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County of Orange
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

DAVID A. SZECSEI, an individual, JUNE
MAIER, an individual, and ANTONIO
CUTTS, an individual;

Plaintiffs,

v.

CITY OF NEWPORT BEACH, a municipal
corporation; CITY COUNCIL OF THE CITY
OF NEWPORT BEACH; and DOES 1-100,
inclusive;

Defendants.

EBB TIDE, LLC, a California limited liability
company; and THE TOTAH FAMILY
PARTNERSHIP, a California limited
partnership;

Real Parties in Interest.

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND ADMINISTRATIVE
MANDAMUS, AND COMPLAINT FOR
JUST COMPENSATION,
DECLARATORY AND INJUNCTIVE
RELIEF, AND DAMAGES**

Date Filed: April 6, 2015

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1 **GENERAL ALLEGATIONS**

2 1. This action involves resident injury from the closure of Ebb Tide Mobilehome
3 Park (“**Ebb Tide MHP**”) through the processing of a subdivision map application and
4 “Relocation Impact Report”.

5 2. As detailed below, the CITY OF NEWPORT BEACH (“**NEWPORT**
6 **BEACH**”), by and through its CITY COUNCIL (collectively, together with NEWPORT
7 BEACH, “**CITY**”) adopted a resolution (“**Resolution**”) on January 27, 2015, which approved
8 a “Relocation Impact Report” (“**RIR**”), prepared by Overland, Pacific, and Cutler, Inc., on
9 behalf of the property owner “Totah Family Partnership” (“**Totah**”). Totah and Totah’s agent
10 Ebb Tide, LLC (“**Applicant**”) submitted the RIR to CITY, with the intention of changing Ebb
11 Tide MHP to a residential development through a tentative subdivision map (“**Tentative**
12 **Tract Map 17772**”).

13 3. The CITY, in adopting the Resolution and approving the RIR as sufficient for
14 the closure of the MHP:

15 a. Failed to proceed as required by law, which by virtue of Totah and the
16 Applicant’s application for a tentative subdivision map, *requires compliance with*
17 *California Government Code § 66427.4, which keys closure of the mobilehome park*
18 *to the approval of the subdivision Application, and which does not limit*
19 *compensation to residents;*

20 b. Failed to proceed as required by law, by approving the RIR which
21 makes resident consent to a “Voluntary Relocation Agreement” an express condition
22 of mitigation, *while at the same time unfairly suppressing a resident’s attempt to*
23 *include the Voluntary Relocation Agreement in the administrative record;*

24 c. Alternatively, assuming *arguendo* California Government Code §
25 65863.7 applies, failed to review the RIR, failed to evaluate mitigation of resident
26 impact from closing, and/or prejudicially ignored evidence that demonstrated the
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1 relocation plan was inadequate, and such other facts as shall be established at trial, in
2 that the City:

3 i. Failed to consider whether relocation payments would be made
4 prior to residents' termination of tenancy and requirement to vacate the space;
5 and/or

6 ii. Sanctioned unlawful termination notices which, contrary to the
7 RIR, **may only be given** "[a]fter all required permits requesting a change of use
8 have been approved by the local governmental board, commission, or body."
9 California Civil Code § 798.56(g)(2); and/or

10 iii. Failed to consider evidence in the record, which showed there
11 are insufficient replacement mobilehome spaces in neighboring mobilehome
12 parks, **and that most of the homes are incapable of relocation, thus**
13 **necessitating "in place" appraisal of the mobilehomes and compensation to**
14 **relocate residents;**

15 iv. Failed to consider "relocation costs" by adopting Totah and the
16 Applicant's incorrect interpretation of California Government Code § 65863.7,
17 suggesting the '...Owner is obligated to determine what elements should be
18 considered in determining "reasonable costs of relocation"...' RIR, Pg. 9.
19 However, per California Government Code § 65863.7(e), the City is
20 responsible to determine reasonable costs of relocation in its determination
21 whether to condition the closure application.

22 d. In approving the RIR and adopting the Resolution, the CITY violated
23 the mobilehome park residents' constitutional rights by *inter alia*, proximately causing
24 the taking of their mobilehomes—a direct and natural cause of the RIR, without
25 payment of just compensation.

26 4. Petitioner/Plaintiff DAVID A. SZECSEI ("SZECSEI") is an individual
27 residing at 1560 Placentia Ave., G-6, Newport Beach, CA 92663.

1 5. Petitioner/Plaintiff JUNE MAIER (“**MAIER**”) is an individual residing at
2 1560 Placentia Ave., C-01, Newport Beach, CA 92663.

3 6. Petitioner/Plaintiff ANTONIO CUTTS (“**CUTTS**”) is an individual residing at
4 1560 Placentia Ave., B-03, Newport Beach, CA 92663, (and collectively with MAIER and
5 SZECSEI “**HOMEOWNERS**”).

6 7. Respondent/Defendant CITY OF NEWPORT BEACH (“**CITY**”) is a
7 municipal corporation, organized and existing in the State of California, located within the
8 County of Orange, California.

9 8. Respondent/Defendant CITY COUNCIL OF THE CITY OF NEWPORT
10 BEACH is the CITY OF NEWPORT BEACH’s legislative body. As used herein, references
11 to the “**CITY**” include the acts carried out on its behalf by the City Council.

12 9. Real Party in Interest Totah Family Partnership (“**Totah**”) is named as a party
13 hereto, as HOMEOWNERS are informed, believe, and that basis allege that Totah’s interests
14 would be directly affected by the outcome of the proceeding, insofar as Totah is are the
15 property owner of Ebb Tide MHP.

16 10. Real Party in Interest Ebb Tide, LLC (“**Applicant**”) is named as a party hereto,
17 as HOMEOWNERS are informed, believe, and that basis allege that Applicant’s interests
18 would be directly affected by the outcome of the proceeding, insofar as the Applicant is the
19 anticipated purchaser of Ebb Tide MHP, and Totah’s agent relating to the Application and the
20 RIR.

21 11. HOMEOWNERS do not know the true names and capacities of the
22 Respondents/Defendants sued as DOES 1 through 100 inclusive, and therefore sues them by
23 their fictitious names. HOMEOWNERS allege that Respondents/Defendants DOES 1 through
24 100, inclusive, are jointly, severally and/or concurrently liable and responsible for the causes
25 of action set forth herein, acting on their own or as the agents of named
26 Respondents/Defendants. HOMEOWNERS will amend this Petition/Complaint to insert the
27 true names of the fictitiously named Respondents/Defendants when ascertained.

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1 which also fails to raise the applicability of California Government Code § 66427.4. The
2 report concludes “almost all of the units will not be able to be relocated to another park.”
3 Exhibit D, Pgs. 9-10.

4 19. SZECSEI, confirmed that the change in use was a result of the subdivision
5 Application after reviewing the CITY’s Notice of Incomplete Filing provided to Applicant,
6 and specifically informed the CITY they were proceeding contrary to law in correspondence
7 dated January 13, 2015, and included a copy of the Notice of Incomplete Filing. Exhibit E.
8 SZECSEI also attempted to submit the form Voluntary Relocation Agreement to the City, as
9 Exhibit B of his letter, but the CITY, by and through the City Attorney, refused to accept or
10 consider it for inclusion in the administrative record.

11 20. Notwithstanding its notice of the defects, errors, and objections above, the
12 CITY adopted the Resolution at the conclusion of the City Council Hearing. Exhibit F.

13
14 **APPLICABLE LAW**

15 21. The California Subdivision Map Act, California Government Code §§ 66410 *et*
16 *seq.* has specific provisions that govern changes in use at mobilehome parks that involve a
17 subdivision map. In particular, California Government Code § 66427.4 provides that: “**at the**
18 **time of filing a tentative or parcel map for a subdivision** to be created from the conversion
19 of a mobilehome park...to another use, the subdivider shall also file a report on the impact of
20 the conversion upon the displaced residents of the mobilehome park...” “In determining the
21 impact of the conversion on displaced mobilehome..., the report shall address the availability
22 of adequate replacement space in mobilehome parks...”. California Government Code §
23 66427.4 makes no citation outside of the Subdivision Map Act, and in particular, neither
24 references California Government Code § 65863.7, **nor limits the mitigation costs to the**
25 **cost of relocation.**

26 22. California Government Code § 65863.7, and any limitations on mitigation
27 costs to the “costs of relocation” specifically do not apply, as by its own terms, paragraph (a)

1 specifically excludes conversions related to the Subdivision Map Act: “Prior to the conversion
2 of a mobilehome park to another use, **except pursuant to the Subdivision Map Act**
3 **(Division 2 (commencing with Section 66410) of Title 7)...”** (emphasis added).

4
5 **THE HEARING**

6 23. On January 27, 2015, the CITY held a hearing (the “**Hearing**”) on the RIR and
7 adopted the Resolution. Both the Applicant and Paragon Partners gave testimony at hearing,
8 that California Government Code § 65863.7 applies, and mitigation costs “shall not exceed
9 the reasonable costs of relocation.” Both Applicant and Paragon Partners failed to note that
10 the controlling statute for the closure is California Government Code § 66427.4, which does
11 not contain this limitation. Further, even assuming *arguendo* California Government Code §
12 65863.7 applies, the Applicant failed to explain that under that section, the CITY retains
13 authority to include whatever items it so choses, in conditioning the change in use, so long as
14 the CITY deems them relocation costs.

15 24. MAIER objected at Hearing in a manner consistent with her previous
16 correspondence dated January 16, 2015, attached here as Exhibit G, that the RIR failed to
17 consider in-place appraisals, failed to consider that relocation to other parks in town would
18 actually cost between \$60,000 and \$100,000 (which also reflects in place value), and that the
19 RIR did not even provide for Totah or the Applicant to provide moving costs in advance *of*
20 move out.

21 25. SZECSEI objected in a manner consistent with his previous correspondence
22 dated January 13, 2015, attached here as Exhibit E, that that the RIR had a facial error, which
23 misrepresents the potential closing date. This error was apparently acknowledged by CITY at
24 the Hearing, but the CITY refused to require the Applicant to correct the RIR. SZECSEI also
25 noted that without a payment date, the residents lacked the ability to know when they would
26 be able to move. Further, SZECSEI objected that the Voluntary Relocation Agreement was
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1 not included as part of the RIR but was referenced as a required element. His attempt to
2 submit it previously had been rejected by CITY’s attorney.

3 26. At the Hearing, Mary Jo Baretich of the Golden State Manufactured-Home
4 Owners League spoke that the Purpose of the RIR is to “explain the protections” afforded to
5 the residents. She testified that relocation not only means moving the mobilehomes, but
6 putting people in mobilehomes of equal values (as an in place value of their homes, equal to
7 homes of equal value in the area). The structures should be appraised as the in-place value of
8 the homes as if they were not being relocated. Ms. Baretich stated that nearby Newport
9 Terrace mobilehomes range between \$65,000 and \$150,000, and that elsewhere, mobilehomes
10 range from \$250,000 to \$500,000.

11 27. Saul Wolf, an attorney for several of the Ebb Tide MHP residents, objected
12 that as the mitigation measures did not provide a schedule for payment. Mr. Wolf also alleged
13 that given there are inadequate replacement spaces, a “cap” for relocation cost was also
14 inadequate—calling on the CITY to determine reasonable relocation costs, without merely
15 deeming relocation was infeasible.

16
17 **THE RIR AND RESOLUTION ARE INCONSISTENT WITH APPLICABLE LAW**

18 28. The RIR introduction states plainly that the park will be closed as a result of
19 the Application for subdivision. However, the RIR fails to mention the Subdivision Map
20 Act’s mobilehome park closure requirements in California Government Code § 66427.4,
21 discussed above. Notably, California Government Code § 66427.4 does not limit the
22 mitigation burden to the total cost of relocation—which is in direct conflict with the
23 statements in the RIR.

24 29. The RIR also avoids citing the first line of California Government Code §
25 65863.7 which by its own terms, excludes conversions related to subdivision maps: “Prior to
26 the conversion of a mobilehome park to another use, *except pursuant to the Subdivision Map*
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1 *Act (Division 2 (commencing with Section 66410) of Title 7...* California Government
2 Code § 65863.7(a) (emphasis added).

3 30. Notwithstanding this exclusion, Overland, Pacific, and Cutler, Inc.
4 (“**Overland**”) ignore California Government Code § 66427.4, and arbitrarily limit the
5 relocation costs, saying: ‘[w]hile the requirements that may be imposed “to mitigate” are
6 stated in the California Government Code, there are no clear guidelines to determine what is
7 *required* to mitigate any adverse impact. Section 65863.7 does not require a local government
8 to impose any mitigation measures, but clearly limits any measures imposed to the reasonable
9 cost of relocation.’ RIR, Page 9-10 (emphasis original). In light of the subdivision map
10 application filed concurrently, which “proposed project will replace the Park’s existing 73
11 spaces, site improvements and mobile homes,” Overland’s report is facially inconsistent and
12 fatally flawed. RIR, Page 1. Quite simply, there is no limit to “the reasonable cost of
13 relocation.”

14 31. The RIR goes on to propose fixed payments capped at the maximum amount of
15 moving costs. RIR, Page 10-11.

16 32. The RIR also fails to show that impact will be mitigated at all—by not even
17 providing a schedule for payment, among other deficiencies to be shown at the time of trial.

18
19 **FIRST CAUSE OF ACTION**

20 **(Petition for Writ of Mandate, California Code of Civil Procedure § 1085 by all**

21 **Plaintiffs against all Defendants)**

22 33. HOMEOWNERS incorporate by reference the allegations contained in
23 paragraphs 1 through 32 above.

24 34. California Code of Civil Procedure § 1085 authorizes courts to issue a writ of
25 mandate to compel the performance of an act that the law specifically requires. *US Ecology v.*
26 *Cal.*, 92 Cal. App. 4th 113, 138 (2001). Writ relief is available to compel a public officer to
27 perform a mandatory ministerial act. *Id.* Pursuant to California Code of Civil Procedure §
28

1 1085, writ relief is also available to correct a legislative decision that is arbitrary, capricious,
2 entirely lacking in evidentiary support, contrary to established public policy, unlawful, or
3 procedurally unfair.

4 35. The CITY failed to comply with the procedural and substantive requirements
5 of applicable law. Such failures include, but are not limited to applying the incorrect
6 procedural standard, through citation to California Government Code § 65863.7, **which states**
7 **it does not apply to conversions to another use resulting from Subdivision Map Act**
8 **applications:** “Prior to the conversion of a mobilehome park to another use, except pursuant
9 to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7).”

10 36. Such failures also include failing to enforce the California Subdivision Map
11 Act, California Government Code §§ 66410 *et seq.*, specifically California Government Code
12 § 66427.4, which provides—without limitation—**“at the time of filing a tentative or parcel**
13 **map for a subdivision** to be created from the conversion of a mobilehome park...to another
14 use, the subdivider shall also file a report on the impact of the conversion upon the displaced
15 residents of the mobilehome park...” (emphasis added). “In determining the impact of the
16 conversion on displaced mobilehome..., the report shall address the availability of adequate
17 replacement space in mobilehome parks...” California Government Code § 66427.4 makes no
18 citation outside of the Subdivision Map Act, and in particular, neither references California
19 Government Code § 65863.7, **nor limits the mitigation costs to the cost of relocation.**

20 37. By failing to follow the procedures applicable to mobilehome park conversion
21 under California Government Code § 66427.4, the CITY acted arbitrarily and capriciously
22 and failed to proceed in the manner required by law. HOMEOWNERS have no plain, speedy,
23 and adequate remedy other than issuance of a writ of mandate to invalidate the Resolution.
24 HOMEOWNERS are beneficially interested because they own mobilehomes within Ebb Tide
25 MHP, and are the beneficiary of the protections in California Government Code § 66427.4.
26 HOMEOWNERS are entitled to a writ of mandate commanding Respondent/Defendant to set
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1 aside the Resolution and RIR, and direct the City to process said park closure pursuant to
2 California Government Code § 66427.4.

3 38. HOMEOWNERS further allege that the CITY’s actions alleged above were
4 arbitrary and capricious, and entitle HOMEOWNERS to attorneys fees under California
5 Government Code § 800.

6
7 **SECOND CAUSE OF ACTION**

8 **(Petition for Writ of Administrative Mandamus, California Code of Civil Procedure §**
9 **1094.5 by all Plaintiffs against all Defendants)**

10 39. HOMEOWNERS incorporate by reference the allegations contained in
11 paragraphs 1 through 38 above.

12 40. To the extent that the Court finds that HOMEOWNERS have no right to
13 recourse under California Code of Civil Procedure § 1085 above, HOMEOWNERS contend
14 that CITY, at all relevant times mentioned herein, proceeded without and in excess of its
15 jurisdiction and prejudicially abused its discretion. The CITY:

- 16 a. has not proceeded in the manner required by law;
17 b. the Resolution is not supported by the findings; and
18 c. the findings are not supported by substantial evidence.

19 41. The CITY has not proceeded in the manner required by law as the RIR admits
20 on its face, that the park closure will occur as a result of the Application. RIR, Page 1.
21 Applicable law requires that the RIR “address the availability of adequate replacement space
22 in mobilehome parks”, and allows that the CITY “may require the subdivider to take steps to
23 mitigate any adverse impact of the conversion on the ability of displaced mobilehome
24 park...residents to find adequate space in a mobilehome park...” *without any limitation to*
25 *the reasonable costs of relocation.* California Government Code § 66427.4.

26 42. Further, the CITY has not proceeded in the manner required by law, *as the*
27 *CITY, by and through the City Attorney, refused to receive and consider the “Voluntary*
28

1 *Relocation Agreement” provided by Applicant to SZECSEI, which “Voluntary Relocation*
2 *Agreement” is specifically referenced in the RIR as a condition to mitigation payments.*

3 SZECSEI included this specimen in his January 13, 2015 letter to CITY, but which the CITY
4 disingenuously cites “Not Provided”. This refusal to consider the Voluntary Relocation
5 Agreement deprived HOMEOWNERS of a fair proceeding, and reflects a prejudicial abuse of
6 discretion.

7 43. In the alternative, should California Government Code § 65863.7(e) apply, the
8 CITY has not proceeded in the manner required by law, as the CITY does not make a
9 determination of what should be included in “reasonable costs of relocation.” To the contrary,
10 the RIR makes a reckless, unsupported conclusion that “...the Owner is obligated to
11 determine what elements should be considered in determining “reasonable costs of
12 relocation”. RIR, Pg. 9. This is contrary to California law; pursuant to California Government
13 Code § 65863.7(e), the CITY is empowered to determine the “reasonable costs of relocation,”
14 as the CITY retains authority to “require, as a condition of the change, the person or entity to
15 take steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the
16 ability of displaced mobilehome park residents to find adequate housing in a mobilehome
17 park.”

18 44. Further, and regardless of whether the limitation in California Government
19 Code § 65863.7 applies, the CITY lacks substantial evidence to support the Resolution, given
20 that the report explains plainly: “[o]nly one of the existing homes within the Park meets the
21 ten year age standard based on information provided that may be considered for acceptance
22 by another park in the immediate vicinity. Therefore, under the above generally accepted
23 standards and practices, it is a reasonable assumption that only a very limited number of
24 mobile homes...may be relocated to a comparable mobile home park....” RIR, Page 8. The
25 RIR goes on to adopt a single payment under RIR, with no consideration, discussion, or
26 ostensible relationship to the difference in cost between mobilehome space rent and apartment
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1 rents, or the value of the mobile home, or a Resident’s outstanding mortgage for purchase of
2 their mobilehome. RIR, Page 9.

3 45. Further, and regardless of whether the limitation in California Government
4 Code § 65863.7 applies, the CITY lacks substantial evidence to support the Resolution, as
5 under the “Proposed Mitigation Measures,” the RIR only allows payment “...provided the
6 mobile home owner signs a cooperation agreement that terminates any tenancy/occupancy
7 and permanently vacates the Park,” yet the RIR *does not include a copy of the “cooperation*
8 *agreement”, which is an express condition of the mitigation measures*, and which could
9 include unconscionable terms without oversight of the CITY. RIR, Page 11.

10 46. The Resolution contains no evidence, analysis, or explanation that would
11 support the conclusion that the CITY addressed the requirements of California Government
12 Code § 66427.4.

13 47. Alternatively, the Resolution contains no evidence, analysis, or explanation
14 that would support the conclusion in Section 3, Paragraph 1, that the CITY addressed the
15 requirements of California Government Code § 65863.7:

16 a. the RIR fails to provide for the mandatory one-year notice prior to
17 termination of tenancy if no further entitlements were required for closure—or
18 alternatively, fails to provide for a six-month notice prior termination of tenancy once
19 the entitlements for change of use are approved, per California Civil Code §
20 798.56(g)(2);

21 b. the RIR requires a resident election and method of relocation in sixty
22 days after approval of CITY’s approval of same, notwithstanding that the termination
23 of tenancy would be a year or more away;

24 c. the RIR lacks any substantive consideration of impacts to Ebb Tide
25 MHP residents after concluding it is likely that most, if not all residents, will be unable
26 to relocate their mobilehomes, such as:

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- i. the disparity in cost between Ebb Tide MHP lot rent and apartment rent within ; or
- ii. the impact of closure on residents with mortgages on their mobilehomes, or the inevitable forfeiture of the vast majorities of mobilehome resulting from the closure; or

d. the RIR lacks an explanation of the mitigation measures, and implementation of relocation payments, most notably through the lack of a copy of the RIR’s express condition on mitigation payments, namely a separate “cooperation agreement,” the terms of which were not disclosed;

48. By applying the incorrect standard, or alternatively by failing to consider the actual relocation impact to HOMEOWNERS of closure of Ebb Tide MHP, such as loss of value for their mobilehomes, default on purchase loans for their mobilehomes, and disparity between replacement apartment rent relative to mobilehome space rent, the RIR data considered by the CITY in Resolution, is biased and does not represent the true impacts to residents of the park closure.

49. In sum, the CITY’s Resolution fails to apply the correct standard required by law, or fails to consider the impacts as required by law. These flagrant defects illustrate that the CITY abused its discretion and the Resolution has no real evidentiary support. Accordingly, the CITY should be ordered to rescind the Resolution.

50. HOMEOWNERS further allege that the CITY’s actions, specifically, but without limitation the decision to suppress the Voluntary Relocation Agreement submitted by SZECSEI, were arbitrary and capricious, and entitle HOMEOWNERS to attorneys fees under California Government Code § 800.

1 **THIRD CAUSE OF ACTION**

2 **(Declaratory and Injunctive Relief by all Plaintiffs against all Defendants)**

3 51. HOMEOWNERS incorporate by reference the allegations contained in
4 paragraphs 1 through 50 above.

5 52. An actual controversy has arisen between HOMEOWNERS and CITY
6 concerning their respective rights and duties.

7 53. HOMEOWNERS contend that:

8 a. the CITY is required to follow California Government Code § 66427.4,
9 as per the RIR, a subdivision Application is causing the closure of Ebb
10 Tide MHP;

11 b. California Government Code § 66427.4 does not include a limitation
12 on the reasonable cost of relocation;

13 c. California Government Code § 65863.7 does not apply to mobilehome
14 park closure resulting in part from a Subdivision Map Application, in
15 that the first paragraph of subpart (a) specifically excludes conversion
16 from a Subdivision Map Act: “Prior to the conversion of a mobilehome
17 park to another use, *except pursuant to the Subdivision Map Act*
18 *(Division 2 (commencing with Section 66410) of Title 7)*, or prior to
19 closure of a mobilehome park or cessation of use of the land as a
20 mobilehome park, the person or entity proposing the change in use
21 shall file a report on the impact of the conversion, closure, or cessation
22 of use upon the displaced residents of the mobilehome park to be
23 converted or closed.” (emphasis added);

24 d. as a subdivision application is involved with the change in use for Ebb
25 Tide MHP, a required notice of termination may only be given for six
26 months from the CITY’s approval of the final entitlements, as per
27 California Civil Code § 798.56(g)(2);
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54. In the alternative, HOMEOWNERS contend that:
- a. the CITY’s suppression of the Voluntary Relocation Agreement from discussion and consideration at the hearing was wrongful and deprived HOMEOWNERS of a fair hearing;
 - b. the RIR, as approved by the CITY’s Resolution is illusory and void for vagueness in that it makes payments of compensation to residents who are unable to relocate their homes *wholly contingent* upon execution of a “Voluntary Relocation Agreement”, which has not been provided to the CITY with the RIR or at hearing, and not included in the administrative record;
 - c. the RIR, as approved by the CITY’s Resolution, fails to describe the relationship between the CITY and the Totah, to the detriment of the CITY, saying: “...the Owner is obligated to determine what elements should be considered in determining “reasonable costs of relocation.” RIR, Pg. 9. To the contrary, the **CITY retains the jurisdiction, as the limitation occurs only as part of the CITY’s determination of the conditions to mitigate the impact of closure upon mobilehome park residents:** the CITY “may require, as a condition of the change, the person or entity to take steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome park.” California Government Code § 65863.7(e).
55. As to either alternative, HOMEOWNERS contend that
- a. RIR is void and unenforceable
 - b. the approval Resolution is void and unenforceable
 - c. the HOMEOWNERS cannot not be forced to move out of Ebb Tide MHP, and Totah and Applicant must continue to operate the

1 mobilehome park until, and only if, the Park closure is properly
2 administered.

3 56. Based on the acts and conduct of the City, the HOMEOWNERS are informed
4 and believe, and thereon allege that to the contentions in paragraphs 53 through 55 above, the
5 CITY contends to the contrary.

6 57. HOMEOWNERS have no plain, speedy and adequate remedy at law, other
7 than this proceeding to compel the CITY to take the actions requested by this
8 Petition/Complaint. Unless and until the CITY is enjoined from continued violation of the law
9 by order of this Court, CITY will suffer great and irreparable injury. HOMEOWNERS seek
10 declaratory and injunctive relief to prevent continued harm and to protect HOMEOWNERS
11 from the CITY's unlawful conduct.

12 58. HOMEOWNERS seek a judicial declaration of the rights and duties of the
13 respective parties.

14 **FOURTH CAUSE OF ACTION**

15 **(Taking: California Constitution, Article I, § 19; U.S. Constitution, Fifth Amendment,**

16 **by all Plaintiffs against all Defendants)**

17 59. HOMEOWNERS incorporate by reference the allegations contained in
18 paragraphs 1 through 58 above.

19 60. The CITY as the approving agency for the Resolution, has direct and
20 substantial involvement in authorizing Applicant and Totah's conduct and the closure of Ebb
21 Tide MHP, and the RIR specifically relates to HOMEOWNERS' mobilehomes,

22 61. The Resolution effects a per se taking of the HOMEOWNERS' mobilehomes
23 (the "Property") without just compensation. By approving the RIR which states plainly it is
24 intended to support the Application for a tentative subdivision map, **by the Applicant's own**
25 **admission in the RIR, the Resolution leaves the Property without an economically**
26 **productive or beneficial use--and thereby destroys the value of the Property.**

27

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1 62. In the alternative, the Resolution effects a taking of the Property under the
2 principles of *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978). The
3 economic impact of the action authorized by the Resolution is so severe, that it destroys the
4 value of the property. The Resolution interferes with the HOMEOWNERS' reasonable
5 investment-backed expectations as HOMEOWNERS reasonably expected they could
6 continue living in their mobilehomes. The character of the CITY's action in adopting the
7 Resolution, likewise militates in favor of finding a taking.

8 63. HOMEOWNERS have submitted a claim to CITY under the Government
9 Claims Act, California Government Code §§ 810 *et seq.* HOMEOWNERS will amend this
10 Petition and Complaint to allege the CITY's rejection of that claim.

11 64. If and to the extent HOMEOWNERS would otherwise be required to show a
12 final determination of the beneficial use alleged, such showing is established or excused. The
13 Resolution explicitly prevents any such further determination/exercise, and there is no further
14 process allowing for variance or excuse from the Resolution.

15 65. HOMEOWNERS are accordingly entitled to recover just compensation for the
16 taking of their Property. HOMEOWNERS are also entitled to recover their attorneys' fees and
17 litigation expenses under 42 U.S.C. § 1988 and California Code of Civil Procedure § 1036.

18
19 **FIFTH CAUSE OF ACTION**

20 **(Denial of Due Process: U.S. Constitution, 14th Amendment, § 1; California**
21 **Constitution, Article I, § 7, by all Plaintiffs against all Defendants)**

22 66. HOMEOWNERS incorporate by reference the allegations contained in
23 paragraphs 1 through 65 above.

24 67. The Fourteenth Amendment to the Constitution of the United States guarantees
25 that no State shall "deprive any person of life, liberty, or property, without due process of
26 law." Similarly, Article I, Section 7 of the California Constitution provides that "[a] person
27 may not be deprived of life, liberty, or property without due process of law." The due process
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1 clause includes a substantive component, which guards against arbitrary, capricious,
2 malicious, abusive, or irrational government action.

3 68. HOMEOWNERS have a constitutionally protected property interest in their
4 mobilehomes. CITY violated HOMEOWNERS' right to substantive due process by
5 approving the RIR and adopting the Resolution, as detailed above. At the behest of the
6 Applicant, the CITY deliberately flouted the law and, in doing so, trampled
7 HOMEOWNERS' property rights.

8 69. HOMEOWNERS have suffered damages due to CITY's violation of their right
9 to substantive due process. HOMEOWNERS are entitled to recover their damages as well as
10 their attorneys' fees and litigation expenses under 42 U.S.C. § 1988 and California Code of
11 Civil Procedure § 1021.5.

12 13 **SIXTH CAUSE OF ACTION**

14 **(Denial of Equal Protection: U.S. Constitution, 14th Amendment, § 1; California** 15 **Constitution, Article I, § 7, by all Plaintiffs against all Defendants)**

16 70. HOMEOWNERS incorporate by reference the allegations contained in
17 paragraphs 1 through 69 above.

18 71. The Fourteenth Amendment to the Constitution of the United States provides
19 that no State shall "deny to any person within its jurisdiction the equal protection of the laws."
20 Similarly, Article I, Section 7 of the California Constitution provides that "[a] person may not
21 be ...denied equal protection of the laws." The equal protection clause secures every person
22 against intentional and arbitrary discrimination, whether occasioned by the express terms of a
23 statute, or by the improper execution of the law.

24 72. By taking the actions as described above, the CITY intentionally treated
25 HOMEOWNERS' Property differently from every other property in its jurisdiction, without a
26 rational basis for doing so. The CITY's actions were irrational and wholly arbitrary.

1 73. HOMEOWNERS have suffered damages due to the CITY's violation of their
2 right to equal protection. HOMEOWNERS are entitled to recover their damages as well as
3 their attorneys' fees and litigation expenses under 42 U.S.C. § 1988 and California Code of
4 Civil Procedure § 1021.5.

5
6 WHEREFORE, HOMEOWNERS pray as follows:

7 On the First Cause of Action, Petition for a Writ of Mandate:

8 A. For issuance of a writ of mandate under California Code of Civil Procedure §
9 1085 ordering the CITY to repeal, invalidate, and/or refuse to enforce the Resolution;

10 B. For attorneys fees pursuant to California Government Code § 800;

11
12 On the Second Cause of Action, Petition for Administrative Mandamus:

13 C. For issuance of a writ of administrative mandamus under California Code of
14 Civil Procedure § 1094.5 ordering the CITY to repeal, invalidate, and/or refuse to
15 enforce the Resolution;

16 D. For attorneys fees pursuant to California Government Code § 800;

17
18 On the Third Cause of Action, Declaratory Relief:

19 E. For a declaration that:

20 1) the CITY is required to follow California Government Code § 66427.4,

21 2) California Government Code § 66427.4 does not include a limitation
22 on the reasonable cost of relocation;

23 3) California Government Code § 65863.7 does not apply to mobilehome
24 park closure resulting in part from a Subdivision Map Application;

25 4) accordingly, the CITY has failed to discharge their duty above as
26 required by California Government Code § 66427.4, as set forth above and the
27 Resolution is accordingly illegal, void, and unenforceable;

1 5) a required notice of termination may only be given for six months from
2 the CITY's approval of the final entitlements, as per California Civil Code §
3 798.56(g)(2);

4 F. Alternatively, for a declaration that:

5 1) the CITY's suppression of the Voluntary Relocation Agreement from
6 discussion and consideration at the hearing was wrongful and deprived
7 HOMEOWNERS of a fair hearing;

8 2) the failure to include the "Voluntary Relocation Agreement" makes the
9 RIR, illusory and unenforceable, and void for vagueness;

10 3) under California Government Code § 65863.7(e), the CITY retains the
11 jurisdiction to determine what costs are "reasonable relocation costs" without
12 being constrained by moving cost alone;

13 4) alternatively, the Resolution amounts to an abuse of discretion, or
14 otherwise violates the law as set forth above, and is null and void.

15 5) For either alternative, a declaration that:

16 a) the RIR is void and unenforceable;

17 b) the approval Resolution is void and unenforceable; and

18 c) the HOMEOWNERS cannot not be forced to move out of Ebb
19 Tide MHP, and Totah and Applicant must continue to operate the
20 mobilehome park until, and only if, the Park closure is properly
21 administered.

22 G. For issuance of a preliminary and permanent injunction precluding the CITY
23 from enforcing the Resolution against HOMEOWNERS and the Property; and

24 H. For attorneys' fees and litigation expenses;

25
26 On the Fourth Cause of Action, Takings:

27 I. For Just Compensation according to proof ; and
28

VERIFICATION

I, June Maier, declare:

I have read the VERIFIED PETITION FOR WRIT OF MANDATE AND ADMINISTRATIVE MANDAMUS, AND COMPLAINT FOR JUST COMPENSATION, DECLARATORY AND INJUNCTIVE RELIEF, AND DAMAGES and know its contents. I am informed and believe and on that ground, allege that the matters stated in the VERIFIED PETITION FOR WRIT OF MANDATE AND ADMINISTRATIVE MANDAMUS, AND COMPLAINT FOR JUST COMPENSATION, DECLARATORY AND INJUNCTIVE RELIEF, AND DAMAGES are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Newport Beach, California on the 2nd day of April 2015.

June Maier



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VERIFICATION

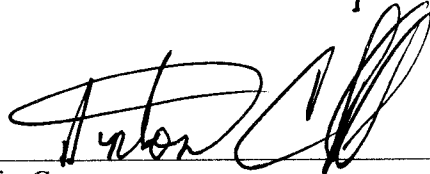
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I, Antonio Cutts, declare:

I have read the VERIFIED PETITION FOR WRIT OF MANDATE AND ADMINISTRATIVE MANDAMUS, AND COMPLAINT FOR JUST COMPENSATION, DECLARATORY AND INJUNCTIVE RELIEF, AND DAMAGES and know its contents. I am informed and believe and on that ground, allege that the matters stated in the VERIFIED PETITION FOR WRIT OF MANDATE AND ADMINISTRATIVE MANDAMUS, AND COMPLAINT FOR JUST COMPENSATION, DECLARATORY AND INJUNCTIVE RELIEF, AND DAMAGES are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Newport Beach California on the 2 day of 4 2015.



Antonio Cutts

VERIFICATION

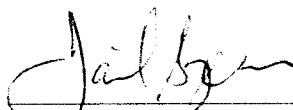
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I, David Szecsei, declare:

I have read the VERIFIED PETITION FOR WRIT OF MANDATE AND ADMINISTRATIVE MANDAMUS, AND COMPLAINT FOR JUST COMPENSATION, DECLARATORY AND INJUNCTIVE RELIEF, AND DAMAGES and know its contents. I am informed and believe and on that ground, allege that the matters stated in the VERIFIED PETITION FOR WRIT OF MANDATE AND ADMINISTRATIVE MANDAMUS, AND COMPLAINT FOR JUST COMPENSATION, DECLARATORY AND INJUNCTIVE RELIEF, AND DAMAGES are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Newport Beach, California on the 2nd day of April 2015.



David Szecsei