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

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

18 Plaintiffs,

19 v.

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

26 Defendants.

27 **AND RELATED CROSS ACTION**  
28

Case No. GIC 821191

**CLASS ACTION**

**PLAINTIFFS' REPLY IN SUPPORT OF  
MOTION FOR CLASS CERTIFICATION**

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

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

# Introduction

1  
2 Plaintiffs want to move this case to conclusion—certify the Class, move for summary  
3 adjudication on the City’s obligation to comply with State law, and try the case on damages. All of  
4 this should be accomplished within six months.

5 But the City would have this Court believe that it’s preferable to litigate nearly 1,000 separate  
6 relocation claims—with all of the attendant costs, amended pleadings, additional plaintiffs, and  
7 additional discovery—no doubt leading to another defense request to push the trial date even  
8 later—probably into 2008. This approach would be unruly, unrealistic, and very expensive.

9 While the City makes sweeping, conclusory assertions about class ascertainability and the  
10 alleged need for hundreds of mini-trials, the City’s Opposition is void of factual detail and  
11 evidentiary support. Worse yet, the City tries to derail the Court from focusing on all of the most  
12 obvious advantages of class adjudication in this case, jumping instead from one tangent to the next.  
13 But, most significantly, the City does *not* dispute most of the key points and evidence supporting  
14 class certification.

15 For example, **the City does not dispute the fact that the central issue to the case is whether**  
16 **the City is bound by the State Mobilehome Residency Law—a question of law shared by each**  
17 **and every Class plaintiff.** Nor does the City dispute that if the MRL applies here—as it does in  
18 every other mobilehome park—it will apply to *all* Class members.

19 This Reply, therefore, will simply focus on the concessions and contradictions readily found in  
20 the City’s brief<sup>1</sup> and demonstrate why class certification is not only warranted, but is the most  
21 practical way to proceed.

22  
23 <sup>1</sup> The City’s brief is objectionable, both in its blatant attempt to nearly double the acceptable  
24 page limit through the use of a 16-page “appendix,” and in factual inaccuracies crammed into  
25 micro-font footnotes throughout the body of its brief. Conforming the City’s Opposition to court  
26 requirements under California Rules of Court, Rule 201(c)(1), the City’s brief would be nearly 40-  
27 pages long. The argumentative appendix is little more than the City’s paraphrased rendering of  
28 deposition testimony, but omitting *all* of the underlying objections made at deposition. As such, it  
is not an “appendix” at all, but merely a second volume of argument in the City’s Opposition brief  
that violates the page limitation. The Court should not even consider the City’s improper  
“appendix.” (See Pl.’s Objections to City’s Appendix A.)

## Discussion

At first glance, the City’s Opposition brief appears to dispute everything. But after setting aside its rhetoric, the City actually does not contest many of the key points that support Plaintiffs’ request for certification. For example, as detailed in Section 1 below, the following points are undisputed:

- The Class can be ascertained from various sources of information—the vast majority of which the City already has;
- The Class is numerous;
- Questions of law regarding the applicability of the MRL are common to all Class members and predominate;
- Damages can be calculated using a common method across the entire Class; and
- The alternative to Class certification is litigating over 1,000 individual plaintiff relocation cases along with the City’s 800+ individual cross-complaints that were stayed by the Court.

In Section 2 of this Reply, Plaintiffs establish that the City is estopped from taking new positions in its Opposition papers that contradict its sworn discovery responses and, in Section 3, put to bed the City’s remaining tangential arguments and theories.

### **1. The City does not dispute the evidence supporting class certification.**

#### **A. Plaintiffs have shown the plethora of resources which allow the Class to be ascertained.**

Class members are “ascertainable” where they can be readily identified by reference to official records and documents. E.g., *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932. Plaintiffs have demonstrated that Class members can be identified several different ways using tenant files, rent rolls, property records, resident questionnaires, and other readily available information—virtually all of which the City already has. The City knows who the homeowners and residents of De Anza Cove are.

#### ***(1) The mountain of available Class-member information remains undisputed.***

Although the City argues *concepts* like “ascertainability” in its Opposition, it does not dispute

1 any of the following *evidence* that Plaintiffs submitted to demonstrate the ease with which the Class  
2 can be ascertained:

- 3 • The City cross-complained against more than 800 individual residents at De Anza—  
4 highlighting the ease with which the City was able to identify putative Class  
members (Pl.’s Ex. 9, Caption of City’s First Amended Cross-Complaint);
- 5 • The City produced over 27,000 pages of resident information (14 boxes) maintained  
6 by its former management company containing detailed information about Class  
members, including:
  - 7 ➤ Title and Registration documents from the California Department of Housing  
8 & Community Development *showing the names and addresses of the*  
9 *registered owners* of the Park’s homes, types of homes, sales dates and  
prices (Pl.’s Exs. 1-3);
  - 10 ➤ Settlement Questionnaires returned to the City in late 2003 *showing owner*  
11 *and occupant names* and much more information (Pl.’s Exs. 4, 5);
  - 12 ➤ County of San Diego tax bills *showing property and owner information*  
13 (Pl.’s Ex. 6);
  - 14 ➤ The City’s De Anza Vehicle Registration Forms *identifying owners and*  
15 *occupants* and other personal information (Ex. 7)—even copies of *owners*  
16 *and occupants’ drivers licenses* (Bates-label pages SD68485, SD68371).
- 17 • The City has over 280 Resident Questionnaires, along with related leases,  
18 documents, and registration information that those residents produced;
- 19 • The City not only admits it has a list of Class members who signed settlement  
20 agreements, the City actually has ALL of the actual settlement agreements  
21 themselves, which *identifies all residents who fall within Subclass A*—the people  
22 who signed the City’s settlement agreement (Pl.’s Ex. 8, as well as Bates-label pages  
23 SD34491-41073, SD48260-51626);
- 24 • The City has Hawkeye’s as well as its new management company—Newport  
Pacific’s—tenant files, rental applications, subleasing agreements, rent rolls, and  
resident questionnaires, all of which allow the City to ascertain *who the non-owner*  
*residents are*, and therefore, who belongs to Subclass B (Tatro Decl., ¶ 2; Pl.’s  
Exs. 1-9);
- 25 • Resident information is available directly from the Department of Housing &  
Community Development, De Anza Harbor Resort & Golf, Inc. (DHRG)—the prior  
operator and lessee—the County of San Diego, and Plaintiffs’ counsel; and
- 26 • The City has over 100 boxes of De Anza-related documents.

27 **The City did not dispute any of this—nor can it.** In its Opposition, the City chose to utterly  
28 ignore this massive compilation of information. Instead, the City simply pretends that it cannot  
determine who owns a home or lives at De Anza Cove.

But the City’s Opposition includes a declaration from Terre Catalano, the City’s former on-site

1 park manager, who long ago conceded that **the City maintains detailed records on De Anza**  
2 **residents and each home at the Park:**

3 In the normal course of business, Hawkeye keeps records of mobilehome sales at  
4 the Property and title records as to the current registered owner of mobilehomes  
5 located at spaces on the Property. We also keep records of the current mailing  
6 address of registered owners of mobilehomes at the Property. We keep such  
7 records in order to properly administer and manage the Property and in order to  
8 send monthly invoices for space rental to mobilehome owners.... **We update our**  
9 **records on a regular basis to ensure the information contained therein is true**  
10 **and accurate.** (Catalano Decl., ¶ 2 (emphasis added), City’s Ex. 27 to NOL.)

11 The City’s systematic collection of resident information belies any attempt to credibly claim  
12 that the Class is too vague or that it will be too impractical to give notice to Class members.<sup>2</sup>

13 **(2) An example: Ascertaining who owns a particular home is simple.**

14 By way of example, *what does the City know about the home located at Shore Drive-3?*

15 Owner:	Faye Weisman	Date of Birth:	Oct. 16, 19█ (redacted)
16 Address:	2727 De Anza Rd., S.D. 3	Driver’s Lic.#:	K00230█ (redacted)
	San Diego, CA 92109	Home Model:	Gold Medal (1971)
17 Phone #:	(858) 274-█ (redacted)	Purchased Home:	May 1997
		Size:	60’ x 24’ (triple-wide)

18 The source of this information? The City’s own resident files, which include title documents,  
19 Resident Questionnaires collected by the City, and the City’s Vehicle Registration Forms. (Pl.’s  
20 Exs. 3, 5, 7.) This example only took a few minutes to pull together. Yet, the City has had much of  
21 this information for several *years* and can easily compile a similar list—if it hasn’t already—using  
22 these same sources. (See, e.g., Catalano Decl., City’s Ex. 27 to NOL.)

23 ///

24 <sup>2</sup> While the City expresses its confusion over the timeframe involved (Opp. at p. 16), the  
25 proposed Class definition *expressly* states that it only includes those people who have lived at De  
26 Anza Cove or owned a home at De Anza Cove *on October 22, 2003, or thereafter*. It does not  
27 include anyone who moved out before then. Further, **the Master Class definition came directly**  
28 **from the language stipulated to by the City Council and City Attorney** in an earlier Order  
setting forth who would be included in the Tenant Impact Report: “all homeowners, tenants, and  
other occupants of the mobilehome park as of October 22, 2003, as well as any and all...who may  
have entered the mobilehome park after October 22, 2003.” (Pl.’s Ex. 20, ¶ 3.) The City’s alleged  
confusion over the Class definitions is dubious and without merit.

1 **(3) The City’s ongoing complaints—that it has been deprived of the opportunity to**  
2 **conduct sufficient pre-certification discovery—have already been rejected.**

3 In its *ex parte* application, the City sought to conduct additional discovery, arguing that it  
4 needed to serve hundreds of subpoenas and conduct resident interviews. Ultimately, after  
5 considering the vastness of information amassed by the parties and offered into evidence by  
6 Plaintiffs, the Court observed that “**there has been really an awful lot of discovery up to this**  
7 **point**” and concluded that no further class discovery was necessary or justified:

8 **If I felt that the defendant City didn’t have sufficient information to deal with**  
9 **the certification issues, I would be inclined to order discovery, but I don’t think**  
10 **that’s necessary at this point with what’s available....** (Rptr’s Tr., July 25, 2006,  
11 p. 28, Pl.’s Ex. 27 to Reply Tatro Decl.)

12 The Court already decided the discovery issue; it is not at issue in this certification motion.

13 In conclusion, the City has not and cannot dispute the mountain of information available. In the  
14 absence of any sufficient supporting evidence or legal authority, the City’s hollow arguments  
15 cannot be taken seriously. Plaintiffs have readily established that the Master Class and its two  
16 subclasses are ascertainable.

17 **B. The City does not dispute that the proposed Class is numerous.**

18 Plaintiffs established that the Class consists of approximately 1,000 people—based on roughly  
19 500 homes. The City did not dispute numerosity.

20 **C. The City does not dispute the common legal issues.**

21 The City’s Opposition does not contest that the following *are* common issues of law central to  
22 the case—and to each and every Class member:

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

1       **If the City is required to comply with State law as to any one class member, it is required**  
2 **to comply as to all class members**—the very essence of commonality. The City has not disputed  
3 this point. Similarly, if one class member is entitled to relief, then *all* class members are entitled to  
4 relief because the MRL specifically addresses the park-wide relocation assistance and benefits that  
5 are required before the City tries to close the mobilehome park. See Civ. Code § 798.56; Gov’t  
6 Code § 65863.7. Again, the City does not offer any factual or legal authority to validly dispute that  
7 these common issues predominate over any individual issues.

8  
9       ***(1) Varied damage amounts cannot defeat commonality or the superiority of class***  
10 ***treatment, particularly where the method of calculating damages is the same for***  
***everyone in the Class.***

11       The City emphasizes that each Class member will likely be entitled to a different dollar amount  
12 of relocation benefits. This is true, and neither Plaintiffs nor Dr. Patrick Kennedy—Plaintiffs’  
13 economist—take issue with this. But the City then bootstraps this fact into its contention that,  
14 *simply because the dollar amounts vary*, individual issues must predominate. This is patently false.

15       **The law is clear: the existence of different damage amounts does not undermine**  
16 **commonality or the superiority of class treatment—all that is required is a uniform**  
17 **methodology.** *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916; *Reyes v.*  
18 *Bd. of Supervisors of San Diego Co.* (1987) 196 Cal.App.3d 1263, 1278; *Employment Dev. Dept. v.*  
19 *Sup. Ct.* (1981) 30 Cal.App.3d 256, 262; *Acree v. General Motors Acceptance Corp.* (2001) 92  
20 Cal.App.4th 385, 397; *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341,  
21 1354; *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934. This makes sense because the  
22 precise amount that a member has been harmed is rarely the same across an entire Class.

23       What is uniform in this instance is the **method** for calculating the amount of harm to each Class  
24 member. Plaintiffs’ economist, Dr. Kennedy, testified that **damages in this case can be**  
25 **determined using the same methodology and common mathematical approach for the entire**  
26 **class.** (Kennedy Decl., ¶ 6.)<sup>3</sup> Punching numbers on a calculator for 509 households does not mean  
27 that individual issues predominate to bar class certification. The opposite is true.

28       <sup>3</sup> See also Section 3.D., below, regarding Dr. Kennedy’s testimony.

1 Furthermore, the City—via the City Attorney and unanimous vote of the City Council—already  
2 ***stipulated in this case to calculate damages on a uniform basis*** via a Tenant Impact Report—  
3 exactly like all tenant impact reports done under the Mobilehome Residency Law:

4 The Tenant Impact Report **shall address, among other things, relocation needs,**  
5 **relocation costs, relocation assistance, relocation benefits, replacement housing**  
6 **needs, replacement housing availability, appraisal of existing mobilehomes, and**  
7 **replacement housing payments.** (Pl.’s Ex. 20, Order dated Feb. 22, 2005, ¶ 2.)

8 Utilizing a common methodology for damage analysis across the entire class is far superior to  
9 the City’s unwieldy scheme that would require the parties and the Court to conduct a thousand  
10 individual mini-trials.

11 ***(2) The City’s eligibility arguments regarding relocation benefits have no bearing on***  
12 ***whether the Class should be certified.***

13 The City blurs class-certification issues with benefit-eligibility issues. It argues why *it* thinks  
14 certain hyper-diminutive subsets of De Anza Cove residents might not be eligible to receive  
15 relocation damages. But rather than reserving those arguments for when the merits of the case will  
16 be adjudicated, the City lumps its own version of eligibility criteria onto its class certification  
17 analysis. The City even asserts—without *any* legal authority whatsoever—that the Class cannot be  
18 certified because some Class members moved in before 1989, some moved in after then, and some  
19 have more financial resources than others, etc. None of this explains why the Class shouldn’t be  
20 certified. In sum, the City jumps the gun with its uncorroborated arguments, apparently inviting the  
21 Court to essentially issue advisory opinions under the guise of analyzing commonality.

22 And, of course, the City fails to address the breadth of Plaintiffs’ case under the MRL and  
23 Plaintiffs’ supporting authorities. Every single Class member—regardless of the amount of  
24 damages—is entitled to the MRL’s mandatory protections in the form of relocation assistance,  
25 preparation of a tenant impact report, and open hearings *before* park closure. See Civ. Code  
26 §§ 798.55, 798.56; Gov’t Code § 65863.7; *Keh v. Walters* (1997) 55 Cal.App.4th 1522; Third  
27 Amended Complaint (TAC) at ¶ 71. Thus, with injunctive relief available to all class members  
28 who own or live at De Anza Cove—from homeowners and renters to their family members and

1 other occupants—monetary damages do not decide the issue of whether a class should be certified.

2 The City’s confusion is further reflected in its bullet list of alleged issues that it claims must  
3 splinter the Class into hundreds of mini-trials. A closer look at the City’s list of issues, however,  
4 reveals that the vast majority of these issues are either immaterial or are not disputed at all.

5 For example, the City claims that individual litigation is needed to determine whether “the  
6 notice each proposed class member received (if any) was adequate.” Opp. at p. 2. But the notices  
7 sent to class members were *all the same*. And the gravamen of the lawsuit is not that the City’s  
8 intent to close the Park was a secret, but that **the City failed to follow State law** and provide  
9 mandatory relocation assistance and benefits *before the City tried to close the Park*. For example,  
10 if the City says it’s going to take your home in 10 years, duration of notice is not the issue, nor is  
11 repeated notice a substitute for properly compensating you for the loss of your home. The City’s  
12 non-compliance with State law and failure to compensate the Class *are* at issue.

13 Moreover, the City’s renewed reliance on waiver provisions in various lease agreements—  
14 whether the City’s Ground Lease or the LTRAs—fails to account for the irrefutable fact that the  
15 MRL renders such waivers *illegal and unenforceable*. Civ. Code § 798.77 (“Any such waiver shall  
16 be deemed **contrary to public policy** and **shall be void and unenforceable**.” (emphasis added)).  
17 Thus, the invalidity of waiver provisions under the MRL is a question of law common to all Class  
18 members, and especially those who signed the City’s settlement agreements that force residents to  
19 waive their MRL rights—Subclass A. No individual mini-trials are needed, but rather, a simple  
20 legal determination that, on its face, the waiver provision in the City’s settlement agreement—the  
21 issue for Subclass A—is unlawful and unenforceable. Individual circumstances are irrelevant.

22 For class certification purposes, it suffices that the common legal issues regarding the MRL’s  
23 applicability predominate the litigation and that the case can be well-managed as a class action.

24  
25 **D. The City cannot legitimately dispute the efficiencies of adjudicating**  
26 **this case as a class action.**

27 The City points to the *Abbit* case (Abuse claims/park mismanagement case, GIC 865536) as an  
28 allegedly preferable means of litigating the relocation benefit claims. But this assertion

1 demonstrates a fundamental misunderstanding of Plaintiffs' case, as well as complete amnesia  
2 regarding the history of both suits.

3 As the Court is aware, the *Abbit* suit was filed as an independent action because: (1) **the City**  
4 **demanding the separation of the personal injury claims via its demurrer** to the Class claims;  
5 and (2) the *Abbit* case deals exclusively with abuses related to the City and Hawkeye's  
6 mismanagement of De Anza Cove and their attempts to run residents out of the Park with help from  
7 their armed security guards and towing company. The Court agreed that the tortious conduct and  
8 abuse claims could not be handled on a class-wide basis and, as a result, a completely separate  
9 action was filed dealing solely with those claims to toll applicable statutes of limitation.

10 **The two suits address very different rights, injuries, obligations, and time frames.** The  
11 Class suit deals with relocation rights that vested long ago; the Abuse litigation deals with the City  
12 and its numerous agents' actions after taking control of the Park in 2003. The latter has nothing to  
13 do with property rights, relocation assistance, or replacement housing. There is no part of the Class  
14 Action that requires resolution of the Abuse claims. Plaintiffs have only sought to certify the  
15 relocation claims.<sup>4</sup> Everyone at De Anza Cove is included in the Master Class and, therefore, will  
16 be bound by the result in the Class Action, whereas only those who opted to file suit are represented  
17 in the Abuse litigation. Whereas the Class Action is scheduled for trial in February 2007, the  
18 Abuse case will likely not be set for trial until late 2007. In short, these two cases are completely  
19 different in terms of legal theories, damages, number of parties, timeframe, and relief sought.

20 Proceeding with 1,000 individual plaintiff relocation claims and the City's 800+ individual  
21 cross-actions will not achieve any efficiencies or advance the resolution of either case, but would  
22 only serve to extraordinarily complicate the litigation, introduce hundreds of new individual parties,  
23 swamp this Court, delay the trial, and cause litigation costs to skyrocket for both sides. Most  
24 importantly, though, certifying the class will protect the potential rights of those class members  
25 who are unable—or too intimidated—to pursue litigation on their own.

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26 <sup>4</sup> Contrary to the City's assertion that Class representatives are claiming damages for personal  
27 injuries and emotional distress here, the Court severed all such claims. They are *not* ear-marked for  
28 certification. As the Court and parties are well-aware, Plaintiffs have moved to consolidate all  
abuse claims into the *Abbit* case. The hearing is set for Sept. 14, 2006.

1 In sum, the fact that a separate suit has been filed does not detract from the efficiencies gained  
2 by adjudicating the instant case on a class-wide basis. Here, class certification will:

- 3 • Allow the parties to resolve the fundamental legal questions class-wide; and
- 4 • Protect the potential rights of those members who would otherwise be unlikely  
5 to pursue litigation on their own, thereby ensuring that no one falls through the  
6 cracks. If members want to opt out, they can; but everyone gets the opportunity  
7 to make an informed choice based on *truthful* information.

7 **E. The City cannot convincingly dispute the adequacy of the Class**  
8 **representatives or Class counsel.**

9 The City has failed to identify a single legitimate conflict between the Class representatives and  
10 Class members based on any legal authority or evidence. While the City notes that some Class  
11 representatives would like to stay at the Park longer than others, this does not create a conflict. Nor  
12 does the fact that some Class representatives value their homes as being worth more than others do.  
13 Why? Because **relocation assistance and benefits will be determined by the Court and jury**  
14 **based on the MRL and the experts designated in this matter—not by the Class**  
15 **representatives themselves.** As discussed above, all Class members are entitled to the MRL’s  
16 mandatory protections. See Civ. Code §§ 798.55, 798.56; Gov’t Code § 65863.7; *Keh v. Walters*  
17 (1997) 55 Cal.App.4th 1522; TAC at ¶ 71. None of these requirements change based on a class  
18 representative’s personal beliefs.<sup>5</sup>

19 As to the adequacy of Class Counsel, it is hard to fathom that the City took a shot at questioning  
20 the adequacy and ability of Thorsnes, Bartolotta & McGuire and Tatro & Zamoyski to prosecute  
21 this action through to judgment. As the original counsel of record, Mr. Tatro and Mr. Zamoyski  
22 have steadfastly litigated this case for nearly three years—during which time the City “transitioned”  
23 through more than 14 different attorneys. Moreover, Mr. Bartolotta’s firm is one of the most  
24 accomplished plaintiff-firms in the State of California, having successfully handled *many* class  
25 actions. (Bartolotta Decl., ¶¶ 2-3.) Class Counsel can satisfactorily complete the task at hand.

26 \_\_\_\_\_  
27 <sup>5</sup> The City’s deposition questions regarding damages were objected to on the grounds that they  
28 lacked foundation and called for expert opinion, legal conclusions, and speculation. See Pl.’s  
Evidentiary Objections filed herewith.

1 **2. The City is estopped from taking a legal position that is**  
2 **inconsistent with its sworn discovery responses.**

3 In an effort to streamline the certification process, Plaintiffs propounded very focused  
4 admission requests designed to ferret out the City’s position on various class issues, with an eye  
5 towards narrowing the criteria in dispute. For example, Plaintiffs asked:

6 Please admit that the IDENTITY of members of the Master Class can be  
7 ASCERTAINED by reference to the CITY’s rent rolls, information in the CITY and  
8 its attorneys, agents, and contractors’ possession, tax records, other public records,  
9 and/or by proper notice. (Pl.’s Ex. 23, Req. for Admissions, No. 2.)

10 Plaintiffs warned the City that they would object to any attempt by the City to bring in new  
11 contentions or evidence in its opposition to class certification. (Pl.’s Ex. 26.) The City then  
12 supplemented its prior responses and swore under penalty of perjury: “[Objections omitted.] After  
13 a good faith reasonable inquiry **the City is unable to admit or deny this request....**” (Pl.’s Ex. 23,  
14 City’s Suppl. Resp. to Req. for Admissions, No. 2.) Similarly, when asked whether: the Master  
15 Class, Subclass A, and Subclass B were ascertainable; particular questions of law were common to  
16 the Class; Class members were numerous; damages were calculable on a class-wide basis; the  
17 representative Plaintiffs’ claims were typical of the Class and they could adequately represented the  
18 Class; and a class action was superior to individual cases—the City asserted under penalty of  
19 perjury time after time that after “a good faith reasonable inquiry **the City is unable to admit or**  
20 **deny**” the request. (See Pl.’s Ex. 23, City’s Suppl. Resp. to Req. for Admissions, Nos. 1-9, 11, 13-  
21 41; Pl.’s Ex. 24, City’s Suppl. Resp. to Form Interrogatories, No. 17.1.) The City’s responses were  
22 signed by Gordon & Rees, verified by a City Attorney investigator, and served on **July 31, 2006**.  
23 Relying on the City’s responses, Plaintiffs filed their motion to certify.

24 Then, a mere three weeks later, the City files its Opposition brief, replete with new contentions,  
25 which now affirmatively contend that the Class cannot be ascertained, Class members cannot be  
26 identified from available documents, the representative Plaintiffs and counsel are inadequate,  
27 damages cannot be calculated class-wide, *et cetera*. **In other words, the City takes a position**  
28 **now for the purposes of argument that it could not take under penalty of perjury during**  
**discovery.** What possibly changed in the three-week interim that wasn’t uncovered during the  
City’s “good faith inquiry?” The City’s switcheroo is not fair play. The City must be estopped

1 from taking positions now that are inconsistent with its prior sworn discovery responses.

2  
3 **3. Miscellaneous inaccuracies and errors plague the City’s brief.**

4 In this Section of the Reply, in order to succinctly dispel the issues raised by the City that are  
5 either tangential to class certification or are simply in error, Plaintiffs briefly address:

- 6 A. The MRL’s inclusive definitions of homeowner and resident;  
7 B. The City’s skewed “historical” perspective;  
8 C. The De Anza Cove HOA’s true interests in protecting all residents; and  
9 D. The un rebutted expert testimony of Plaintiffs’ economist.

10  
11 **A. The MRL protects homeowners *and* renters *and* occupants.**

12 Although it does not bear on class certification, it’s worth noting that the City is wrong in its  
13 claim that the MRL only bestows rights on homeowners. Opp. at p. 16, Ins. 15-21. Rather, the  
14 MRL protects everyone owning a home or living at a mobilehome park.

15 The Mobilehome Residency Law defines “Resident” as a “homeowner **or other person who**  
16 **lawfully occupies a mobilehome.**” Civ. Code § 798.11 (emphasis added). Thus, renters, family  
17 members, and other people who occupy the home are covered under the MRL’s umbrella of  
18 protections as a “Resident.” An “occupant”—included in Plaintiffs’ Master Class—is simply “a  
19 person who occupies a house.” Webster’s New World College Dictionary, 4<sup>th</sup> ed. (2000).

20 Pertinent to our case, for example, the MRL requires the City to mitigate “any adverse impact  
21 of the conversion, closure, or cessation of use [of the Park] on the ability of displaced mobilehome  
22 park **residents** to find adequate housing in a mobilehome park” (Gov’t Code § 65863.7(e)  
23 (emphasis added)), and a tenant impact report must be provided to “the **homeowners or residents.**”  
24 Civ. Code § 798.56(h) (emphasis added).

25 Homeowners, renters, and other occupants receive relocation *assistance* upon Park closure  
26 under the MRL, but renters and other occupants typically receive less monetary damages in the way  
27 of relocation *benefits* than homeowners because they don’t own the home and won’t lose any  
28 equity—so their loss is smaller. Regardless, these residents expressly fall within the protections of

1 the MRL and are properly included in the Master Class and Subclass B—the non-owner residents.

2  
3 **B. The City’s “historical” perspective reveals its blunders.**

4 The City proudly asserts that when it negotiated and approved the 10<sup>th</sup> Amendment to its  
5 Ground Lease, the City required its Park operator to notify current and future De Anza Cove  
6 residents that, in the wake of the Kapiloff Bill, residents would allegedly not be entitled to any  
7 relocation benefits. Opp. at p. 4, Ins. 8-28. Omitted from the City’s tale is the fact that the Kapiloff  
8 Bill never authorized such a statement, the Kapiloff Bill never waived anyone’s right to relocation  
9 benefits, and there is no legal authority supporting the City’s self-drafted waiver of benefits. (See  
10 Kapiloff Bill, Ex. 7 to City’s NOL.) The State never authorized such a waiver and never relieved  
11 the City of its relocation obligations under the MRL. **The City, on its own, took this unlawful**  
12 **action, added that condition to its Ground Lease, and tried to dupe the residents, this Court,**  
13 **and the entire public.** As will be discussed in Plaintiffs’ upcoming Motion for Summary  
14 Adjudication, the City’s own actions and omissions unravel its case.

15  
16 **C. The HOA has never been adverse to the Class, does not seek**  
17 **compensation in this suit, and does not “sell” pieces of the lawsuit.**

18 The City portrays the HOA as some sort of money-grubbing ponzi scheme, going so far as to  
19 wrongly claim: “The HOA seeks to recover damages for a large group of individuals and then  
20 redistribute them without regard to actual damages or non-members’ interests.” Opp. at p. 8. But  
21 the City’s wild mythology—which seems to be resurrected every time the City brings in new  
22 lawyers—was quelled long ago. Here’s the testimony—which the City has had for over a year—of  
23 the HOA’s Secretary, who attended the membership meetings and took official minutes, regarding  
24 the actual facts about the litigation and costs of litigation:

25 On October 29, 2003 . . . [the HOA membership] **voted unanimously in favor**  
26 **of pursuing litigation and authorized the Board to secure legal counsel for this**  
27 **purpose....** As to the HOA’s fund-raising efforts, we had many discussions about  
28 **collecting money for litigation costs.... It was understood and agreed that the**  
**Court would have the final say on what litigation costs, if any, would be**  
**reimbursed by the City. Any residents who contributed to the HOA litigation**  
**fund would be eligible to “share” in the reimbursement of those contributions**

1           **on a pro-rata basis, if fees and costs were ultimately awarded by the Court.** In  
2 this manner, each resident would be able to get back an amount equal to the  
3 percentage of their contribution relative to the total amount collected for **costs** by  
4 the HOA. **This reimbursement plan, however, has nothing to do with**  
5 **damages, relocation benefits, or any other compensation** that are owed by the  
6 City to De Anza Cove residents **other than litigation costs....** The City's assertion  
7 that the HOA is structured to reward the most affluent households is not true.  
8 (Decl. of Dorie Offerman, ¶¶ 5-7, filed herewith as Pl.'s Ex. 28 (emphasis added).)

9           It's deplorable the way the City has persecuted the good people of De Anza Cove. The De  
10 Anza Cove Homeowners Association was formed to protect the rights of all homeowners and  
11 residents of the Park. And through three years of litigation, that is what it has done tirelessly. The  
12 HOA has never taken a position adverse to the Class. No one is forced to join. No one is forced to  
13 pay dues. To raise additional money to fund the litigation costs, the HOA sells candy, recycles  
14 cans, and holds church raffles. The ability to finance the costs of litigation has made it possible for  
15 the Class to seek relief that would otherwise have been too expensive for the residents to pursue  
16 individually. And the HOA has proven its ability to weather the storm and more than adequately  
17 represent—with proper standing—the interests of all De Anza Cove residents. *Tenants Ass'n. of*  
18 *Park Santa Anita v. Southers* (1990) 222 Cal.App.3d 1293, 1304; *Salton City Area Property*  
19 *Owners Assn. v. M. Penn Phillips Co.* (1977) 75 Cal.App.3d 184, 188; *Residents of Beverly Glen,*  
20 *Inc. v. City of Los Angeles* (1973) 34 Cal.App.3d 117, 121.

21           **D. The City did not rebut Dr. Kennedy's opinion that damages can be**  
22 **calculated class-wide using a common methodology.**

23           The City's attempt to portray Dr. Kennedy as unqualified or ill-equipped to render opinions  
24 here falls flat since Plaintiffs did not offer Dr. Kennedy's testimony as a tenant impact  
25 report/relocation expert. Plaintiffs retained *economist*, Patrick Kennedy, Ph.D., for two purposes:  
26 to evaluate the feasibility of calculating damages on a class-wide basis using a common  
27 methodology, and to evaluate economic losses. Dr. Kennedy holds a doctorate in economics, has  
28 served on the Board of Governors for the Federal Reserve, and has evaluated damages in many  
class action cases. (Curriculum vitae, Ex. A to Kennedy Decl.) Moreover, Dr. Kennedy testified  
that, in a case like this, he would be relying on foundational experts on issues specific to

1 mobilehome parks—such as appraisal of mobilehomes, relocation costs, and the like. Plaintiffs  
2 have other, complimentary experts in such fields.

3 Dr. Kennedy determined that, even though individual dollar amounts will likely vary from  
4 household to household, the formula used to determine relocation benefits is uniform for everyone  
5 claiming benefits under the MRL. Therefore, he concluded that it *is* possible to determine damages  
6 on a class-wide basis. (Kennedy Decl., ¶ 6.) Most tellingly, **the City offers no countervailing**  
7 **testimony from any expert, leaving Dr. Kennedy’s opinions unopposed.**

8  
9 **Conclusion**

10 The City took a shotgun approach to Plaintiffs’ Motion, but none of its birdshot came close to  
11 hitting the mark. In fact, the City failed to dispute the truth of the evidence Plaintiffs provided in  
12 support of Class certification, including the vast array of sources from which the identity of the  
13 Class can be ascertained, the commonality of the central legal issues in the case, and the enormous  
14 time and money saved by certifying the Class. The Court can see the unjust, inefficient quagmire  
15 that is the alternative to certification—1,000 individual relocation suits compounded by the City’s  
16 800+ individual cross-complaints. It defies logic that the latter would be a more efficient, equitable  
17 way to proceed. Thus, Plaintiffs respectfully request that the Court grant this Motion, certify the  
18 Master Class and Subclasses A & B, and enter the proposed Order filed with the moving papers.

19 Respectfully Submitted,

20 DATE: August \_\_, 2006

TATRO & ZAMOYSKI, LLP

21  
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23 Timothy J. Tatro, Esq.  
24 Attorneys for Plaintiffs

25 DATE: August \_\_, 2006

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