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OF ORIGINAL FILED
Los Angeles Superior Court

DEC 24 2012

John A. Clarke, Executive Officer/Clerk

By M. Vandeman, Deputy

5 Plaintiff-Petitioner in pro per

CASE MANAGEMENT CONFERENCE

6 APR 15 2013

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Date

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE

8 COUNTY OF LOS ANGELES, WEST DISTRICT

9 Case No. SC119545

LISA HART COLE

10 BRENDA BARNES, an Individual;)

Case No.

11 Plaintiff-Petitioner,)

**COMPLAINT FOR INJUNCTIVE RELIEF AND
PETITION FOR WRIT OF MANDATE, FOR
FAILURE TO PROCEED AS ENJOINED BY LAW**

12 v.)

**BY: (1) ACCEPTING APPLICATION FOR
REMOVAL PERMIT WITHOUT REGULATIONS
REQUIRED BY CITY CHARTER AND DUE
PROCESS OF LAW; (2) THREATENING TO HEAR
APPLICATION FOR REMOVAL PERMIT WITHOUT
DOCUMENTS ON ISSUES RAISED BEING
ACCESSIBLE AS REQUIRED BY CHARTER AND
DUE PROCESS; (3) THREATENING TO
DECIDE REMOVAL PERMIT CASE UNDER
INFLUENCE OF CITY COUNCIL, AS PROHIBITED
BY CITY CHARTER; (4) THREATENING TO
DECIDE REMOVAL PERMIT APPLICATION
COVERING 109 TRAILERS NOT OWNED BY OR
UNLAWFULLY OBTAINED BY APPLICANT,
WHEN CITY CHARTER ALLOWS REMOVING
ONLY "A" CONTROLLED RENTAL UNIT;
(5) THREATENING TO DECIDE REMOVAL
PERMIT APPLICATION FOR A "PROPERTY"
WITH NO AUTHORITY IN CITY CHARTER; AND
(6) THREATENING TO PROCESS A REMOVAL
PERMIT APPLICATION WHEN DEFENDANTS
AND RPIs HAVE ALREADY VIOLATED THE
BROWN ACT AND STATE CONSTITUTION BY
CONSPIRING TO VIOLATE PLAINTIFF'S AND
THE PUBLIC'S RIGHT TO FAIR PUBLIC HEARING**

13 TRACY CONDON, as Administrator)
14 of the Santa Monica Rent Control)
15 Board; Stephen Lewis, as General)
16 Counsel of the Santa Monica Rent)
17 Control Board; and SANTA MONICA)
18 RENT CONTROL BOARD, a Public)
19 Agency of the City of Santa Monica;)

20 Defendants-Respondents.)

21 VILLAGE TRAILER PARK, INC., a)
22 California Corporation; and VILLAGE)
23 TRAILER PARK, LLC, a California)
24 Limited Liability Company, a)
25 General Partnership, dba VILLAGE)
26 TRAILER PARK; MARC L. LUZZATTO,)
27 An Individual; WELK REAL ESTATE,)
28 INC., a California Corporation;)

Defendants-Real Parties in Interest.)

1 (C.C.P. §§ 525 et seq. and 1060, 1021.5, and 1085
2 et seq.; Gov't C. §§ 800 and 54950 et seq.; Santa
3 Monica Charter, §§ 1803 (g) and (t)(1), 1801(c),
4 1802, 1807, 1803(t)(2)(ii), 1801(m), 1803(f)(10);
5 and California Constitution, Article 1, section 3(b)
6 and 7)

7 **UNLIMITED CIVIL CASE, EQUITABLE RELIEF**
8 **AND WRIT REQUESTED**

9 **(FILED CONCURRENTLY WITH EXHIBITS**
10 **UNDER SEPARATE TITLE, REQUEST FOR**
11 **JUDICIAL NOTICE ("RJN"), AND NOTICE OF**
12 **RELATED CASES)**

13 **COMPLAINT AND PETITION FOR WRIT OF MANDATE**

14 Plaintiff-Petitioner BRENDA BARNES ("Plaintiff," "Petitioner," or "BARNES") alleges:

15 **GENERAL ALLEGATIONS**

- 16 1. Plaintiff is an individual residing at the subject property, Village Trailer
17 Park, at 2930 Colorado Avenue, Santa Monica, California ("subject property" or
18 "Park"). At all times relevant, specifically since on or about July 10, 2006 when
19 events detailed in this Complaint/Petition began, Plaintiff has been an authorized and
20 lawful resident of the subject property, as an immediate family member of the
21 registered legal owner, as a member and residual beneficiary of the Family Trust to
22 hold ownership the trailer was placed in by one of the then-registered legal owners,
23 her son, and as a renter from the Family Trust, which is now in the form of an LLC.
24 Plaintiff purchased the trailer herself in 1986, and is now an elderly renter thereof,
25 one of the groups particularly to be protected by rent control, along with the poor,
26 minorities, families with children, the disabled, and students (RJN, Exh. A). Plaintiff
27 therefore has sufficient interest to sue on behalf of herself alone, based on equitable
28 and/or legal title, residency, and rental of a controlled rental unit. Plaintiff also is a
taxpayer and voter in the City of Santa Monica, and brings this action as such.
2. The subject property is located in the venue of the West Judicial District, County
of Los Angeles, California.

- 1 3. All Defendants-Respondents except the SANTA MONICA RENT CONTROL
2 BOARD ("SMRCB") (identified hereinafter by name) are employees and officials of
3 SMRCB and are sued in their official capacities as such.
- 4 4. Defendant-Respondent SANTA MONICA RENT CONTROL BOARD is an agency
5 created and governed by the Charter of the City of Santa Monica, which is a charter
6 city of the State of California, located in and operating wholly within the West Judicial
7 District of the County of Los Angeles. SMRCB is enjoined by law to follow the City
8 Charter and the general law of the State of California applicable to charter cities, and
9 the constitutions of California and the United States of America. That SMRCB has
10 not done so and threatens not to do so in the future are the sole bases for this suit.
- 11 5. At all times mentioned, Plaintiff is informed and believes and on that ground
12 alleges Defendants-Real Parties in Interest VILLAGE TRAILER PARK, INC., and WELK
13 REAL ESTATE, INC. were and are California Corporations registered with and doing
14 authority under corporate charters issued by the State of California, and Defendant-
15 Real Party in Interest VILLAGE TRAILER PARK, LLC, was and is a California
16 Limited Liability Company, that all three entities were and are a General Partnership
17 doing business as and/or the Manager of VILLAGE TRAILER PARK, in the area
18 under the jurisdiction of the West District of the Superior Court of the County of Los
19 Angeles, and that as such were and are liable to Plaintiff due to responsibility in
20 some fashion for their own actions and/or actions by Defendants and/or other Real
21 Parties in Interest with whom they are related or in concert, as alleged herein.
- 22 6. Defendant-Real Party in Interest ("RPI") MARC L. LUZZATTO ("LUZZATTO") is
23 an individual residing and/or doing business in the City of Santa Monica within the
24 jurisdiction of the West District of the Superior Court of the County of Los Angeles
25 and according to the registration form filed in 2006 (Exhibit C) is President of WELK
26 REAL ESTATE, INC. and incorrectly calls himself "President" of VILLAGE TRAILER
27 PARK, LLC (such companies do not have officers). As such, and due to entering
28 into a conspiracy with these parties and the other Defendants-Respondents in or

1 about July 2007, as alleged herein, LUZZATTO is a General Partner with VILLAGE
2 TRAILER PARK, INC., which holds itself out in related case No. 12U02139 as being
3 in a General Partnership with VILLAGE TRAILER PARK, LLC.

- 4 7. Plaintiff is informed and believes and thereon alleges each Defendant and RPI was
5 the agent, employee, servant, aider, abettor, co-conspirator and/or co-actor of each
6 other Defendant and RPI in doing acts alleged herein to have been done by
7 Defendants and RPIs, and that due to their complicity in a conspiracy with each other
8 each is responsible for all damage caused to and need for relief suffered by Plaintiff
9 and alleged herein, and whether each was a direct actor or because of his/her/its
10 vicarious liability due to joining in conspiracy, is responsible for actions of every other.

11 JURISDICTION OVER SUBJECT MATTER AND VENUE

- 12 8. This is a case seeking a Writ of Mandate and injunctive relief, with incidental
13 damages and attorney's fees, and reserving the right to seek other and different
14 types of relief after discovery, where the entity as to which mandate is sought,
15 SMRCB, operates wholly within the West District. Therefore, pursuant to Local Rule
16 2.3(a)(1)(B), the case is optionally filed in either the West or the Central District and
17 Plaintiff is choosing to file it in the West District because a related case has been
18 pending there for a number of years, and reserves the right if the Court hearing that
19 case does not consolidate it with this one to transfer the case to the Central District
20 and seek consolidation with a related case pending there.

21 FIRST CAUSE OF ACTION

22 (For a Writ of Mandate Directing Defendants as Indicated Herein, and
23 Attorneys' Fees, Reserving the Right to Ask Leave of Court to Request
24 Further and Different Types of Relief and Damages, for **FAILURE TO
PROCEED AS REQUIRED BY LAW BY ACCEPTING AN APPLICATION
FOR REMOVAL PERMIT WITHOUT REGULATIONS REQUIRED BY CITY
CHARTER**; and for injunctive Relief Against Real Parties in Interest, jointly
25 and severally, Pursuant to Santa Monica City Charter §§ 1803(g) and 1803(t)
26 (1), and C.C.P. §§ 525 et seq., and 1085)

- 27 9. Plaintiff realleges and incorporates by reference as though set forth and
28 repeated in full here, all allegations of Paragraphs 1 through 8, inclusive, above.

- 1 10. Santa Monica City Charter § 1803(g) reads in relevant part as follows:
2 (g) RULES AND REGULATIONS: The Board shall issue and follow such
3 rules and regulations, including those which are contained in this Article,
4 as will further the purposes of the Article. (Emphasis added.)
- 5 11. Santa Monica City Charter § 1803(t)(1) reads in relevant part as follows:
6 (t) REMOVAL OF CONTROLLED UNIT FROM RENTAL HOUSING MARKET:
7 (1) Any landlord who desires to remove a controlled rental unit from the
8 rental housing market by demolition, conversion or other means is
9 required to obtain a permit from the Board prior to such removal from
10 the rental housing market in accordance with rules and
11 regulations promulgated by the Board. (Emphasis added.)
- 12 12. Defendants are therefore specifically required by law to have rules and
13 regulations applying to all their work, and specifically to hearing applications for
14 removal permits.
- 15 13. Nonetheless, Defendants' website states and has stated for at least the last
16 year that the "regulation" applying to removal permits is "suspended." Exhibit "A", ¶
17 1, incorporated here by reference as though repeated in full. Therefore, although
18 Petitioner obtained a copy of the Chapter 5 Regulations promulgated by the Board
19 applying to removal permit cases until 1999, and has attached it hereto as Exhibit F,
20 SMRCB claims those regulations are not in effect. Moreover, the Notice of
21 Application for Removal Permit stamped received on November 7, 2012 on p. 1,
22 attached hereto as Exhibit E and incorporated here by reference as though repeated
23 in full, states at the top of page 2 that it will be decided by SMRCB pursuant to
24 Charter section 1803(t), not any regulations.
- 25 14. In addition, although the City Charter specifically requires RPIs to obtain a
26 permit "in accordance with rules and regulations promulgated by the Board," RPIs
27 are persisting in applying for such a permit when SMRCB claims there are no
28 rules and regulations promulgated by the Board in effect.

1 15. Petitioner is irreparably harmed by a removal permit's being applied for by
2 RPIs and processed by Defendants without regulations in effect in advance
3 because SMRCB can conspire and according to the admission of RPI LUZZATTO
4 detailed in Exhibit A, ¶ 2, did conspire in 2007 with RPIs to make up procedures
5 and substantive standards to apply for this case only, depriving Petitioner of due
6 process of law and the right to know in advance what standards will apply, as is
7 guaranteed by the Charter's requirements that the Board promulgate and adopt
8 after public hearing regulations to apply to all its work and specifically to removal
9 permit applications, and also by state Constitution article 1, section 7(a).

10 16. Plaintiff is also irreparably harmed by SMRCB's not having regulations in
11 effect to govern approval of removal permits because SMRCB knows it cannot
12 keep RPIs from exercising their right to remove units from rental housing under
13 the Ellis Act once the units are built if they are new construction, since SMRCB
14 and the City lost on exactly this issue in Embassy, LLC v. City of Santa Monica
15 (2nd Dist., 2010) 185 Cal.App.4th 771, 777. This means while SMRCB pretends it
16 is protecting Plaintiff's rights in requiring RPIs to construct replacement housing for
17 removed units under Charter § 1803(t)(2)(ii)—and it is able to so protect current
18 residents as to vacancy decontrol because there is a section of the state law
19 permitting such exception, Civ. C. § 1954.52(b)—there is no such exception to the
20 Ellis Act, as the Court of Appeal found in Embassy LLC. This means no purpose
21 of Charter Chapter 18 can be accomplished by allowing removal of rent-controlled
22 units in order to construct more units and replace the rent-controlled ones to
23 protect current residents such as Plaintiff, since all those replacement units can be
24 removed from rent control anytime RPIs wish.

25 17. Moreover, the public should know Defendants will follow procedures they
26 are required to follow by law, not just make up things willy-nilly, as such sloppy
27 procedure and refusal to follow practices specifically enjoined upon SMRCB by
28 law in one thing is indicative of all the other kinds of sloppiness and refusal to

1 abide by law in procedure and substance in Defendants' practices, as indicated in
2 the remainder of this Complaint/Petition.

3 18. In addition, the public is irreparably harmed if SMRCB is allowed to proceed
4 without regulations because since RPIs can remove the replacement units
5 covered by rent control pursuant to the SMRCB removal permit anytime they wish,
6 the public is virtually certain to lose more of the dwindling supply of rent-controlled
7 units if SMRCB is allowed to grant a removal permit when it knows it cannot write
8 regulations under Charter § 1803(t)(2)(ii) now that the Ellis Act allows removal of
9 replacement units at the landlord's whim. That is why the regulations "suspended"
10 in 1999 have not been replaced in over 13 years. No honest regulations could say
11 replacement units are going to be in place as the Charter requires.

12 Injunctive Relief and/or Writ of Mandate

13 19. Plaintiff is unable without the intervention of the Court to require Defendants to
14 promulgate regulations applying to the case before processing a removal permit
15 application, and is unable to require RPIs to apply for such a permit in accordance
16 with rules and regulations promulgated by SMRCB, both as specifically enjoined
17 upon Defendants and required by RPIs by the Charter, and as required by general
18 principles of due process of law.

19 20. The damage to Plaintiff from such failures is irreparable as has been stated
20 above, which statements of irreparable harm are incorporated by reference here as
21 though restated in full. Plaintiff also is without a readily available legal remedy.

22 21. The damage to the public from such failures is also irreparable as has been
23 stated above, which statements of irreparable harm are incorporated by reference
24 here as though restated in full. The public also is without a readily available legal
25 remedy.

26 22. Plaintiff is likely to prevail for herself and on behalf of the public, and allowing
27 while the case is pending RPIs and Defendants to apply for and process a removal
28

1 permit would make meaningless the relief sought and deprive Plaintiff and the public
2 of the fruit of victory, which is requiring regulations in advance of the hearing.

3 23. Therefore, the Court should enter a temporary restraining order and
4 peremptory writ of mandate immediately, issue an order to show cause and
5 thereafter preliminarily enjoin/permanently require by writ correction of all such
6 unlawful actions until this case is concluded. This can occur promptly, since this
7 case has legal priority.

8 24. Thereafter, after separate hearing, the Court should permanently enjoin and
9 permanently for all time, as long as the law requires what Defendants have failed to
10 provide, require by writ addressed to Defendants, and grant Plaintiff incidental
11 damages for prior violations and such other relief, including but not limited to costs of
12 suit and attorney's fees, as is provided by law.

13 25. Plaintiff also is suing on behalf of the public as a private attorney general to
14 obtain for the public all the rights she has alleged herein for herself, and therefore
15 she alleges she is entitled to attorneys' fees under C.C.P. § 1021.5 for the benefit
16 she confers upon the public by so suing to enforce important rights, so she and
17 others like her will be encouraged to enforce such rights on behalf of the public,
18 without having to pay the costs they incur for help they receive from attorneys who do
19 not become their attorneys of record, or for their attorneys of record if they are able to
20 hire same, for having to sue for the benefit of the public.

21 26. Plaintiff also alleges acting as alleged above in this cause of action is arbitrary
22 and capricious on the part of SMRCB, entitling her to attorney's fees under Gov't. C.
23 § 800 for having to sue about such arbitrary and capricious actions.

24 Damages

25 27. Plaintiff is unaware of the nature or amount of injuries she suffered, is
26 suffering now, and will suffer in the future due to the wrongful actions of Defendants
27 detailed herein, and will seek leave of court to amend this Complaint/Petition further
28 at the various junctures after future discovery has been completed and she has filed

1 whatever claim forms are needed in the circumstances, when the nature and extent
2 of her damages becomes more fully known.

3 28. Plaintiff may also have been damaged and/or will in the future be damaged by
4 such actions by Defendants as alleged above and will have suffered and/or will suffer
5 actual damages in ways and amounts that are subject to proof. Plaintiff therefore
6 reserves the right to amend this Complaint/Petition to allege entitlement to
7 compensatory damages for future similar actions by Defendants before or after trial,
8 according to proof to be presented at the relevant time, and after she has filed the
9 requisite claim with Defendants and it has been denied or deemed denied, unless
10 such claim is accepted.

11 SECOND CAUSE OF ACTION

12 (For a Writ of Mandate Directing Defendants as Indicated Herein, and
13 Attorneys' Fees, Reserving the Right to Ask Leave of Court to Request
14 Further and Different Types of Relief and Damages, for **FAILURE TO
15 PROCEED AS REQUIRED BY LAW BY THREATENING TO HEAR
16 APPLICATION FOR REMOVAL PERMIT WITHOUT DOCUMENTS ON
17 ISSUES RAISED BEING ACCESSIBLE TO THE PUBLIC AS REQUIRED BY
18 CITY CHARTER**; and for Injunctive Relief Against Real Parties in Interest,
19 jointly and severally, Pursuant to Santa Monica City Charter § 1803(g), and
20 C.C.P. §§ 525 et seq., and 1085)

21 29. Plaintiff realleges and incorporates by reference as though set forth and
22 repeated in full here, all allegations of Paragraphs 1 through 8 and 10 through 28,
23 inclusive, above.

24 30. Santa Monica City Charter § 1803(g) reads in relevant part as follows:

25 All rules and regulations, internal staff memoranda, and written
26 correspondence explaining the decisions, orders, and policies of the
27 Board shall be kept in the Board's office and shall be available to the
28 public for inspection and copying. The Board shall publicize this Article
so that all residents of Santa Monica will have the opportunity to become
informed about their legal rights and duties under Rent Control in Santa
Monica. (Emphasis added.)

1 31. Defendants are therefore specifically required by law to have all the papers
2 that would explain the Board's decisions and policies to the public available for
3 inspection and copying by the public in the Board's office.

4 32. Nonetheless, Exhibit A, ¶ 2 shows that SMRCB not only does not have all the
5 decisions, internal memorandum, and rules and regulations the Charter requires
6 available for the public to inspect and copy on specific issues. It also shows SMRCB
7 has NO papers in ANY place in its office available to the public to inspect and copy
8 on ANY issues raised by RPIs' three (3) applications for removal permits.

9 33. Petitioner is irreparably harmed by a removal permit's being applied for by
10 RPIs and processed by Defendants without any documents being available in
11 advance for inspection and copying explaining SMRCB decisions and policies on
12 similar cases because SMRCB can do what it did on the first two (2) applications,
13 which is issue a Staff Report mere days in advance of the SMRCB hearing, claiming
14 all sorts of things are SMRCB policy, without any notice of those issues or even
15 citation to previous cases, much less ability for Plaintiff to review cases and have a
16 meaningful opportunity to be heard on issues raised by them. Far less is Petitioner
17 given what the Charter requires, access to even internal SMRCB memoranda on its
18 decisions, policies, and rules. Acting as SMRCB has acted on RPIs' prior two
19 applications deprives Petitioner of due process of law and the right to know in
20 advance what the issues and policies of SMRCB are, by letting the public see in
21 advance what the Board has done on prior similar cases and what the Board's
22 current policies are on the issues, as is guaranteed by the Charter's requirements
23 and also by state Constitution article 1, section 7(a).

24 34. Moreover, the public is harmed irreparably by not being guaranteed as the
25 Charter requires that Defendants will follow procedures and rules they have followed
26 in the past and publicized to the public in advance, instead of just making up things
27 willy-nilly, as such sloppy procedure and refusal to follow practices specifically
28 enjoined upon SMRCB by law in one thing is indicative of all the other kinds of

1 sloppiness and refusal to abide by law in procedure and substance in Defendants'
2 practices, as indicated in the remainder of this Complaint/Petition.

3 Injunctive Relief and/or Writ of Mandate

4 35. Plaintiff is unable without the intervention of the Court to require Defendants to
5 have all prior decisions and rules and memoranda on the issues raised by them put
6 in a place in the SMRCB office where the public can review them and copy them in
7 advance of a similar hearing, and is unable to require RPIs to be bound by prior
8 decisions of SMRCB, both as specifically required by the Charter, and by general
9 principles of due process of law.

10 36. The damage to Plaintiff from such failures is irreparable as has been stated
11 above, which statements of irreparable harm are incorporated by reference here as
12 though restated in full. Plaintiff also is without a readily available legal remedy.

13 37. The damage to the public from such failures is also irreparable as has been
14 stated above, which statements of irreparable harm are incorporated by reference
15 here as though restated in full. The public also is without a readily available legal
16 remedy.

17 38. Plaintiff is likely to prevail for herself and on behalf of the public, and allowing
18 while the case is pending RPIs and Defendants to apply for and process a removal
19 permit would make meaningless the relief sought and deprive Plaintiff and the public
20 of the fruit of victory, which is requiring notice of the issues and a meaningful
21 opportunity to be heard in advance of every SMRCB hearing, and having SMRCB
22 being required to follow the principles of *stare decisis* applicable in any quasi-judicial
23 adversarial hearing.

24 39. Therefore, the Court should enter a temporary restraining order and
25 peremptory writ of mandate immediately, issue an order to show cause and
26 thereafter preliminarily enjoin/permanently require by writ correction of all such
27 unlawful actions until this case is concluded. This can occur promptly, since this
28 case has legal priority.

1 40. Thereafter, after separate hearing, the Court should permanently enjoin and
2 permanently for all time, as long as the law requires what Defendants have failed to
3 provide, require by writ addressed to Defendants, and grant Plaintiff incidental
4 damages for prior violations and such other relief, including but not limited to costs of
5 suit and attorney's fees, as is provided by law.

6 41. Plaintiff also is suing on behalf of the public as a private attorney general to
7 obtain for the public all the rights she has alleged herein for herself, and therefore
8 she alleges she is entitled to attorneys' fees under C.C.P. § 1021.5 for the benefit
9 she confers upon the public by so suing to enforce important rights, so she and
10 others like her will be encouraged to enforce such rights on behalf of the public,
11 without having to pay the costs they incur for help they receive from attorneys who
12 do not become their attorneys of record, or for their attorneys of record if they are
13 able to hire same, for having to sue for the benefit of the public.

14 42. Plaintiff also alleges acting as alleged above in this cause of action is arbitrary
15 and capricious on the part of SMRCB, entitling her to attorney's fees under Gov't. C.
16 § 800 for having to sue about such arbitrary and capricious actions.

17 Damages

18 43. Plaintiff is unaware of the nature or amount of injuries she suffered, is
19 suffering now, and will suffer in the future due to the wrongful actions of Defendants
20 detailed herein, and will seek leave of court to amend this Complaint/Petition further
21 at the various junctures after future discovery has been completed and she has filed
22 whatever claim forms are needed in the circumstances, when the nature and extent
23 of her damages becomes more fully known.

24 44. Plaintiff may also have been damaged and/or will in the future be damaged by
25 such actions by Defendants as alleged above and will have suffered and/or will
26 suffer actual damages in ways and amounts that are subject to proof. Plaintiff
27 therefore reserves the right to amend this Complaint/Petition to allege entitlement to
28 compensatory damages for future similar actions by Defendants before or after trial,

1 according to proof to be presented at the relevant time, and after she has filed the
2 requisite claim with Defendants and it has been denied or deemed denied, unless
3 such claim is accepted.

4 THIRD CAUSE OF ACTION

5 (For a Writ of Mandate Directing Defendants as Indicated Herein, and
6 Attorneys' Fees, Reserving the Right to Ask Leave of Court to Request
7 Further and Different Types of Relief and Damages, for **FAILURE TO
8 PROCEED AS REQUIRED BY LAW BY THREATENING TO DECIDE A
9 REMOVAL PERMIT CASE UNDER INFLUENCE OF THE CITY COUNCIL,
10 AS PROHIBITED BY CITY CHARTER**; and for Injunctive Relief Against Real
11 Parties in Interest, jointly and severally, Pursuant to Santa Monica City
12 Charter § 1802, and C.C.P. §§ 525 et seq., and 1085)

13 45. Plaintiff realleges and incorporates by reference as though set forth and
14 repeated in full here, all allegations of ¶¶ 1 through 8, 10 through 28, and 30
15 through 44, inclusive, above.

16 46. Santa Monica City Charter § 1802 reads in relevant part as follows:

17 The Rent Control Board shall be an integral part of the government
18 of the city, but shall exercise its powers and duties under this Article
19 independent of and without interference from the City Council, City
20 Manager, and City Attorney. (Emphasis added.)

21 47. Defendants are therefore specifically required by law to act independently
22 of the City Council, to be a sovereign agency of the City of Santa Monica.

23 48. Nonetheless, Exhibit E, the first paragraph not in parentheses on page 1 of
24 the SMRCB form for Application for Removal Permit shows that SMRCB states it is
25 going to decide the removal permit case by using its own Charter (unlawful
26 because SMRCB is required to promulgate rules and regulations to do its work,
27 and specifically to decide removal permit cases, as detailed in the First Cause of
28 Action supra), and also City Ordinance 4.24.030.

49. Santa Monica Municipal Code § 4.24.030 reads in full as follows:

1
2 **4.24.030 City permits conditioned on removal permit.**

3 A department, commission, board, or agency of the City shall accept for
4 processing applications involving the demolition, conversion or other removal of a
5 controlled rental unit from the rental housing market without requiring the owner
6 of the property to secure a removal permit under Section 1803(t), an exemption
7 determination, or approval of a vested rights claim from the Rent Control Board or
8 requiring the owner to withdraw the controlled rental unit pursuant to the
9 provisions of the Ellis Act. In approving any such application, the department,
10 commission, board, or agency of the City shall impose a condition that the final
11 permit necessary to demolish, convert, or otherwise remove a controlled rental
12 unit from the rental housing market shall not be issued until the owner of the
13 property has first secured a removal permit under Section 1803(t), an exemption
14 determination, an approval of a vested rights claim from the Rent Control Board,
15 or withdrawn from the controlled rental unit pursuant to the provisions of the Ellis
16 Act. (Prior code § 4603; amended by Ord. No. 1153CCS, adopted 4/14/80; Ord. No.
1589CCS § 1, adopted 7/23/91)

17 50. It first is obvious that this Municipal Code section (not even a City
18 Ordinance as the form states), by its very terms applies to CITY departments,
19 commissions, boards, and agencies OTHER THAN SMRCB, since it states such
20 City departments, etc., may accept for processing applications for removal
21 from the rental housing market without a removal permit or other approval
22 from the SMRCB, but in order to approve such applications those departments,
23 etc. must make it a condition of approval that the applicant obtain a removal
24 permit or some other approval from SMRCB or have the right to withdraw under
25 the Ellis Act without such a permit. It makes no sense at all to say SMRCB may
26 accept applications for removal permits for processing without a removal
27
28

1 permit but in order to approve a removal permit application it must make it a
2 condition of approval of the removal permit application it approves that the
3 applicant get a removal permit from the SMRCB itself, which is what SMRCB
4 just approved.

5
6 51. Much more importantly, using a Municipal Code section when SMRCB is
7 ordered by the Charter to be sovereign of the City Council, which passes
8 Municipal Code sections, violates that principle of sovereignty.

9
10 52. Petitioner is irreparably harmed by a removal permit's being applied for
11 by RPIs and processed by Defendants using ANYTHING the City Council
12 touches, since Exhibit D shows the City Council agreed in 2007 to help RPIs get
13 around Plaintiff's rent control rights and demolish the home Plaintiff and her
14 family own through an LLC. Plaintiff has also determined by analysis and based
15 thereon alleges that the City Council approved on November 26, 2012 a
16 development agreement pretending to require replacement units under both
17 Costa-Hawkins and Ellis but actually referring only to Costa-Hawkins (see the
18 First Cause of Action herein), so the City Council knows it approved a
19 development agreement that would result in the loss of at least 99 controlled
20 rental housing units. The City Council had approved demolition of thousands of
21 rental units in the 1970s, which is why rent control became the law of the City,
22 ranking above the City Council and above SMRCB. Moreover, anything in the
23 Municipal Code is a legislative act, so if SMRCB agrees to follow it, it is agreeing
24 to be under legislation passed by the City Council, so it thereby violates the
25 Charter. The Charter requires SMRCB to be sovereign and independent of the
26
27
28

1 City Council to avoid exactly the kind of manipulation of people's rent control
2 rights by the City Council as occurred in this case. Therefore, Plaintiff is
3 entitled as is guaranteed by the Charter's requirement of SMRCB
4 independence, not to have SMRCB import into its own hearings some
5 legislative act of the City Council.
6

7 53. Moreover, the public is harmed irreparably by not being guaranteed as the
8 Charter requires that Defendants will be sovereign and independent of the City
9 Council, since as Exhibit D shows, the City Council cares nothing for preserving
10 low rents, as is a purpose of Chapter 18 of the Charter. The Municipal Code
11 section at issue itself shows a preference by the City Council to getting
12 applications for demolition processed, over making sure there is no demolition
13 without a removal permit first being obtained, not just made a condition of
14 approval of a demolition permit.
15

16 Injunctive Relief and/or Writ of Mandate
17

18 54. Plaintiff is unable without the intervention of the Court to require
19 Defendants to act independently of the City Council, and is unable to require RPIs
20 not to try to get the City Council to influence the SMRCB, as Exhibit D shows RPIs
21 did, both as specifically prohibited by the Charter.
22

23 55. The damage to Plaintiff from such failures is irreparable as has been stated
24 above, which statements of irreparable harm are incorporated by reference here
25 as though restated in full. Plaintiff also is without a readily available legal
26 remedy.
27
28

1 56. The damage to the public from such failures is also irreparable as has been
2 stated above, which statements of irreparable harm are incorporated by reference
3 here as though restated in full. The public also is without a readily available legal
4 remedy.

5
6 57. Plaintiff is likely to prevail for herself and on behalf of the public, and
7 allowing while the case is pending RPIs to encourage Defendants to be influenced
8 by the City Council would make meaningless the relief sought and deprive Plaintiff
9 and the public of the fruit of victory, which is requiring SMRCB to act
10 independently to accomplish the purposes of Chapter 18 of the Charter, which
11 specifically apply to poor, elderly and minority renters of rent-controlled housing
12 in Santa Monica, not to rich white developers out to make a profit by demolishing
13 such housing, like RPIs, who do not need the protection of SMRCB.
14

15 58. Therefore, the Court should enter a temporary restraining order and
16 peremptory writ of mandate immediately, issue an order to show cause and
17 thereafter preliminarily enjoin/permanently require by writ correction of all such
18 unlawful actions until this case is concluded. This can occur promptly, since this
19 case has legal priority.
20

21 59. Thereafter, after separate hearing, the Court should permanently enjoin
22 and permanently for all time, as long as the law requires what Defendants have
23 failed to provide, require by writ addressed to Defendants, and grant Plaintiff
24 incidental damages for prior violations and such other relief, including but not
25 limited to costs of suit and attorney's fees, as is provided by law.
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27
28

1 60. Plaintiff also is suing on behalf of the public as a private attorney general to
2 obtain for the public all the rights she has alleged herein for herself, and therefore
3 she alleges she is entitled to attorneys' fees under C.C.P. § 1021.5 for the benefit
4 she confers upon the public by so suing to enforce important rights, so she and
5 others like her will be encouraged to enforce such rights on behalf of the public,
6 without having to pay the costs they incur for help they receive from attorneys
7 who do not become their attorneys of record, or for their attorneys of record if
8 they are able to hire same, for having to sue for the benefit of the public.
9

10 61. Plaintiff also alleges acting as alleged above in this cause of action is
11 arbitrary and capricious on the part of SMRCB, entitling her to attorney's fees
12 under Gov't. C. § 800 for having to sue about such arbitrary and capricious
13 actions.
14

15 Damages

16 62. Plaintiff is unaware of the nature or amount of injuries she suffered, is
17 suffering now, and will suffer in the future due to the wrongful actions of
18 Defendants detailed herein, and will seek leave of court to amend this
19 Complaint/Petition further at the various junctures after future discovery has been
20 completed and she has filed whatever claim forms are needed in the
21 circumstances, when the nature and extent of her damages becomes more fully
22 known.
23
24

25 63. Plaintiff may also have been damaged and/or will in the future be damaged
26 by such actions by Defendants as alleged above and will have suffered and/or will
27 suffer actual damages in ways and amounts that are subject to proof. Plaintiff
28

1 therefore reserves the right to amend this Complaint/Petition to allege entitlement
2 to compensatory damages for future similar actions by Defendants before or after
3 trial, according to proof to be presented at the relevant time, and after she has
4 filed the requisite claim with Defendants and it has been denied or deemed
5 denied, unless such claim is accepted.
6

7
8 FOURTH CAUSE OF ACTION

9 (For a Writ of Mandate Directing Defendants as Indicated Herein, and Attorneys' Fees,
10 Reserving the Right to Ask Leave of Court to Request Further and Different Types of
11 Relief and Damages, for **FAILURE TO PROCEED AS REQUIRED BY LAW BY
12 THREATENING TO DECIDE REMOVAL PERMIT APPLICATION COVERING 109
13 TRAILERS EITHER NOT OWNED OR UNLAWFULLY OBTAINED BY APPLICANT,
14 WHEN CITY CHARTER ALLOWS REMOVING ONLY "A" CONTROLLED RENTAL
15 UNIT OWNED BY THE APPLICANT**; and for Injunctive Relief Against Real Parties in
16 Interest, jointly and severally, Pursuant to Santa Monica City Charter §§ 1801(c) and
17 1803(t)(2)(ii), and C.C.P. §§ 525 et seq., and 1085)

18 64. Plaintiff realleges and incorporates by reference as though set forth and
19 repeated in full here, all allegations of ¶¶ 1 through 8, 10 through 28, 30 through
20 44, and 46 through 63, inclusive, above.
21

22 65. Santa Monica City Charter § 1801(c) reads in relevant part as follows:

23 The following words or phrases as used in this Article shall have the
24 following meanings:

25

26 (c) CONTROLLED RENTAL UNITS: All residential rental units in the City of
27 Santa Monica, including mobile homes, and mobile home spaces, and
28 trailers and trailer spaces, [with exceptions not applicable here]

(Emphasis added.)

66. Santa Monica City Charter § 1803(t) reads in relevant part as follows:

(t) REMOVAL OF CONTROLLED UNIT FROM RENTAL HOUSING MARKET:

1 (1) Any landlord who desires to remove a controlled rental unit from the
2 rental housing market by demolition, conversion or other means is
3 required to obtain a permit from the Board prior to such removal from the
4 rental housing market in accordance with rules and regulations
5 promulgated by the Board. In order to approve such a permit, the Board is
6 required to find that the landlord cannot make a fair return by retaining
7 the controlled rental unit.

8 (2) Notwithstanding the foregoing provisions of this subsection, the Board
9 may approve such a permit:

10

11 67. Defendants are therefore specifically allowed by law to approve removal from
12 the rental housing market of only "A" or "the" controlled rental unit. Clearly, for ease
13 of processing, if a landlord owned all the rental units on a property, one application
14 could be processed for removing all of them at once. However, since trailers and
15 trailer spaces are each defined as a controlled rental unit in Charter § 1801(c), and
16 since ¶ 1 of this Complaint/Petition states under penalty of perjury that Plaintiff rents
17 her trailer from her family's trust, which has become an LLC, no RPI owns that
18 controlled rental unit at the subject address, so no RPI can apply for removal from
19 the rental housing market of all the controlled rental units at that address. Plaintiff is
20 informed and believes there are up to 50 other persons who rent trailers at the
21 subject property from persons other than RPIs.

24 68. Nonetheless, Exhibit E shows that SMRCB has accepted for processing an
25 application that refers only to the TRAILER SPACES on the subject lot, which RPIs
26 indeed may or may not own, but makes no reference at all to who owns the trailers at
27 the property. These, according to the definition in Charter § 1801(c), if they are
28

1 rented in the City of Santa Monica, and are housing units, are as much controlled
2 rental units as are the trailer spaces.

3 69. Petitioner is irreparably harmed by a removal permit's being applied for by
4 RPIs and processed by Defendants without any reference to as many as 109
5 controlled rental units at the property, according to Exhibit B. Since the Charter
6 allows SMRCB to approve a removal permit only for "a controlled rental unit," all the
7 controlled rental units at the property have to be eligible to be removed in an
8 application, or SMRCB has no jurisdiction or ability to act under the Charter.
9 Moreover, since no plan offered by RPT referred to in any application for a removal
10 permit from SMRCB has offered to pay Plaintiff or any of the other current residents
11 a fair amount—nothing for the cost of replacing their homes in a location as good as
12 the one they have, nothing for the value of the leaseholds under rent control they
13 would be losing if the removal permit were granted, and in fact even nothing for no
14 longer owning their own homes and being able to will them to their heirs or like
15 Plaintiff, be a member of an LLC that owns them so when members die, remaining
16 members automatically continue to own the homes—it is highly unlikely RPIs could
17 get the owners of all the controlled rental units at the subject property to apply for a
18 removal permit with RPIs. Certainly not without major changes.

19 70. Moreover, the public is harmed irreparably by SMRCB's granting removal
20 permits that are not authorized under the Charter, since the public must be
21 guaranteed, in order to protect the existing rental housing supply—one of the
22 purposes of Charter Chapter 18 given in Charter § 1800 (RJN, Exh. A)—that SMRCB
23 will allow removals only as it is authorized to do under the Charter. The whole
24 reason SMRCB was created and exists is to protect the rental housing supply, not
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1 only for current residents such as Plaintiff, but also for future residents, the public,
2 represented by the voters that passed rent control.

3 Injunctive Relief and/or Writ of Mandate

4 71. Plaintiff is unable without the intervention of the Court to require Defendants to
5 process only removal permit applications showing the applicant owns all the
6 controlled rental units on a lot, as specifically required by the Charter.

7
8 72. The damage to Plaintiff from such failure is irreparable as has been stated
9 above, which statements of irreparable harm are incorporated by reference here as
10 though restated in full. Plaintiff also is without a readily available legal remedy.

11 73. The damage to the public from such failure is also irreparable as has been
12 stated above, which statements of irreparable harm are incorporated by reference
13 here as though restated in full. The public also is without a readily available legal
14 remedy.

15
16 74. Plaintiff is likely to prevail for herself and on behalf of the public, and allowing
17 while the case is pending RPIs and Defendants to apply for and process a removal
18 permit would make meaningless the relief sought and deprive Plaintiff and the public
19 of the fruit of victory, which in this context is preventing improper reduction of the
20 rental housing stock of the City of Santa Monica, particularly for poor, minority, and
21 elderly residents such as Plaintiff.

22
23
24 75. Therefore, the Court should enter a temporary restraining order and
25 peremptory writ of mandate immediately, issue an order to show cause and
26 thereafter preliminarily enjoin/permanently require by writ correction of all such
27 unlawful actions until this case is concluded. This can occur promptly, since this
28 case has legal priority.

1 76. Thereafter, after separate hearing, the Court should permanently enjoin and
2 permanently for all time, as long as the law requires what Defendants have failed to
3 provide, require by writ addressed to Defendants, and grant Plaintiff incidental
4 damages for prior violations and such other relief, including but not limited to costs of
5 suit and attorney's fees, as is provided by law.
6

7 77. Plaintiff also is suing on behalf of the public as a private attorney general to
8 obtain for the public all the rights she has alleged herein for herself, and therefore
9 she alleges she is entitled to attorneys' fees under C.C.P. § 1021.5 for the benefit
10 she confers upon the public by so suing to enforce important rights, so she and
11 others like her will be encouraged to enforce such rights on behalf of the public,
12 without having to pay the costs they incur for help they receive from attorneys who
13 do not become their attorneys of record, or for their attorneys of record if they are
14 able to hire same, for having to sue for the benefit of the public.
15

16 78. Plaintiff also alleges acting as alleged above in this cause of action is arbitrary
17 and capricious on the part of SMRCB, entitling her to attorney's fees under Gov't. C.
18 § 800 for having to sue about such arbitrary and capricious actions.
19

20 Damages

21 79. Plaintiff is unaware of the nature or amount of injuries she suffered, is
22 suffering now, and will suffer in the future due to the wrongful actions of Defendants
23 detailed herein, and will seek leave of court to amend this Complaint/Petition further
24 at the various junctures after future discovery has been completed and she has filed
25 whatever claim forms are needed in the circumstances, when the nature and extent
26 of her damages becomes more fully known.
27
28

1 80. Plaintiff may also have been damaged and/or will in the future be damaged by
2 such actions by Defendants as alleged above and will have suffered and/or will
3 suffer actual damages in ways and amounts that are subject to proof. Plaintiff
4 therefore reserves the right to amend this Complaint/Petition to allege entitlement to
5 compensatory damages for future similar actions by Defendants before or after trial,
6 according to proof to be presented at the relevant time, and after she has filed the
7 requisite claim with Defendants and it has been denied or deemed denied, unless
8 such claim is accepted.
9

10 FIFTH CAUSE OF ACTION

11 (For a Writ of Mandate Directing Defendants as Indicated Herein, and Attorneys'
12 Fees, Reserving the Right to Ask Leave of Court to Request Further and Different
13 Types of Relief and Damages, for **FAILURE TO PROCEED AS REQUIRED BY
14 LAW BY THREATENING TO DECIDE REMOVAL PERMIT APPLICATION FOR
15 WHAT THE CHARTER DEFINES AS A "PROPERTY," WITH NO AUTHORITY
16 TO DO SO IN THE CHARTER**; and for Injunctive Relief Against Real Parties in
17 Interest, jointly and severally, Pursuant to Santa Monica City Charter §§ 1801(m)
18 and 1803(t)(2)(ii), and C.C.P. §§ 525 et seq., and 1085)

16 81. Plaintiff realleges and incorporates by reference as though set forth and
17 repeated in full here, all allegations of ¶¶ 1 through 8, 10 through 28, 30
18 through 44, 46 through 63, and 65 through 80, inclusive, above.

19 82. Santa Monica City Charter § 1801(m) reads in relevant part as follows:

20 The following words or phrases as used in this Article shall have the following
21 meanings:

22

23 (m) PROPERTY: All rental units on a parcel or lot or contiguous parcels or
24 contiguous lots under common ownership. (Emphasis added.)

25
26 83. Santa Monica City Charter § 1803(t) reads in relevant part as follows:

27 (t) REMOVAL OF CONTROLLED UNIT FROM RENTAL HOUSING MARKET:
28

1 (1) Any landlord who desires to remove a controlled rental unit from the rental
2 housing market by demolition, conversion or other means is required to obtain a
3 permit from the Board prior to such removal from the rental housing market in
4 accordance with rules and regulations promulgated by the Board. In order to
5 approve such a permit, the Board is required to find that the landlord cannot make
6 a fair return by retaining the controlled rental unit.

7 (2) Notwithstanding the foregoing provisions of this subsection, the Board may
8 approve such a permit:

9
10 (ii) If the permit is being sought so that the property may be developed with
11 multifamily dwelling units and the permit applicant agrees as a condition
12 of approval, that the units will not be exempt from the provisions of this
13 Article pursuant to Section 1801(c) and that at least fifteen (15) percent
14 of the controlled rental units to be built on the site will be at rents
15 affordable by persons of low income. (Emphasis added.)

16
17 84. Defendants are therefore specifically allowed by law to approve removal from
18 the rental housing market of "A" or "the" controlled rental unit under this subsection
19 ONLY so that "the property" may be developed with multifamily dwelling units.
20 However, since Charter § 1801(m) defines "a property" as ALL the controlled rental
21 units on a lot or contiguous lots under common ownership, but the section allows
22 removing only A controlled rental unit, not ALL the controlled rental units on a lot, it is
23 impossible to grant a removal permit under Charter § 1803(t)(2)(ii). This is therefore
24 another reason, other than the one in the First Cause of Action, that SMRCB needs
25 regulations to hear any removal permit applications under Charter § 1803(t)(2)(ii):
26 since the section is internally inconsistent with another section of the Charter, the
27
28

1 Board could rationalize the two and interpret their meanings in some way to make
2 the entire Charter make sense. However, without implementing regulations, the
3 section simply cannot be used.

4 85. Nonetheless, Exhibit E shows that SMRCB threatens to grant a removal permit
5 for “a property” when all it has authority to do is grant removal permits for a
6 controlled rental unit.
7

8 86. Petitioner is irreparably harmed by a removal permit's being applied for by
9 RPIs and processed by Defendants for the property rather than the controlled rental
10 units. The property is what would be developed, but the controlled rental unit on the
11 property is all SMRCB can remove from rent control. If SMRCB can interpret the
12 Charter without writing regulations doing so, we are in 1984's Oceania for sure,
13 where doublespeak keeps changing as the rulers deem necessary. This is not due
14 process of law.
15

16 87. Moreover, the public is harmed irreparably by SMRCB's granting removal
17 permits that are not authorized under the Charter, since, as discussed in the Fourth
18 Cause of Action, the public must be guaranteed, in order to protect the existing rental
19 housing supply—one of the purposes of Charter Chapter 18 given in Charter § 1800
20 (RJN, Exh. A)—that SMRCB will allow removals only as it is authorized to do under
21 the Charter. Again, the whole reason SMRCB was created and exists is to protect
22 the rental housing supply, not only for current residents such as Plaintiff, but also for
23 future residents, the public, represented by the voters that passed rent control. The
24 SMRCB might very well decide, if it is doing its job of protecting the rental housing
25 supply, that the Charter did not mean to grant removal permits for development
26 where separate homeowners rented from an applicant. Whatever the Board would
27
28

1 decide, it needs to do so, and not allow ultra vires hearing of an application under a
2 section that makes no sense without prior thought and reconciliation of terms that are
3 on their face irreconcilable.

4 Injunctive Relief and/or Writ of Mandate

5 88. Plaintiff is unable without the intervention of the Court to require Defendants to
6 process only removal permit applications specifically allowed by the entire Charter.

7 89. The damage to Plaintiff from such failure is irreparable as has been stated
8 above, which statements of irreparable harm are incorporated by reference here as
9 though restated in full. Plaintiff also is without a readily available legal remedy.

10 90. The damage to the public from such failure is also irreparable as has been
11 stated above, which statements of irreparable harm are incorporated by reference
12 here as though restated in full. The public also is without a readily available legal
13 remedy.

14 91. Plaintiff is likely to prevail for herself and on behalf of the public, and allowing
15 while the case is pending RPIs and Defendants to apply for and process a removal
16 permit would make meaningless the relief sought and deprive Plaintiff and the public
17 of the fruit of victory, which in this context is preventing improper reduction of the
18 rental housing stock of the City of Santa Monica, particularly for poor, minority, and
19 elderly residents such as Plaintiff.

20 92. Therefore, the Court should enter a temporary restraining order and
21 peremptory writ of mandate immediately, issue an order to show cause and
22 thereafter preliminarily enjoin/permanently require by writ correction of all such
23 unlawful actions until this case is concluded. This can occur promptly, since this
24 case has legal priority.
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1 93. Thereafter, after separate hearing, the Court should permanently enjoin and
2 permanently for all time, as long as the law requires what Defendants have failed to
3 provide, require by writ addressed to Defendants, and grant Plaintiff incidental
4 damages for prior violations and such other relief, including but not limited to costs of
5 suit and attorney's fees, as is provided by law.
6

7 94. Plaintiff also is suing on behalf of the public as a private attorney general to
8 obtain for the public all the rights she has alleged herein for herself, and therefore
9 she alleges she is entitled to attorneys' fees under C.C.P. § 1021.5 for the benefit
10 she confers upon the public by so suing to enforce important rights, so she and
11 others like her will be encouraged to enforce such rights on behalf of the public,
12 without having to pay the costs they incur for help they receive from attorneys who
13 do not become their attorneys of record, or for their attorneys of record if they are
14 able to hire same, for having to sue for the benefit of the public.
15

16 95. Plaintiff also alleges acting as alleged above in this cause of action is arbitrary
17 and capricious on the part of SMRCB, entitling her to attorney's fees under Gov't. C.
18 § 800 for having to sue about such arbitrary and capricious actions.
19

20 Damages

21 96. Plaintiff is unaware of the nature or amount of injuries she suffered, is
22 suffering now, and will suffer in the future due to the wrongful actions of Defendants
23 detailed herein, and will seek leave of court to amend this Complaint/Petition further
24 at the various junctures after future discovery has been completed and she has filed
25 whatever claim forms are needed in the circumstances, when the nature and extent
26 of her damages becomes more fully known.
27
28

1 97. Plaintiff may also have been damaged and/or will in the future be damaged by
2 such actions by Defendants as alleged above and will have suffered and/or will
3 suffer actual damages in ways and amounts that are subject to proof. Plaintiff
4 therefore reserves the right to amend this Complaint/Petition to allege entitlement to
5 compensatory damages for future similar actions by Defendants before or after trial,
6 according to proof to be presented at the relevant time, and after she has filed the
7 requisite claim with Defendants and it has been denied or deemed denied, unless
8 such claim is accepted.
9

10 SIXTH CAUSE OF ACTION

11 (For a Writ of Mandate Directing Defendants as Indicated Herein, and Attorneys'
12 Fees, Reserving the Right to Ask Leave of Court to Request Further and Different
13 Types of Relief and Damages, for **FAILURE TO PROCEED AS REQUIRED BY LAW
14 BY THREATENING TO PROCESS A REMOVAL PERMIT APPLICATION WHEN
15 DEFENDANTS AND RPIs HAVE VIOLATED THE BROWN ACT AND STATE
16 CONSTITUTION BY CONSPIRING TO VIOLATE PLAINTIFF'S AND THE PUBLIC'S
17 RIGHTS TO FAIR HEARING**; and for Injunctive Relief Against Real Parties in
18 Interest, jointly and severally, Pursuant to Gov't. C. § 54952.2, Calif. Const. art. 1,
19 sec. 3, and C.C.P. §§ 525 et seq., and 1085)

20 98. Plaintiff realleges and incorporates by reference as though set forth and
21 repeated in full here, all allegations of ¶¶ 1 through 8, 10 through 28, 30 through
22 44, 46 through 63, 65 through 80, and 82 through 97, inclusive, above.

23 99. If the admission against interest of RPI LUZZATTO outlined in Exhibit A, ¶ 3 is
24 truthful—an assumption the paragraph states Declarant-Plaintiff herself originally did
25 not make because she has heard him tell so many lies—SMRCB had “months and
26 months” of ex parte communications with LUZZATTO.

27 100. The Ralph M. Brown open meetings Act reads in relevant part as follows:

28 Gov't. C. § 54952.2.

(a) As used in this chapter, "meeting" means any congregation of a majority of the
members of a legislative body at the same time and location, including
teleconference location as permitted by Section 54953, to hear, discuss, deliberate,

1 or take action on any item that is within the subject matter jurisdiction of the
2 legislative body.

3 (b) (1) A majority of the members of a legislative body shall not, outside a meeting
4 authorized by this chapter, use a series of communications of any kind, directly or
5 through intermediaries, to discuss, deliberate, or take action on any item of business
6 that is within the subject matter jurisdiction of the legislative body.

7 (2) Paragraph (1) shall not be construed as preventing an employee or official of a
8 local agency, from engaging in separate conversations or communications outside of
9 a meeting authorized by this chapter with members of a legislative body in order to
10 answer questions or provide information regarding a matter that is within the subject
11 matter jurisdiction of the local agency, if that person does not communicate to
12 members of the legislative body the comments or position of any other member or
13 members of the legislative body.

14 (c) Nothing in this section shall impose the requirements of this chapter upon any of
15 the following: (1) Individual contacts or conversations between a member of a
16 legislative body and any other person that do not violate subdivision (b). [Emphasis
17 added.]

18 101. State Constitution article 1, § 3 reads in relevant part as follows:

19
20 (a)The people have the right to instruct their representatives, petition
21 government for redress of grievances, and assemble freely to consult for
22 the common good.

23 (b)(1)The people have the right of access to information concerning the
24 conduct of the people's business, and, therefore, the meetings of public
25 bodies and the writings of public officials and agencies shall be open to
26 public scrutiny.

27 (2)A statute, court rule, or other authority, including those in effect on the
28 effective date of this subdivision, shall be broadly construed if it furthers

1 the people's right of access, and narrowly construed if it limits the right of
2 access. A statute, court rule, or other authority adopted after the effective
3 date of this subdivision that limits the right of access shall be adopted
4 with findings demonstrating the interest protected by the limitation and
5 the need for protecting that interest.

6 102. If LUZZATTO really negotiated for "months and months" with SMRCB in
7 2007, and what came of the negotiations was an agreement to remove the home
8 Plaintiff owns from rent control, all of the participants violated the duty specifically
9 enjoined upon them by law in the Brown Act not to have a series of conversations
10 with individuals other than City staff about matters before or someday to be before
11 SMRCB.

12 103. Moreover, the parties involved in these ex parte communications did not
13 keep any record of the discussions, nor did they disclose at a public meeting the
14 substance of what was said in any of the discussions. In these circumstances, the
15 potential is enormous for the public's business to be done improperly, and in violation
16 of Article 1 of the California Constitution, section 3 stating we the people do not give
17 over our affairs to our representatives to handle for us without our knowledge.

18 Injunctive Relief and/or Writ of Mandate/Prohibition

19 104. Plaintiff is unable without the intervention of the Court to require Defendants to
20 stop having communications violative of the Brown Act and the Constitution, and to
21 undo the damage any violative conversations have already had.

22 105. The damage to Plaintiff from such ex parte communications seems to Plaintiff
23 to be irreparable. Having to suffer any of this damage without a readily available
24 legal remedy, or in fact , without any legal remedy at all, constitutes inadequacy of
25 legal remedy as well as irreparable harm.

26 106. Allowing Defendants not to even have to explain themselves to an unwary
27 public also would constitute Defendants' inequitably benefiting from their own wrong
28 in failing to follow laws applicable to them and passed specifically for the benefit of

1 the public and residents such as Plaintiffs of properties where SMRCB is considering
2 approving a removal permit that would involve their losing homes that they own and
3 not obtaining what the law requires to be given to them, as alleged herein.

4 107. Plaintiff is likely to prevail in this case, and allowing Defendants to violate and
5 RPIs to keep the benefits in the future of past violations of clear laws passed
6 specifically to protect Plaintiff and others similarly situated from such damage while
7 the case is pending would make meaningless the relief sought.

8 108. Therefore, the Court should enter a temporary restraining order and
9 peremptory writ of mandate immediately, issue an order to show cause and
10 thereafter preliminarily enjoin/permanently require by writ correction of all such
11 actions until this case is concluded. This can occur promptly, since this case has
12 legal priority.

13 109. Thereafter, after separate hearing, the Court should permanently enjoin and
14 permanently for all time as long as the law requires what Defendants have failed to
15 provide to be required by writ addressed to Defendants, and grant Plaintiff incidental
16 damages for prior violations and such other relief, including but not limited to costs of
17 suit and attorney's fees, as is provided by law.

18 110. Plaintiff also is suing on behalf of the public as a private attorney general to
19 obtain for the public all the rights she has alleged herein for herself, and therefore
20 she alleges she is entitled to attorneys' fees under C.C.P. § 1021.5 for the benefit
21 she confers upon the public by so suing to enforce important rights, so she and
22 others like her will be encouraged to enforce such rights on behalf of the public,
23 without having to pay the costs they incur for help they receive from attorneys who
24 do not become their attorneys of record, or for their attorneys of record if they are
25 able to hire same, for having to sue for the benefit of the public.

26 111. Plaintiff also alleges acting as alleged above in this cause of action is arbitrary
27 and capricious on the part of SMRCB, entitling her to attorney's fees under Gov't. C.
28 § 800 for having to sue about such arbitrary and capricious actions.

1 Damages

2 112. Plaintiff is unaware of the nature or amount of injuries she suffered, is
3 suffering now, and will suffer in the future due to the wrongful actions of Defendants
4 detailed herein, and will seek leave of court to amend this Complaint/Petition at the
5 various junctures after future discovery has been completed and she has filed
6 whatever claim forms are needed in the circumstances, when the nature and extent
7 of her damages becomes more fully known.

8 113. Plaintiff may also have been damaged and/or will in the future be damaged by
9 such actions by Defendants as alleged above and will have suffered and/or will suffer
10 actual damages in ways and amounts that are subject to proof. Plaintiff therefore
11 reserves the right to amend this Complaint/Petition to allege entitlement to
12 compensatory damages for future similar actions by Defendants before or after trial,
13 according to proof to be presented at the relevant time, and after she has filed the
14 requisite claim with Defendants and it has been denied or deemed denied, unless
15 such claim is accepted.

16 **WHEREFORE, Plaintiff-Petitioner prays:**

17 On All Causes of Action, Against All Defendants, jointly and severally :

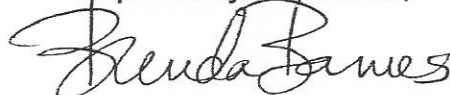
- 18 1. After minimum notice as required by law and separate hearing, for a
19 temporary restraining order and peremptory writ of mandate and an order
20 to show cause why a preliminary injunction enjoining and a preliminary writ
21 of mandate mandating what is specially enjoined on Defendants by law as
22 to each and every action by Defendants proven as alleged in each cause of
23 action should not be entered, and for entry of such preliminary injunction
24 and issuance of such writ until after trial or such other time as the Court
25 deems just and proper;
- 26 2. Thereafter, after separate motion and hearing, for entry of a permanent
27 injunction and writ of mandate enjoining each and every action by

1 Defendants proven as fulfilling the elements of each cause of action of
2 Plaintiff, until such time as the Court deems just and proper;

- 3 3. For incidental damages associated with having to obtain injunctive relief,
4 according to proof after appropriate discovery;
- 5 4. If Plaintiff requests, leave of court to amend this Complaint/Petition to add
6 claims for further damages both compensatory and/or punitive, as shown to
7 be proper, after further discovery and filing and rejection of any necessary
8 claims;
- 9 5. For costs of suit herein incurred, including reasonable attorney's fees
10 pursuant to applicable law for Plaintiff as pro per aided by attorneys who do
11 not become attorneys of record, and/or for attorneys themselves after
12 Plaintiff hires same to prosecute this action;
- 13 6. For attorneys' fees as incurred according to proof for having to sue
14 regarding Defendants' arbitrary and capricious actions as alleged herein,
15 according to proof, pursuant to Gov't C. § 800;
- 16 7. For attorneys' fees as incurred according to proof for defending valuable
17 rights on behalf of the public, as a private attorney general, pursuant to
18 C.C.P. § 1021.5; and
- 19 8. For such other and further relief as the Court may deem just and proper.
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21 DATED: December 23, 2012

Respectfully submitted,



Brenda Barnes

Plaintiff-Petitioner in pro per

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VERIFICATION

The undersigned, says:

I am a Plaintiff-Petitioner in this action, and sign this verification and state the following on the basis of my own personal knowledge.

I have read the foregoing Complaint/Petition, and it is true, of my own personal knowledge, except for matters stated on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 23, 2012, at Santa Monica, California.



BRENDA BARNES