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FILED
FEB -5 AM 11:53
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MHC FINANCING LIMITED
PARTNERSHIP, an Illinois limited partnership;
and GRAPELAND VISTAS, INC., an Illinois
corporation,

Plaintiffs,

v.

CITY OF SAN RAFAEL,

Defendant,

CONTEMPO MARIN HOMEOWNERS
ASSOCIATION,

Defendant-Intervener.

Case No. C 00-3785 VRW

**CITY OF SAN RAFAEL'S OBJECTION
TO THE FORM OF JUDGMENT
PROPOSED BY PLAINTIFFS**

HON. VAUGHN R. WALKER

1 TO THE COURT AND ALL PARTIES OF RECORD:

2 The City of San Rafael objects to the form of the [Proposed] Final Judgment submitted
3 by the Plaintiffs in this action.¹ The City agrees that paragraphs 1-4 of MHC’s proposed form
4 state the judgment entered in the various phases of this case. However, the City objects to
5 paragraphs 5-7 of the Judgment.

6 Paragraph 5 of MHC’s form purports to make a finding that MHC is the prevailing party
7 in this action, and therefore entitled to costs. Paragraph 6 concludes that MHC is the prevailing
8 party for fee purposes. The City respectfully points out that it prevailed in the jury trial in this
9 case concerning breach of contract claims that are distinct from the constitutional issues. The
10 City contends that there is either no prevailing party, or that both parties are prevailing parties on
11 different aspects of the case. **These issues have not been briefed, and should be adjudicated**
12 **in connection with cost bills and fee petitions brought by both sides.** The City respectfully
13 requests that the Court’s Judgment set a schedule for briefing the prevailing party, costs, and fee
14 issues instead of summarily appointing MHC the prevailing party – without briefing – as MHC
15 has requested. The briefing scheduled proposed by MHC is acceptable to the City.

16 Paragraph 7 of the Judgment purports to make it “effective immediately upon its entry...”
17 Presumably this has been requested so that MHC can immediately raise the rent for existing
18 tenants as this Court has struck down all rent control, including basic rent control for existing
19 tenants. The City intends to ask this Court to stay its injunction pending appeal and, if that
20 request is denied, to request that the Court of Appeals grant the same relief. The homeowners’
21 association will likely seek the same relief. The City respectfully requests that the Court allow a
22 reasonable period of time (30 days) for the City to prepare and file its motion for stay before
23 implementing the injunction awarded to MHC so that this matter can be addressed in an orderly
24 fashion.

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27 ¹ The City, of course, respectfully disagrees with the Court’s conclusions, but the purpose
28 of this objection is only to address the form, not the substance, of the judgment. The City
reserves all of its rights to appeal the issues adjudicated against it in this case.

1 The City therefore respectfully requests that the Court reject paragraphs 5 through 7 of
2 MHC's [Proposed] Judgment, and replace those paragraphs with the following:

3 5. The Court is informed that the parties disagree as to the
4 identity of the prevailing party or parties. The parties shall have
5 until 30 days following entry of judgment to submit petition(s) for
6 attorneys' fees along with briefing on the prevailing party issue.
7 Any party opposing such a petition shall have 30 days to file its
8 opposition. Similarly, any party seeking to be awarded costs shall
9 file a bill of costs within 30 days following entry of judgment, with
10 any motion to tax costs filed within 30 days thereafter.

11 6. The injunction issued herein shall not become effective
12 until 30 days following entry of judgment to allow the defendants
13 sufficient time to file, if appropriate, a motion for stay of the
14 injunction pending appeal pursuant to Federal Rule of Civil
15 Procedure 62(c).
16

17 A form of judgment making these changes to MHC's submitted form is attached hereto
18 as Exhibit A.

19 Respectfully submitted,

20 DATED: February 5, 2008

KERR & WAGSTAFFE LLP

21
22 By 

JAMES WAGSTAFFE
MICHAEL VON LOEWENFELDT

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24 Attorneys for Defendant
25 CITY OF SAN RAFAEL
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EXHIBIT A

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MHC FINANCING LIMITED
PARTNERSHIP, an Illinois limited partnership;
and GRAPELAND VISTAS, INC., an Illinois
corporation,

Plaintiffs,

v.

CITY OF SAN RAFAEL,

Defendant,

CONTEMPO MARIN HOMEOWNERS
ASSOCIATION,

Defendant-Intervener.

Case No. C 00-3785 VRW

**[PROPOSED] FINAL JUDGMENT AS
MODIFIED BY CITY OF SAN
RAFAEL'S OBJECTION**

HON. VAUGHN R. WALKER

[PROPOSED] FINAL JUDGMENT

This Court, having entered Findings of Facts, Conclusions of Law and Order Thereon on January 29, 2008, hereby enters this Final Judgment on Plaintiffs' Second Amended Complaint as follows:

IT IS ORDERED, ADJUDGED AND DECREED that:

1. Judgment is entered in favor of Plaintiffs and against Defendants on Plaintiffs' *First Cause of Action*. The Court permanently enjoins Defendant from enforcing or applying Title 20 of the San Rafael Municipal Code ("SRMC"), the Mobilehome Rent Stabilization law (the "Ordinance") or any part thereof.

2. Judgment is entered in favor of Plaintiffs and against Defendant on MHC's *Second Cause of Action*. Pursuant to the Declaratory Judgments Act, 28 U.S.C. § 2201, et seq., the Ordinance is hereby declared (a) unconstitutional and invalid as a private taking both on its face and as applied to Plaintiffs or any of their affiliates and/or to the Contempo Marin Mobilehome Park (the "Park") in San Rafael, and (b) unconstitutional and invalid as applied to Plaintiffs or any of their affiliates and/or to the Park in San Rafael as an uncompensated regulatory taking under the standards set forth in *Penn Central Transportation Co. v. New York*, 438 U.S. 104 (1979), all in violation of the Takings Clause of the Fifth Amendment to the United States Constitution as applied to the states through the Fourteenth Amendment and in violation of 42 U.S.C. § 1983.

3. Judgment is entered in favor of Defendant and against Plaintiffs on MHC's *Third, Fourth and Seventh Causes of Action*. Plaintiffs shall recover nothing on Plaintiffs' Third, Fourth, and Seventh Causes of Action.

4. Pursuant to its January 27, 2006 Order, which shall be incorporated herein by reference, the Court dismisses Plaintiffs' *Fifth and Sixth Causes of Action* with prejudice. Plaintiffs shall recover nothing on Plaintiffs' Fifth and Sixth Causes of Action.

5. The Court is informed that the parties disagree as to the identity of the prevailing party or parties. The parties shall have until 30 days following entry of judgment to submit petition(s) for attorneys' fees along with briefing on the prevailing party issue. Any party

1 opposing such a petition shall have 30 days to file its opposition. Similarly, any party seeking to
2 be awarded costs shall file a bill of costs within 30 days following entry of judgment, with any
3 motion to tax costs filed within 30 days thereafter.

4 6. The injunction issued herein shall not become effective until 30 days following
5 entry of judgment to allow the defendants sufficient time to file, if appropriate, a motion for stay
6 of the injunction pending appeal pursuant to Federal Rule of Civil Procedure 62(c).

7 7. Without affecting the finality of this Final Judgment in any way, the Court hereby
8 retains continuing jurisdiction over enforcement of this Judgment and over all parties for the sole
9 purpose of construing and enforcing this Judgment.

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VAUGHN R. WALKER
United States District Court
Northern District of California
Chief Judge

PROOF OF SERVICE

I, Andrew Hanna, declare that I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Kerr & Wagstaffe LLP, 100 Spear Street, Suite 1800, San Francisco, California 94105.

On February 5, 2008, I served the following document(s):

**CITY OF SAN RAFAEL'S OBJECTION TO THE FORM OF JUDGMENT
PROPOSED BY PLAINTIFFS**

on the party or parties listed below as follows:

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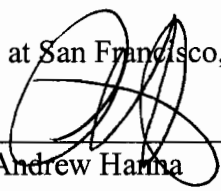
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Attorneys for Plaintiffs

By electronic mail by sending a Portable document Format ("PDF") file to the email addresses set forth above pursuant to stipulation of the parties Civil Local Rule 5-5.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 5, 2008, at San Francisco, California.



Andrew Hanna