code
12 section 65863.7, Plaintiff went to great lengths to study the legislative intent behind the statute.
13 Assemblyman Wray, who authored the statute, explained to then Governor Brown that the law was
14 designed to address the scarcity of affordable housing in several communities, including San
15 Diego:

16 In several tight housing markets, such as Orange, **San Diego** and Santa Clara
17 Counties, in which mobilehome park vacancy rates have reached critically low
18 levels, there has been a recent and dramatic upswing in the number of mobilehome
19 parks which owners are proposing to convert either to residential uses (apartments,
20 homes) or to commercial and industrial uses. The result of such conversions can be
21 the total elimination of the park.

22 * * *

23 The [tenant impact] report must address the availability of replacement spaces for
24 displacees. The bill further requires local review of the report and provides that a
25 local government may require mitigation of adverse impact identified in the report.
26 **It is important to note that [Gov't Code § 65863.7] applies to conversions of
27 parks to any other use.**

28 (Letter from Assemblyman Wray to Governor Brown, dated Sept. 10, 1980, attached as Exhibit 16
to Decl. of Maria Sanders (“Sanders Decl.”), filed herewith (emphasis added).)

More to the point, Assemblyman Wray stated that this statute “applies to all mobilehome
park conversions (for example, **demolition of a park to make way for a commercial
development**).” (See News from Assemblyman Wray dated Aug. 30, 1980, attached as Exhibit 16

1 to Sanders Decl. (emphasis added).) As noted in Assemblyman Wray’s commentary, the
2 Legislature intended to cast as wide a net as possible by mandating an impact report and public
3 review process **any time a park is to be transitioned to another use that displaces park**
4 **residents.**

5 The CITY has presented **no** evidence or legislative history to the contrary. The CITY
6 simply argues, without any supporting authority, that this statute—which applies to every other
7 mobilehome park in the State of California—does not apply to De Anza. Yet, the same Legislature
8 that enacted Government Code section 65863.7 in 1980, passed the Kapiloff Bill in 1981. If the
9 Legislature had actually intended to exempt the De Anza Cove mobilehome park from Government
10 Code section 65863.7 as the CITY repeatedly suggests, it certainly could have written such an
11 exemption into the Kapiloff Bill. It did not.

12 There is simply no evidence to suggest that Government Code section 65863.7 and the
13 balance of the Mobilehome Residency Law were intended to apply everywhere in California except
14 the De Anza Cove mobilehome park. To the contrary, San Diego was one of three cities that
15 Assemblyman Wray specifically targeted because of the scarcity of affordable housing here.
16 (Exhibit 16 to Sanders Decl.)

17
18 **B. The CITY offers no legitimate justification for violating the Mello Act.**

19 The CITY is threatening to destroy one of the last pockets of affordable housing within a
20 coastal zone without so much as lifting a finger to determine whether a like number of replacement
21 homes are even available within the area. Yet, under the Mello Act, the CITY cannot allow the
22 destruction of coastal homes until it has ensured that replacement housing is available.

23 The conversion or demolition of existing residential dwelling units occupied by
24 persons and families of low or moderate income . . . **shall not be authorized**
25 **unless provision has been made for the replacement of those dwelling units**
with units for persons and families of low or moderate income.

26 Gov’t Code § 65590(b) (emphasis added). Thus, determining the availability of replacement
27 housing is a **prerequisite** to the CITY authorizing demolition of the homes at De Anza. Contrary
28 to the CITY’s position, whether or not the CITY owns the homes at issue is irrelevant. The Mello

1 Act charges the CITY with protecting coastal housing regardless of who owns it.

2 While the CITY attempts to argue that it is *not* ordering Park residents to destroy their
3 homes, that is the final result for the majority of homeowners in this instance—a fact that seems
4 rather obvious to everyone else, including plaintiff’s mobilehome expert, Charles Green, whose
5 testimonial evidence in that regard was not challenged by the CITY. To recap, most of the homes
6 are too old to move, would not survive transport, and would not be allowed in other mobilehome
7 parks due to their age. As a result, the homes must be torn down and hauled to the land fill. (See
8 Decl. of Charles Green, filed with plaintiff’s initial moving papers.) What little “evidence” the
9 CITY has offered is inadmissible on several grounds. Plaintiff draws the Court’s attention to
10 Plaintiff’s Statement of Objections to Evidence Offered by the City, filed herewith.

11 The CITY’s reliance on *Stephens* in the attempt to escape application of the Mello Act is,
12 once again, misplaced because the case did not even involve the Mello Act. The case is simply
13 inapplicable to the instant matter.

14 By contrast, plaintiff’s authority is directly on point. In *Venice Town Council, Inc. v. City*
15 *of Los Angeles* (1996) 47 Cal.App.4th 1547, the court analyzed the Mello Act and concluded that
16 the statute “creates a mandatory duty to require replacement housing, or an in-lieu fee, unless the
17 City makes express factual determinations the project falls within specific statutory categories,
18 which in turn still mandate replacement unless the City makes an express factual determination
19 replacement housing is not feasible.” *Id.* at 1558. None of these factual determinations have been
20 made in this instance and the CITY certainly did not offer any evidence of such in its Opposition
21 Brief, nor did it even address the *Venice Town Council* case.

22 That both the Mobilehome Residency Law and the Mello Act justify injunctive relief is not
23 surprising given that both sets of laws target a common problem. “The Legislature has recognized
24 there is a severe shortage of affordable housing throughout California, especially for persons of low
25 and moderate income.” *Venice Town Council*, 47 Cal.App.4th at 1564. Both *Venice Town Council*
26 and the situation here involve “an important public right to preserve affordable housing in the
27 coastal zone.” *Id.* at 1564. And, ultimately, the *Venice Town Council* court held that plaintiff had
28 “standing to seek a preliminary injunction to enforce the requirements of the Mello Act if

1 necessary”—precisely as plaintiff seeks to do here. *Id.*

2
3 **C. Plaintiff has standing to sue on behalf of all park residents who share a common**
4 **interest in stopping the unlawful actions threatened by the CITY.**

5 Leapfrogging months ahead procedurally to issues regarding class certification, the CITY
6 challenges the HOA’s standing to sue on several grounds—namely commonality and ascertainable
7 class. The CITY claims that the HOA’s membership is too amorphous and that there are simply
8 too many divergent interests among Park residents to allow one entity to speak for all. Opposition
9 Brief, p. 14. Plaintiff only briefly addresses these alleged concerns below, and, in the interests of
10 keeping this Reply Brief more succinct, respectfully requests that if the Court were inclined to deny
11 the Preliminary Injunction on the ground of standing, that Plaintiff be permitted to submit a
12 supplemental brief on the issue.

13 The CITY launches its attack on standing, strangely enough, from a pair of cases that
14 recognize an association’s ability to litigate in a representative capacity. *Tenants Ass’n. of Park*
15 *Santa Anita v. Southers* (1990) 222 Cal.App.3d 1293; *Salton City Area Property Owners Ass’n. v.*
16 *Penn Phillips Co.* (1977) 75 Cal.App.3d 184.

17 In *Southers*, an owner and managers of a mobilehome park argued—as the CITY does
18 here—that an association of tenants had no standing to represent the interests of park residents and
19 the trial court sustained a demurrer on that basis. *Southers*, 222 Cal.App.3d at 1295-1296. The
20 appellate court reversed, holding that tenants and former tenants of the park constituted an
21 ascertainable class and that they shared a common interest in compelling the park owner to comply
22 with the Mobilehome Residency Law:

23 There is an ascertainable class—members of the association who are the
24 tenants and former tenants of the Park. There is also a community of
25 interest in the questions of law and fact—not only was appellant formed to
26 pursue the legal rights of its members, the members have a common
27 interest in seeing that the applicable state and local mobilehome park laws
28 are enforced. . . .

27 *Southers*, 222 Cal.App.3d at 1304. Given the common interests involved and the relative ease of
28 defining the prospective class, the *Southers* court concluded that “considerations of necessity,

1 convenience and justice provide justification for the use of the representative procedural device.”
2 *Southers*, 222 Cal.App.3d at 1304. All of these considerations apply with equal force here.

3 The De Anza Cove Homeowners Association, Inc. (“HOA”) was formed several years ago
4 by concerned residents who wanted to safeguard their Park and the rights of its residents. The
5 HOA is open to all residents who want to join and it does not discriminate between different living
6 areas within the Park. Its active membership at the end of last month included more than 270 of the
7 509 homes, and is now believed to exceed 300. (Suppl. Decl. of James Lewan, ¶ 2, filed herewith.)
8 Moreover, as stated in paragraphs 2 and 3 of the Complaint:

9 Plaintiff DE ANZA COVE HOMEOWNERS ASSOCIATION, INC. (“HOA”)
10 was **formed in order to pursue and protect the legal rights of its members, as**
11 **well as the legal rights of the approximately 1,100 mobilehome owners and/or**
12 **residents** of the approximately 509 lots within the De Anza Harbor Resort
13 mobilehome park (“Park”), located at 2727 De Anza Road, San Diego, California.

14 **The HOA has a common interest with its members, owners, and residents of**
15 **the Park in enforcing the applicable state and local mobilehome park laws**, as
16 well as the causes of action stated herein. Plaintiff brings this action in its
17 representative capacity as a Class Representative on behalf of these owners and
18 residents of Park both **in the public interest and in the interests of necessity,**
19 **convenience, and justice.**

20 The interest common to all residents is the most important one: ensuring that the CITY
21 follows the State mobilehome park laws and provides the relief such laws mandate. Preparing a
22 Tenant Impact Report, for example, will force the CITY to reconcile the sheer number of families
23 who will be thrown out of the Park with the total scarcity of housing alternatives available. (See
24 Decl. of Charles Green and Gary London.) Evaluating the report will lead to mitigation measures
25 that will necessarily provide some solutions to the hardships all residents now face upon threat of
26 eviction. That HOA members live in the area to be affected by the CITY’s actions and will suffer
27 injury if the evictions go forward, is sufficient to justify representative standing. *Residents of*
28 *Beverly Glen, Inc. v. City of Los Angeles* (1973) 34 Cal.App.3d 117, 121. Moreover, in the remote
chance that the Court decides that plaintiff cannot suitably represent the class, the proper remedy is
to permit plaintiff to amend. *Id.* at 129.

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1 **D. The CITY has failed to offer admissible evidence that it will suffer any significant**
2 **harm in the event the Preliminary Injunction is granted.**

3 The CITY claims three types of harm if the injunction is granted: (1) risk of suit by third
4 parties for failing to implement the Kapiloff Legislation, (2) lost time in proceeding with its
5 transition plan, coupled with money expended on remaining Park residents, and (3) resulting liability
6 to DHRG for making Park improvements available to residents. Opposition Brief, p. 21. None of
7 this harm, even if assumed to be true, is unique to the injunctive relief sought, however, because the
8 CITY would face all of these claimed risks even without the injunction.

9 Bearing in mind that the CITY's proposed transition plan allows some settling residents to
10 remain until 2008, a third party could still challenge the CITY's compliance with the Kapiloff Bill,
11 even absent an injunctive order. Moreover, the CITY will still incur expenses as to those settling
12 residents who remain, irrespective of the instant motion. And lastly, the Court has already stated
13 that the CITY cannot be deemed to have "purchased" DHRG's assets—Park improvements—simply
14 for complying with this Court's order. Plaintiff will even stipulate to that term. Thus, **none of the**
15 **harm claimed by the CITY**, even if it were supported by admissible evidence, **would actually be**
16 **caused by the Preliminary Injunction.**

17 Furthermore, the risks claimed by the CITY are speculative. None of the harms raised by the
18 CITY, above, have actually happened. In fact, the totality of "proof" offered by the CITY is the
19 Declaration of William Griffith, the vast majority of which contains inadmissible hearsay,
20 speculation, legal conclusions, and improper lay opinions. (*See* Plaintiff's Statement of Objections
21 to Evidence Offered by the CITY, filed herewith.) By contrast, without the injunction, evictions will
22 commence immediately and the harm—documented by signed declarations of experts and
23 residents—will be swift and severe.

24 Plaintiff would like to further clarify that the Preliminary Injunction will not interfere with
25 the CITY's ability to implement its transition plan. Residents are free to settle with the CITY as
26 they choose and the CITY is free to conduct studies and hotel development proposals. The only
27 impact the injunction would have on the CITY's plan would be to prevent the CITY from evicting
28 non-settling residents, diminishing services, and closing common areas. In all other respects, the

1 CITY's transition plan remains in effect and operative.

2 The CITY relies heavily on *Tahoe Keys Property Owners' Ass'n. v. State Water Resources*
3 *Control Bd.* (1994) 23 Cal.App.4th 1459, in which the court denied a request for injunctive relief.
4 *Tahoe Keys* is hardly the benchmark case for justifying injunctive relief. Plaintiff in that case was
5 seeking to enjoin a state agency from levying—as a condition to issuing a building permit—a
6 monetary fee that would be used to help protect Lake Tahoe from degradation. Recognizing that the
7 dispute involved nothing but money and that none of the homeowners were precluded from building,
8 the court correctly denied plaintiff's request for injunctive relief because there was no irreparable
9 harm alleged. If levying the fee was unlawful, plaintiff had an adequate remedy by seeking
10 damages. *Tahoe Keys*, 23 Cal.App.4th at 1471-1472.

11 The instant case, however, involves the deliberate destruction of affordable housing and the
12 resulting homelessness of hundreds and hundreds of residents who have nowhere to go. This
13 harm—the evidence of which remains undisputed—is significantly more grave than having to pay an
14 extra fee when pulling a building permit. There is no tangible harm to the CITY if the Court grants a
15 Preliminary Injunction.

16
17 **E. Establishing a trust account to receive “rent” resolves the harm alleged by the City,**
18 **serves as a cash deposit in lieu of a bond, and protects the non-settling residents.**

19 Although the CITY would receive absolutely no rent if the non-settling residents were to
20 vacate the premises—Park residents don't want a free lunch. They *want* to pay “rent” and they want
21 to pay for the ir usage of utilities because that is fair. Additionally, since the residents want the same
22 maintenance and services that they had before, they *want* to pay for it—and agree to pay for it—
23 from the “rent” collected—exactly as has been done for years by DHRG. Therefore, Plaintiff
24 respectfully requests that the Court order, as part of the Preliminary Injunction, that: (1) a private,
25 interest-bearing trust account be established to receive payments for “rent” and utilities from all non-
26 settling Park residents, and (2) the trustee of that account shall oversee payments from the trust for
27 the purpose of providing the non-settling residents' pro rata share of the cost of Park maintenance
28 and services. In this manner, the status quo would be objectively preserved.

1 By establishing a private trust account and appointing a trustee to supervise the expenditure
2 of funds for Park maintenance and services, four major advantages are gained:

- 3 1. This Court avoids having to deal with the minutiae of mobilehome park operation;
- 4 2. The trust account serves as a cash deposit in accordance with Code of Civil Procedure
5 section 995.710 in lieu of a bond. The trust fund will grow every month as residents pay
6 “rent” during the litigation, thereby protecting the City from any perceived harm from
7 granting the Preliminary Injunction;
- 8 3. Park residents will feel secure knowing that their funds are accurately accounted for by a
9 neutral third-party trustee, who will oversee and carefully allot payments for Park
10 maintenance and services; and
- 11 4. The CITY and HOA will be able to track each resident’s payment and the expenditure of
12 funds for Park maintenance and services. At the conclusion of the case, the Court can order
13 that the trust funds be paid to the appropriate party.

14 In the CITY’s Application for Dissolution of the Temporary Restraining Order, at page 17,
15 the CITY requested in writing that the Court create a court-supervised account to hold accrued rents.
16 And at the hearing on November 25, 2003, the CITY reiterated the request to Your Honor:

17 [W]e must have them pay rent and charges and not simply, as the Court stated
18 adequately, live for free, and **that money**, so that the City isn’t put in a position
19 where it’s creating rights that don’t exist, **will be put into a court-supervised**
20 **account** exactly as the check is written. **There won’t be any money taken out.**
21 Exactly as the check is written, **that check will be deposited with the court** by the
22 City’s on-site agent. It’s easily done. (Nov. 25, 2003 Transcript, p. 22, lns. 19-27
23 (emphasis added).)

24 Under the circumstances of this case, it seemed that both parties agreed that a trust account
25 makes perfect sense—both sides can keep an eye on the other and the status quo is preserved. And
26 Plaintiff agreed to this on the record.

27 But only one week after the CITY twice asked the Court to order a trust account and
28 promised to deposit all checks into that account, the CITY’s request for a trust account vanished
from its latest brief. Its last bastion of reasonableness seemingly disappeared too. The CITY now
wants to avoid any oversight its upcoming actions. It now asks the Court to order that the CITY can
receive “rent” directly from non-settling residents, get the Court’s blessing to absolve it from any
“rights or obligations” that it otherwise would have, spend the money however it pleases,
dramatically curtail Park maintenance and services, close the common areas like the Bay Club,
Pavilion, and the pools—while still charging the same amount of “rent”—then presumably spend the

1 non-settling residents’ “rent” to fund the litigation against those very same residents—while
2 demanding a \$10 million bond. (Opposition Brief, p. 24, Ins. 5-26.) In this case, reason must
3 prevail.

4 A neutral, third-party trust account is needed, as is a clearly delineated plan for the parties to
5 follow. U.S. Bank has agreed to serve as the trustee and will open and oversee a trust account held
6 at its bank. (See Decl. of Susie Frank, Vice President of U.S. Bank, and exhibits thereto, filed
7 herewith.) The plan is straightforward. Hawkeye Management will provide the trustee with
8 monthly rent and utility invoices at the time that they are sent to the non-settling residents. The U.S.
9 Bank trustee will receive non-settling residents’ checks from Hawkeye Management and then
10 deposit those checks into the trust account. The trustee will disburse funds to the CITY from the
11 trust account for payment of non-settling residents’ utilities.

12 The City and/or Hawkeye Management will periodically submit to the trustee detailed
13 invoices—and back-up documentation as necessary—showing the actual cost of providing common
14 area maintenance and services to the entire Park. Maintenance and services that were provided to
15 the Park by DHRG and/or its affiliated companies at the time just prior to its departure from the
16 Park, include but are not limited to:

- 17 • Park rangers midnight to 8 a.m., 7 days per week (Winter hours);
- 18 • front gate security guard 24 hours per day, 7 days per week;
- 19 • maintenance of all common area restrooms;
- 20 • utilities (gas & electric, water, sewer) to all residents and common areas;
- 21 • regular landscape maintenance of all common areas;
- 22 • proper heating of the swimming pool, jacuzzi, 2 saunas;
- 23 • maintenance of swimming pool, jacuzzi, sauna once a week;
- 24 • laundromat, and maintenance of the laundromat;
- 25 • trash pick-up twice a week;
- 26 • recycling pick-up once a week;
- 27 • street sweeping once a month;
- 28 • reopening of the Park’s market;

- 1 • mooring lines and buoys; and
- 2 • dry and wet storage facilities.

3 Plaintiff will request that DHRG and its affiliated entities provide a detailed categorization
4 and schedule of the maintenance and services that it provided to the Park at the time just prior to its
5 departure from the Park—in other words exactly what the status quo was—and Plaintiff will provide
6 that information to both the CITY and the trustee. The trustee will ensure that the Park’s
7 maintenance and services are in reasonably in accord with the status quo and that the costs charged
8 by the City and its agents are not grossly disproportionate to that which would be charged by
9 providers of similar services in the community. The trustee will then disburse funds for the non-
10 settling residents’ pro rata share of the cost of Park maintenance and services.

11 Pro rata share is easily determined by taking the total number of non-settling residents’ lots
12 divided by total number of lots (*e.g.*, 415 non-settling residents’ lots ÷ 509 total lots = 81.5%). The
13 U.S. Bank trustee will produce periodic reports and make documents available to both parties, upon
14 request, to ensure accurate accounting and full compliance with this Court’s order. The cost for U.S.
15 Bank’s services as trustee is a sliding scale that is approximately 1.0% of the amount held in trust.
16 (See Decl. of Susie Frank, Vice President of U.S. Bank, and exhibits therewith.) This is a fraction of
17 what it would cost the Court to oversee the account and provide the services that the U.S. Bank
18 Trustee would provide to the parties—and the cost will be outweighed by the return on investment.

19 Based on the above, Plaintiff respectfully requests that the Court order, as part of the
20 Preliminary Injunction, that: (1) a private, interest-bearing trust account be established at U.S. Bank
21 to receive payments for “rent” and utilities from all non-settling Park residents, and (2) the U.S.
22 Bank trustee shall oversee disbursements from the trust as delineated above for the purpose of
23 providing the non-settling residents’ pro rata share of the cost of Park maintenance and services.
24 Accordingly, Plaintiff submits herewith a revised proposed Preliminary Injunction—which is as
25 detailed as presently possible—so as to minimize the need to return to the Court for further
26 guidance or clarification.

27 /////

28 /////

1 **F. The balance of the CITY's contentions scarcely warrants comment.**

2 Rounding out the CITY's shotgun approach are a myriad of minor arguments that can be
3 easily disposed of.

- 4
5 1. Service of the Complaint is not a prerequisite to seeking a preliminary
6 injunction.

7 Plaintiff has 60 days after filing within which to serve its Complaint on the CITY. This
8 time period cannot be shortened. Cal. Rules of Court 201.7(b); Gov't Code § 68616(a). The
9 complaint was filed on November 18, 2003, and, therefore, Plaintiff has until mid-January 2004 to
10 effectuate service on the CITY. Defendant cites absolutely no authority for its proclamation that,
11 absent such service, Plaintiff cannot seek injunctive relief.

- 12
13 2. The CITY cannot violate State law under the guise of making a "policy
14 decision."

15 The cases cited by the CITY deal with judicial restraint and the deference generally
16 afforded to administrative agencies' inherent rule-making powers. *See* Opposition Brief, p.16 and
17 cases cited therein. These cases are simply inapplicable here where Plaintiff alleges that the CITY
18 has violated a series of State laws that impose mandatory obligations whenever a mobilehome park
19 closure occurs. Plaintiff is not asking this Court to inquire into the basis for the CITY's decisions;
20 rather, Plaintiff is seeking to protect the *status quo* until the Court can determine whether the
21 CITY's actions have violated State law.

- 22
23 3. The preliminary injunction will not prevent the CITY from executing a
24 public statute, but will merely protect the status quo until the legality of the
CITY's actions are determined.

25 The CITY contends that Code of Civil Procedure section 526(b)(4) and Civil Code
26 section 3423—which bar injunctive relief that prevents the execution of a public statute—prohibit
27 this Court from interfering with the CITY's proposed transition plan. As discussed previously,
28 however, a preliminary injunction will not foil the CITY's plan, but will merely prevent the

1 eviction of those residents who choose not to settle on the CITY’s “take-it-or-leave-it” terms.

2 The two cases cited by the CITY do not alter that conclusion. In *Tailfeather v. Bd. of*
3 *Supervisors* (1996) 48 Cal.App.4th 1223, 1227, a group of indigent plaintiffs sought to compel a
4 county to adopt formal guidelines regarding maximum waiting times for medical treatment—an
5 injunction for affirmative relief. The court denied the injunction, holding that the court could not
6 assign additional obligations to the county. *Tailfeather, supra*, at 1243. Here, however, the
7 requested injunction would not require affirmative relief, but would merely ensure that the CITY
8 does not commence evictions or curtail services until such time as the Court determines the
9 applicability of Government Code section 65863.7 and other State mandates.

10 In *7978 Corp. v. Pitchless* (1974) 41 Cal.App.3d 42, the court noted that prohibitions on
11 injunctive relief do not apply when the constitutionality of a particular ordinance or statute is
12 challenged. *7978 Corp., supra*, at 46. Injunctive relief is also appropriate where—as here—
13 enforcement of the public statute would cause irreparable injury. *Novar Corp. v. Bureau of*
14 *Collection & Investigative Svcs.* (1984) 160 Cal.App.3d 1, 5.

- 15
16 4. As the rights afforded residents under the Mobilehome Residency Law are
17 unwaivable, the CITY cannot avoid its obligations by contract.

18 The CITY erroneously contends that the residents gave up their legal right to a Tenant
19 Impact Report and other protections afforded under the Mobilehome Residency Law when they
20 signed Long Term Rental Agreements. Irrespective of whether the CITY actually has any third
21 party rights under these LTRAs, when one takes more than a “ cursory glance at Civil Code
22 § 798.77” as suggested by the CITY (Opposition Brief, p. 8, Ins. 22-23), the Legislature made clear
23 that any attempt to waive the mandatory Tenant Impact Report and review requirements is simply
24 unenforceable and void as against public policy. Civ. Code § 798.77.

25 Civil Code section 798.77 states in whole: “No rental or sale agreement shall contain a
26 provision by which the purchaser or homeowner waives his or her rights under this chapter. Any
27 such waiver shall be deemed contrary to public policy and shall be void and unenforceable.” The
28 chapter referred to in this section is Chapter 2.5 of the Civil Code—which is the entirety of

1 California's Mobilehome Residency Law. See Civ. Code section 798.77. So if the CITY's
2 contention is that Park residents contractually waived their statutory rights in the LTRAs, then the
3 LTRAs are "void and unenforceable" as contrary to public policy. So, too, is the purported
4 Settlement Agreement. The California Supreme Court has long held that contracts that are against
5 public policy, regardless of the form they take, are void and unenforceable as a matter of law.
6 *Loving & Evans v. Blick* (1949) 33 Cal.2d 603, 607 (noting a contract made contrary to the terms of
7 a law designed for the protection of the public is illegal and void).

8 9 **IV. Conclusion**

10 Plaintiff has presented ample evidence to demonstrate a likelihood of prevailing on the
11 merits given the CITY's complete failure to prepare a Tenant Impact Report, failure to conduct a
12 feasibility analysis to determine whether adequate replacement housing is even available, and
13 failure to involve Park residents in a public review process. Moreover, the harm threatened by the
14 CITY will be swift and irreparable: the mass eviction of nearly 1,200 residents with no adequate
15 relocation plan. Most of these residents—especially the elderly, the sick, and the disabled—will
16 not be able to find affordable housing.

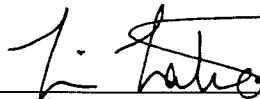
17 Equity demands that the *status quo* be protected until the CITY's statutory obligations, and
18 all of the attendant legal and factual issues, are finally adjudicated. The Court must further enjoin
19 the CITY from terminating or diminishing Park services and closing any common areas that
20 residents depend upon while this litigation is pending.

21 Therefore, Plaintiff's Motion for Preliminary Injunction should be granted.

22 Respectfully Submitted,

23 DATE: December 10, 2003

TATRO & ZAMOYSKI, LLP

24
25 

26 Timothy J. Tatro, Esq.
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