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| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO | |
| STREET ADDRESS: 330 West Broadway | |
| MAILING ADDRESS: 330 West Broadway | |
| CITY AND ZIP CODE: San Diego, CA 92101 | |
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| TELEPHONE NUMBER: (619) 450-7075 | |
| PLAINTIFF(S) / PETITIONER(S): Chris Carrico | |
| DEFENDANT(S) / RESPONDENT(S): City of Encinitas | |
| CARRICO VS. CITY OF ENCINITAS | |
| NOTICE OF CASE ASSIGNMENT | CASE NUMBER: 37-2010-00087269-CU-MC-CTL |

Judge: Richard E. L. Strauss

Department: C-75

COMPLAINT/PETITION FILED: 03/09/2010

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

FILED
CIVIL BUSINESS OFFICE 18
CENTRAL DIVISION

2010 MAR -9 P 2:08

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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8 and ROES 1 through 200, inclusive

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

11 Chris Carrico, an individual,
12 and ROES 1 through 200, inclusive,

13 Plaintiffs,

14 vs.

15 CITY OF ENCINITAS, a Municipal
16 Corporation, and DOES 1 through 10,
17 inclusive,

18 Defendants,

19 CALIFORNIA COASTAL COMMISSION,

20 Real Party In Interest.

) Case No.: **37-2010-00087269-CU-MC-CTL**
) **COMPLAINT FOR:**
) (1) VIOLATIONS OF CAL. CONST.
) ARTICLE XIII C.
) (2) VIOLATIONS OF CAL. CONST.
) ARTICLE XIII D.
) (3) VIOLATIONS OF 5TH AND 14TH
) AMENDMENTS TO THE U.S.
) CONSTITUTION. (DUE PROCESS, EQUAL
) PROTECTION.)

) CLASS ACTION

) **Assigned to Dept:**
) **Judge: Hon.**
) **Complaint Filed:**

) **Trial Date: Not Set**

) Date: open

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1 Plaintiff alleges on information and belief, except for those allegations which pertain
2 to the named Plaintiff, which are alleged on personal knowledge:

3 **VIII. INTRODUCTION**

4 1. Plaintiff and Class members are landlords within the City of Encinitas who have
5 all paid and are challenging the so-called "Short Term Rental Permit Fee," a \$150 levy
6 annually charged by the Defendant City and imposed on anyone who rents their beach
7 residential property "short term," e.g., for 30 consecutive days or less at a time.

8 2. Plaintiffs contend that this Fee is not properly a regulatory fee, but a tax imposed
9 by the City Council for revenue purposes and, because it was imposed without a vote of the
10 electorate, it is in violation of California Constitution Article XIII C.

11 3. Plaintiffs also contend that since the Fee is imposed on property owners, the Fee
12 is also a property related levy which, because it was imposed without any vote of either the
13 property owners or electorate, is a property related fee or charge imposed in violation of
14 California Constitution Article XIII D.

15 4. Plaintiffs further contend that, even if the Fee itself somehow passes legal muster
16 then it still must be stricken because City's Ordinance No. 2006-05, the City's legislation
17 that created the fee, is fundamentally unconstitutional and must be stricken.

18 **IX. JURISDICTION AND VENUE**

19 5. This Court has jurisdiction over all defendants and causes of action asserted
20 herein pursuant to the California Constitution, Article VI, §10, because this case is not a
21 cause given by statute to other trial courts, and defendants are governmental entities in this
22 state.

23 6. Venue is proper in this Court because the named Defendants maintain their
24 principal offices, and the acts and events alleged herein occurred, in this County.

25 **X. IDENTIFICATION OF PARTIES**

26 7. Plaintiff Chris Carrico ("Plaintiff" and/or "Carrico") is a landlord who has been
27 assessed and has paid the subject "Short Term Rental Permit Fee" ("Fee"). She also is the
28 owner of a business that manages similar rental properties for other landlords.

1 8. Plaintiffs suing herein as ROES 1-200 inclusive are all the other landlords who
2 have been harmed by the Defendant City's imposition of the illegal Fee. Each of these
3 fictitiously named Plaintiffs are entitled to join in this action since they have each paid the
4 Fee, filed their own separate administrative claims against Defendant City, and also had their
5 claims denied.

6 9. These Roe Plaintiffs will be further harmed if they are not joined in this action as
7 the statute of limitations is running on such claims daily. Accordingly, each of these
8 fictitiously named Plaintiffs has an interest in this action and joinder is proper.

9 10. The true names and capacities of the Defendants sued herein under Code of Civil
10 Procedure section 474 as Does 1 thru 10, inclusive, are presently unknown to Plaintiff, who
11 therefore sues these Defendants by such fictitious names. Plaintiff will seek to amend this
12 Complaint and include these Defendants' true names and capacities when they are
13 ascertained. Each of the fictitiously named Defendants is responsible in some manner for the
14 conduct alleged herein and for the injuries suffered by Plaintiff and the Roe Plaintiffs.

15 11. Defendant City of Encinitas is an incorporated, general law city within San Diego
16 County with a population of approximately 64,000 residents. This local agency, through its
17 City Council, enacted the challenged subject Fee as part of an Ordinance intending to
18 regulate Short-Term Rental properties. The City then implemented, collected and used the
19 challenged Fee.

20 12. In taking the above-described actions and in approving and ratifying the actions
21 described below, the Defendants conspired with each other and acted together and in concert
22 during the relevant time described herein to conduct the wrongdoing alleged herein.

23 13. At all times mentioned in the causes of action alleged herein, each Defendant was
24 an agent and/or employee of each other Defendant. In doing the things alleged in the causes
25 of action stated herein, each Defendant was acting within the course and scope of his agency
26 and/or employment and was acting with the consent, permission and authorization of each of
27 the remaining Defendants. The actions of each Defendant as alleged in the causes of action
28

1 stated herein were ratified and approved by every other Defendant or their officers or
2 managing agents.

3 14. Real Party California Coastal Commission is an independent, quasi-judicial state
4 agency that plans and regulates the use of land and water in the state's coastal zone.
5 Development activities, which are broadly defined by the Coastal Act to include (among
6 others) activities that change the intensity of use of land or public access to coastal waters,
7 generally require a coastal permit from the Coastal Commission.

8 15. The Commission is properly named as a Real Party because the challenged City
9 Ordinance affects the use and regulation of coastal lands within the Commission's
10 jurisdiction.

11 **XI. FACTUAL ALLEGATIONS**

12 **A. BACKGROUND**

13 16. The City of Encinitas is a small, seaside town known for its beach village charm,
14 its inviting white sandy beaches, and wonderful panoramic vistas of the Pacific Ocean and
15 spectacularly colorful sunsets.

16 17. It's also known as a summer vacation paradise for families. The typical "short
17 term vacation renters" are families with children that can rent an entire townhouse or house
18 close to the beach from Carrico or another Class Member for a week or two during the
19 summer for less than the equivalent number of hotel rooms for the same period. And when
20 they're not visiting Southern California's world renowned family attractions, such as
21 Disneyland, Knott's Berry Farm, or SeaWorld, they relax by just "hanging-out" on the
22 beach.

23 18. But not everyone wants to share "their beach" with "outsiders," apparently.

24 19. A gullible Encinitas City Council, listening to an outspoken minority of "locals,"
25 apparently believes, wrongly, that excessive noise, drunkenness, vandalism, trash
26 accumulation and illegal parking is rampant in Encinitas and would not exist but for this
27 specific type of vacationers.

28

1 20. The City's solution was to pass City Ordinance No. 2006-05 ("Ordinance") and
2 City Resolution 2006-32 ("Resolution").¹ The Ordinance imposes a set of stringent
3 regulations and very stiff penalties that in effect hold the **landlords** accountable for the
4 conduct of **their tenants** and provides for the fixing of the amount and levy of a "permit fee"
5 on anyone desiring to rent their property "short term" The Resolution presently fixes the
6 amount of the "permit fee" at \$150 for the initial permit and another \$150 for each annual
7 renewal.

8 21. The Ordinance and the Resolution, collectively, were the City's third attempt at
9 restricting short-term visitors to Encinitas by eliminating, or at least reducing, their available
10 housing by imposing onerous regulations and a fairly high "fee" on landlords.

11 22. The City's first attempt to restrict short-term visitors was to adopt Ordinance No.
12 2005-06, in May 2005. Since that ordinance purported to ban short-term rentals in coastal
13 residential zones, California Coastal Commission approval was required. The City dutifully
14 applied to the Commission to have this ordinance approved as a change to the City's Local
15 Coastal Program ("LCP"), but withdrew its application after the Commission's staff
16 recommended a denial based on access issues.

17 23. The City's second attempt to restrict short-term visitors was early in 2006 when,
18 inexplicably, the City resubmitted to the Coastal Commission the previously withdrawn
19 zoning ordinance. Predictably, the Commission staff again recommended denial as
20 submitted and, not surprisingly, the commissioners themselves denied it outright when it was
21 brought before them.

22 24. Finally, through Ordinance 2006-05 ("Ordinance") the Council members were, on
23 their third attempt, able to achieve (nearly) the same control of land use as the Coastal
24 Commission rejected, by calling their enactment "regulations" instead of "zoning." A copy
25 of Ordinance No. 2006-05 is attached as Exhibit 1, and incorporated in this Complaint.)

26
27
28 ¹ Unless specified (i.e., enumerated) otherwise, the terms "Ordinance" and "Resolution" refer to the
challenged City Ordinance No. 2006-05 and Resolution No. 2006-32, respectively.

1 25. Ordinance No. 2006-05 holds landlords responsible for their tenants' use of
2 illegal drugs or other violations of law related to disorderly conduct, alcohol, noise, or
3 violations of the City's Municipal Code.

4 26. By holding property owners responsible for criminal acts committed by their
5 tenants, the Ordinance created a huge disincentive for all the existing and any would-be
6 landlords of short-term rentals.

7 27. The Ordinance was approved by the City Council in July of 2006 and has never
8 been submitted to, nor been approved by, the California Coastal Commission as a change to
9 the City's Local Coastal Program.

10
11 **B. ALLEGATIONS OF FACT SHOWING THAT THE PERMIT FEE
12 IS UNCONSTITUTIONAL BECAUSE THE ORDINANCE WHICH
13 IMPOSES THE FEE (ORDINANCE 2006-05) IS
UNCONSTITUTIONAL**

14 28. The City Council denominates Ordinance 2006-05, which imposes the Permit
15 Fee, as a land use ordinance.

16 29. The Ordinance applies only to the owners and tenants of "Short-Term Rentals."
17 The Ordinance defines "Sort-Term Rental as "the rental of any structure or any portion of
18 any structure for occupancy for dwelling, lodging or sleeping purposes of 30 consecutive
19 days or less in the City, including single-family or duplex units. (Ord., at §9.38.020.) The
20 Ordinance exempts Property owners of other properties that do not come under the
21 Ordinance's definition of Short-Term Rentals, such as, tenants for 31 or more days (Ord., at
22 § 9.38.020) or hotels. (Hotels are exempted because they're not in residential zones; Ord., at
23 9.38.040 preface.)

24 30. Hotels are excluded from being regulated because the Ordinance applies only to
25 property zoned as residential. (Ord., at §9.38.040, first line.) All hotels in the City are in
26 other zones and so, by design, are thereby exempted from the Ordinance.

27
28

1 31. The same misconduct that would be subject to fine and permit revocation when
2 committed by a Short-Term tenant is not actionable under this Ordinance when committed
3 by tenants and guests of long term rentals, hotels, or owner-residents.

4 32. The Ordinance requires homeowners who wish to be landlords to apply to the
5 City each year for a special Short-Term Rental Permit. The application must be
6 accompanied by a non-refundable Application Fee. The amount of the Application Fee is to
7 be fixed at an amount “no greater than necessary” to defer [sic] the cost incurred by the City
8 in administering this program. (Ord. at § 9.38.040 (A) (1).) The Ordinance also provides
9 that “[p]ermits and fees required by this [Ordinance] *shall be in addition to* any license,
10 permit or fee required under any other chapter of [the Encinitas Municipal] Code.” (Ord. §
11 9.38.070; emphasis added.)

12 33. The Application Fee and the Renewal Fee are imposed completely independently
13 from any regulatory penalties provided for by the Ordinance.

14 34. Nothing in the Ordinance provides that the imposition of the Fee itself serve any
15 regulatory purpose.

16 35. Payment of the Fee does not, and is not intended to, regulate the conduct of the
17 payor, but rather just to “defer the cost incurred by the City in administering the provisions
18 of the [Ordinance.]” (Ord. §9.38.040 (A) (1).)

19 36. The Fee is imposed as an incident of property ownership, since any change of
20 ownership is an event that requires the new owner to pay an additional \$150 Fee for the
21 issuance of a new permit. (See, Ord. §9.38.040 (A) (2).)

22 37. Any change of “material fact” also requires payment of an additional \$150 Fee
23 for the issuance of a new permit. (See, §9.38.040 (A) (2).) Nowhere in the Ordinance is the
24 term “material fact” defined.

25 38. Either the property owner or the property owner’s agent may be the “applicant”
26 for the purposes of securing the permit, but property owners are the party held responsible
27 for compliance for all provisions of the Ordinance, including all laws regulating Short-Term
28 Rentals. (See §9.38.040 (A) (1).) [This paragraph appears superfluous.]

1 39. The Ordinance requires that “[a]pplicants shall use ‘best efforts’” to insure that
2 the tenants don not violate the noise or engage in disorderly conduct or violate provisions of
3 the Encinitas Municipal Code, or “any applicable law” pertaining to noise, disorderly
4 conduct, overcrowding, alcohol consumption or illegal drugs. (See, §9.38.040 (B) (1).)

5 40. Nowhere in the Ordinance is the term “best efforts” defined, nor is the term
6 “applicable law,” specified nor what laws may be considered “applicable.”

7 41. Apparently, property owners may be fined for their tenants’ violations of the
8 City’s Municipal Code or “applicable law” pertaining to noise, disorderly conduct,
9 overcrowding, the consumption of alcohol, or the use of illegal drugs which would not have
10 occurred, but for the owners’ failure to use “best efforts.” (See, “Operational Requirements,”
11 §9.38.040 (B)(1).)

12 42. Applicants have only two hours upon “receiving notification” of a “complaint”
13 regarding tenant violations to “respond in a timely manner,” and 24 hours “of the initial call”
14 to use “best efforts” to take corrective action to prevent the recurrence of such conduct of the
15 tenants. “Failure to respond timely to two (2) or more complaints regarding tenant violations
16 is grounds for penalties as set forth in this [Ordinance].” (See, §9.38.040 (B) (2).)

17 43. The penalties in the Ordinance are triggered by the number of complaints (two or
18 more), and not necessarily by the number or degree of the alleged misconduct(s).

19 44. There are no provisions in the Ordinance that would prevent two (or more)
20 complaints, from either the same or different complainants, about the same, single act of
21 misconduct from being treated as multiple offenses with multiple penalties.

22 45. The required notice that triggers the start of the two-hour period is referred to as
23 “notification” and “initial call (complaint),” but those terms are not defined in the Ordinance.
24 Even assuming that “initial call (complaint)” means a phone call, the Ordinance does not
25 identify or describe who could make the phone call, or what information is required to be
26 conveyed, or what facts have to be alleged in order for that phone call to qualify as an
27 adequate “notification” or “complaint” under the Ordinance. As the Ordinance requires
28 posting a 24/7 phone number on the outside of the unit in plain view and visible to the

1 general public (See, 9.38.40 (B)(9), it must be presumed that the “complaints” could come
2 from anyone and everyone and there is nothing restricting anyone from calling multiple
3 times for the same alleged offense committed by the tenants.

4 46. Also, it cannot be determined from the Ordinance how the city would objectively
5 fix the time of the call, or even how the City could objectively establish that the Property
6 owner received the call, independently from the person who made the call. (See, §9.38.040
7 (B) (2).)

8 47. Nothing in the Ordinance specifically limits the property owner’s liability for his
9 tenants’ misconduct based on where the alleged misconduct occurs. Under this Ordinance,
10 as written, property owners are liable for their tenants’ disorderly conduct, excessive noise,
11 and use of alcohol or illegal drugs, or any other violation of the City’s Municipal Code (e.g.,
12 including but not limited to, municipal vehicle or parking regulations) regardless of whether
13 that activity takes place inside or outside their residential unit or, for that matter, anywhere
14 else within the City’s limits.

15 48. The City Manager *may*, upon written request for relief from an individual
16 property owner, modify the standard conditions of the Operational Requirements of the
17 Ordinance as a “reasonable accommodation” for that specific individual. The request shall
18 identify how the strict application of the Operational Requirements would not allow
19 “reasonable use of the property for a short-term rental.” (See, §9.38.040 (B)(12).)

20 49. In addition to the above regulations, the City Manager or his or her designee has
21 the independent authority to impose whatever *additional* standards and/or conditions they
22 see fit, “as necessary to achieve the objectives of this [Ordinance].” (Ord. §9.38.040 (B)(7);
23 emphasis added.)

24 50. Fines begin at \$250 for the first violation within a 24-month period and increase
25 to \$500, then to \$750, then to \$1000 for the second, third and fourth violations, within any
26 24-month period, respectively. Also, upon the fourth violation within a 24-month period, the
27 Short Term Rental Permit “shall” be suspended. (Ord. § 9.38.050(B)(1)-(4).)

28

1 51. The Ordinance provides that whenever there is reason to believe that a property
2 owner has violated any provisions of the Ordinance there shall be an investigation. The
3 Ordinance requires that the City Manager “shall” cause that investigation to be conducted.
4 Nothing in the Ordinance prevents the City Manager from appointing himself to be the
5 investigator.

6 52. Property owners are “administratively” fined for any violation, including any
7 violations of any additional “standards and/or conditions” imposed by the City Manager or
8 the manager’s designee. (See, §9.38.050 (A)(2).)

9 53. The accused’s only recourse for challenging any imposed penalty is to first pay
10 the fine, and then request an administrative hearing before the City Manager. (See,
11 §9.38.060 (B).)

12 54. The Ordinance provides that the accused’s only recourse is an “administrative
13 hearing” even though the accused may ultimately be found guilty of a misdemeanor. (See, §
14 9.38.030).

15 55. The City Manager or the manager’s designee “shall preside over the
16 [administrative] hearing.” (See, §9.38.060(B).)

17 56. The City Manager or his or her designee “shall” impose the penalties and/or
18 suspend the permit. (Ord. §9.38.060(B).)

19 57. The Ordinance provides that only after the administrative hearing does the
20 accused have the right to appeal the City Manager’s final ruling to the City Council. (Ord.
21 §9.38.060 (B).)

22 58. Neither the Ordinance nor the Application Fee, nor the Renewal Fee was ever
23 approved by the electorate.

24 59. Neither the Ordinance, nor the Application Fee, nor the Renewal Fee was ever
25 approved by the effected property owners

26 60. The Ordinance contains no severability clause.
27
28

1 **C. ALLEGATIONS ABOUT RESOLUTION 2006-32 THAT SHOW**
2 **THE APPLICATION AND RENEWAL FEES ARE AN**
3 **UNCONSTITUTIONAL TAX**

4 61. About a month after the Ordinance was approved, the City passed Resolution
5 2006-32 (“Resolution”), which established that the Filing Fee for the Short-Term Rental
6 Permit would be \$150 initially and \$150 annually to renew. (A copy of Resolution No.
7 2006-32 is attached as Exhibit 2, incorporated in this Complaint by reference.)

8 62. The Resolution provides that the Application and Renewal Fees are imposed to
9 “cover the costs associated with processing Short-term Rental Permit Applications.” (Res.,
10 at second paragraph.)

11 63. Nothing in the Resolution establishes that the Fee is to provide any regulation or
12 service. Nothing in the Resolution could be construed as regulating the conduct of, or
13 providing any service or license to, anyone required to pay the Fee.

14 64. The Resolution is silent as to how the City arrived at the \$150 figure and why it
15 costs so much for what is essentially a perfunctory clerical task: The issuance or renewal of a
16 simple certificate.

17 65. The Resolution was never put to a vote of the electorate.

18 **D. ALLEGATIONS ESTABLISHING PLAINTIFFS’ STANDING**

19 66. Years before the City Council began imposing the subject Fee, Plaintiff Carrico
20 was already a long time resident, homeowner, rental property owner, and businesswomen in
21 Encinitas. Besides her home she owns two beach rental properties that she typically rents out
22 to vacationers staying for 30 days or less. She also has a business that manages other
23 Encinitas beach rental properties for their owners.

24 67. Plaintiff Carrico bought her rental properties as income property, and requires a
25 predicable rental income stream in order to allow her to continue to afford owning them.

26 68. Several of her clients live in their Encinitas homes as a second home part of the
27 year and rent it out only for the summer months because that is when beach homes command
28

1 the highest rental rate. One week of rental income during the desirable summer months can
2 be more than equal to an entire month anytime during the rest of the year.

3 69. Members of the Class typically rent their properties to defray their costs of
4 ownership. For many owners, losing their rental income would make continued ownership
5 financially impossible.

6 70. Prior to filing this Complaint Plaintiff paid the Application and Renewal Fees and
7 then exhausted her administrative remedies.

8 71. Issuance of a signed Short Term Vacation Rental Permit is evidence of payment
9 of the Fees. Copies of representative Short Term Vacation Rental Permits which show that
10 Plaintiff Carrico has made paid the subject Fees are attached hereto as Exhibit 3 and by
11 reference incorporated herein.

12 72. Plaintiff Carrico first challenged the Fees in a letter to the City. The City replied
13 that her letter “. . . did not appear to be a claim against the City nor does it meet the
14 requirements of a government claim.” (A copy of the City’s letter, dated August 3, 2009, is
15 attached as Exhibit 4 and incorporated herein by this reference.)

16 73. On August 20, 2009, plaintiff Carrico responded to the City’s letter by filing a
17 Claim on the City’s claim form and including a copy of the newspaper article reporting on
18 *Weisblat v. City of San Diego*, (4th Dist. August 18, 2009) 176 Cal. App. 4th 1022, which
19 holds that a fee imposed to collect a tax is unconstitutional. Hence, by extension the City’s
20 Fee in this case was also legally void.. (See Exhibit 5, attached hereto and by this reference
21 incorporated herein.) Before the City responded, Carrico amended the claim and presented it
22 to the City on September 21, 2009. (A copy of the Amended Claim is attached to this
23 Complaint as Exhibit 6 and incorporated into it by this reference.)

24 74. On October 5, 2009, the City sent Ms. Carrico a letter stating that both the initial
25 claim and amended claims were being returned because her claims were time barred; City’s
26 letter states that claims more than one year old are subject to a one year statute of limitations
27 and that virtually identical claims less than one year old are subject to a six month statute of
28

1 limitation. A copy of City's "Return of Late Claim" letter and its enclosed proof of service
2 are attached hereto as Exhibit 7 and by reference incorporated herein.

3 75. On October 8, 2009, Ms. Carrico delivered to the City her response to its October
4 5, 2009 letter challenging the City's arguments that the same sort of claims could have two
5 separate and contradictory statutes of limitation. A copy of Ms. Carrico's October 8, 2009
6 letter is attached hereto as Exhibit 8 and by this reference incorporated herein.

7 76. Also on October 8, 2009, the City issued another letter, "Notice of Rejecting of
8 Claim," stating that Ms. Carrico's claims were "REJECTED by Operation of Law [emphasis
9 in original]," and stating that she has only six months from that date to file a court action on
10 her claims. A copy of that letter is attached hereto as Exhibit 9 and incorporated herein by
11 this reference.

12 77. Plaintiff, having exhausted all her administrative remedies, files this suit.
13

14 **XII. CLASS ALLEGATIONS**

15 78. The class consists of those taxpayers who have paid the Fee at any time since the
16 inception of the Fee and who have not yet received a full refund. The relief sought in this
17 complaint is the maximum possible refund of the unconstitutionally imposed Fee for each
18 member of the class to which that member may be entitled.

19 79. The class of persons for whose benefit this case is brought consists of about 150
20 to 200 of individual property owners whose claims are identical; each class member paid an
21 unconstitutional Fee. Therefore, the repetitive testimony of each class member at trial would
22 be impracticable, unnecessary, and an inefficient use of judicial resources. Moreover, the
23 exhaustive list of class members is now within the exclusive possession and control of
24 Defendants, and is not known to Plaintiff, although the list may be readily obtained using
25 statutory discovery procedures. The Defendant possesses complete records of entities paying
26 the Fee, and, the date and amount of each payment by each class member.
27
28

1 80. The essential questions of law and fact common to all members of the class and
2 which predominate over questions involving individual class members are (1) whether the
3 Fee is unconstitutional and (2) whether the class members are entitled refunds of the Fee that
4 they paid.

5 81. The claims of the representative Plaintiff are typical of the claims of the members
6 of the class. The representative Plaintiff paid the Fee in the same manner and amount as did
7 all the other class members.

8 82. A class action is superior to other methods for the fair and efficient adjudication
9 of this controversy. Since the practices engaged in are common to all members of the class,
10 judicial economy would not served by multiple actions with duplicative and repetitive
11 testimony. Class treatment of claims for refunds of the Fee would avoid potential
12 inconsistent judgments with regard to the individual claims.

13 83. Maintenance of a class action is particularly appropriate where, as here, numerous
14 parties suffer injury in small amounts, because individual lawsuits would be uneconomical
15 and the Defendant City would otherwise escape liability. Here, the payment by each class
16 member was \$150 per year, clearly making impractical the filing of individual actions by
17 each class member. The precise number of Class members is ascertainable from the City's
18 business tax records. In any event, the filing of suits by each class member would
19 overburden the judicial system, since it is estimated that approximately between 150 to 200
20 entities are entitled to a refund of the unconstitutional Fee.

21 84. The action can be efficiently managed if maintained as a class action. The names
22 and addresses of all class members are readily ascertainable from the records of Defendants
23 and can be obtained in discovery. Defendant possesses complete records of the identity of
24 each class member who paid the Fee, and, the amount paid by that class member.

25 85. The representative Plaintiff will fairly and adequately protect the interests of the
26 Class and has retained competent and experienced legal counsel.

27
28

1 **XIII. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**
3 **Cal. Const. Art. XIII C**

4 **By Plaintiffs Against all Defendants**

5 86. Plaintiffs incorporate and re-allege here the paragraphs and the allegations above.

6 87. The \$150 annual "Fee" is an excise tax imposed in violation of Art. XIII C.

7 88. Art. XIII C §1 (a) defines "General Tax" to mean "any tax imposed for general
8 governmental purposes.

9 89. Ordinance No. 2006-05 imposes onerous regulations on the owners of short-term
10 rental properties. Those regulations are enforced by stiff penalties, starting with \$250 for the
11 first violation, and increasing \$250 for each subsequent violation, within a 24 month period.

12 90. Additionally, and apart from its regulatory purpose, Ordinance No. 2006-05 also
13 has a revenue purpose which is to raise revenue for the City's General Fund to cover the
14 City's general governmental costs related to the administration of this Ordinance.

15 91. The Ordinance requires that any owner of residential property is required to pay
16 the Fee each year solely as a precondition to renting the property for 30 days or less, the
17 amount of the Fee to be not more than necessary to defer the cost incurred by the City in
18 administering the provisions of the Ordinance.

19 92. The Ordinance specifically provides that the Fee shall be imposed in addition to
20 any license, permit, or fee required under any other chapter of the City's Municipal Code.

21 93. Resolution No. 2006-32 established that the Fee would be an annual levy of \$150
22 upon the owners of Short-Term Rental Units to "cover the [Defendant City's] cost associated
23 with Processing Short-Term Rental permit application", a general governmental purpose.

24 94. Neither Ordinance No. 2006-05 nor Resolution No. 2006-32 indicates any
25 regulatory purpose to be accomplished solely by imposition of the Fee.

26 95. Hence, the Fee is a new, general excise tax imposed by the Defendant City on the
27 owner's exercise of an incident of his rights in his property.

28

1 121. Administrative hearings are characterized as lacking the many legal
2 formalities of judicial hearings, especially in the rules of evidence, such as the right to
3 subpoena witnesses.

4 122. Courts have held that administrative hearings are an appropriate substitute to a
5 formal court proceeding when, on balance, the slight imposition on the rights and property
6 interests of the accused are significantly outweighed by the governmental interests in
7 reaching a speedy and adequate resolution of relatively minor infractions. Administrative
8 hearings which adjudicate penalties for past action have been held to be constitutional when
9 the property interest has been a nominal amount held for a short time. Nevertheless,
10 administrative hearings must be fair or will be found unconstitutional. But the administrative
11 hearing procedure specified in the ordinance meets none of the above requirements.

12 123. The administrative hearing procedure specified in the Ordinance is unfair and
13 unbalanced because of the nature and source of the allegations put the owner at a legal
14 disadvantage; For example, what may constitute “unreasonable noise” by just one member of
15 the public triggers the application of the Ordinance. Because noise complaints are easy to
16 make and difficult to prove the burden of proof should be on the accuser to prove his
17 accusations instead of requiring the accused to prove his innocence.

18 124. Yet the Ordinance, by imposing the requirement for the owner to first pay the
19 penalty before he is allowed an administrative hearing means that he will be forced to prove
20 his innocence in order to win back a refund of his penalty and to do so without the benefit of
21 formal evidentiary rules.

22
23 ADMINISTRATIVE HEARING REQUIREMENTS OVERBURDEN FUNDAMENTAL
24 PROPERTY RIGHTS

25 125. The Ordinance is unbalanced because it circumscribes and impedes the
26 fundamental right of owning real property, namely renting, one of the essential “sticks” in
27 the “bundle” of property rights. More than just levying direct monetary penalties on the
28 owner for a past offence, it withholds an important property right.

1 126. Most, if not all, of the owners' revenue from short term visitors comes during
2 the mid-summer season. Some owners could not continue to own their property without the
3 revenue they receive just during that one time of year. Summer is also the period during
4 which most of the owner-occupant units are in use, making complaints much more likely.

5 127. Revocation of an owners' Short-Term Rental permit during that period would
6 make the ownership unreasonably expensive and disproportionately punish the owner
7 relative to the state's interests as the owner would be missing critical income while waiting
8 for the hearing and then waiting for the ruling.

9 128. Furthermore, the financial losses caused by the owner's inability to rent
10 during this period could directly lead to the loss of ownership of the property.

11 129. The Ordinance's burden, either directly or indirectly, on owners' property
12 rights, up to and including the right to even own the property, makes the Ordinance's "pay
13 first, hearing later" requirement fundamentally unbalanced and hence, unconstitutional.

14
15 THE ORDINANCE PROVISIONS ARE NOT LEAST RESTRICTIVE MEANS TO
16 ACCOMPLISH STATE GOALS:

17 130. The Purpose and Findings of the Ordinance does not explain why the owners
18 are vicariously liable for their tenant's conduct, nor does it explain why the tenants cannot or
19 should not be held responsible for their own actions. As such the Ordinance is defective
20 because, ultimately, the state's interest cannot be balanced with the imposition on the owners
21 when there are other, less imposing means of accomplishing the same goal, such as
22 regulating the tenants directly.

23
24 THE ORDINANCE VIOLATES FUNDAMENTAL PROCEDURAL DUE PROCESS
25 RIGHTS:

26 131. At least one violation of the Ordinance (e.g., non-payment of the Fee) is
27 punishable as a misdemeanor. An administrative hearing cannot be used as a substitute for a
28 full court trial for a misdemeanor offense because the right to trial when the accused could be

1 incarcerated is a procedural due process right guaranteed by the Fifth Amendment as applied
2 to the states through the Fourteenth Amendment and which right is beyond the power of the
3 state to legislate away.

4 THE ADMINISTRATIVE HEARING SPECIFIED BY THE ORDINANCE IS
5 INHERENTLY UNFAIR:

6 132. The Ordinance provides that City Manager has full authority to:

7 (a) Impose additional operating requirements upon some owners while
8 making reasonable accommodations for other owners;

9 (b) Be the person complaining of some alleged violation of the provisions of
10 the Ordinance;

11 (c) Appoint himself to be the "investigator" of the complaint and make the
12 determination that there exists substantial evidence to support a finding of a violation

13 (d) Preside over the "Administrative hearing" and hand down a finding
14 against the accused;

15 133. Impose a penalty base upon his interpretation of his own additional
16 requirements and his complaint and his own evidence.

17 134. In short, the City Manager is authorized by the Ordinance to be legislator,
18 policeman, jury, judge, and executioner, all at once. Even assuming an Administrative
19 hearing could be considered an appropriate procedure to subject the accused, the
20 "Administrative Hearing," as provided by this Ordinance, would be a hollow gesture and an
21 additional penalty and a pointless exercise as its conclusion would be a foregone conclusion.

22 135. Because the Ordinance does not have a severability clause, if even one
23 provision of the Ordinance is unconstitutional the entire Ordinance, including the Fee, must
24 be declared void.

25 136. The Ordinance cannot be cured by amendment. The offensive provisions, far
26 from being "ancillary," are central to the purpose and objectives of the Ordinance and not
27 amenable to re-write by judicial fiat. Hence, even with a severability clause the Ordinance
28 could still not be saved.

1 137. Because the Ordinance must be declared void its Fee must also be held void.

2 138. Plaintiff and Class seeks and is entitled to the following judgment, orders and
3 relief for itself and members of Class, against said Defendants, jointly and severally: (a) For
4 a declaratory judgment ruling that because the Fee funds an unconstitutional Ordinance that
5 the Fee itself has been unconstitutionally imposed ; (b) For injunctive relief directing
6 Defendant City to immediately refund all Fees imposed and collected from Plaintiff and
7 Class;

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3 **XIV. PRAYER**

4 WHEREFORE, Plaintiff, Class Members, and the Roe Plaintiffs, individually and for each of
5 them as appropriate for the particular cause of action as described above, pray for judgment
6 against Defendants, and each of them, as follows:

7 1. **On the First and Second Causes of Action** against all Defendants based on
8 violations of California Constitution, Articles XIII C, XIII D: Plaintiff seeks and is entitled
9 to the following judgment, orders, and relief and on behalf of herself and Class, against
10 Defendants, jointly and severally:

11 (a) For a declaratory ruling adjudging the Fee is a violation of Art. XIII C
12 and/or Art. XIII D;

13 (b) For injunctive relief directing Defendant City to immediately refund by
14 all Fees collected from the respective landlords;

15 (c) For preliminary and permanent injunctions prohibiting Defendants from
16 engaging in further unlawful conduct.

17 2. **On the Third Cause of Action** against all Defendants based on the denial of Due
18 Process: Plaintiff and Class seeks and is entitled to the following judgment, orders and relief
19 for itself and members of Class, against said Defendants, jointly and severally:

20 (a) For a declaratory judgment regarding whether the Ordinance has been
21 illegally and unconstitutionally imposed and/or invalidly imposed;

22 (b) For injunctive relief directing Defendant City to immediately refund all
23 Fees imposed and collected from Plaintiff and Class;

24 3. **On the Fourth Cause of Action** against all Defendants, based on violations of
25 Fifth and Fourteenth Amendments in that the Ordinance is void for vagueness:

26 (a) For a declaratory judgment regarding whether the Ordinance has been
27 illegally and unconstitutionally imposed and/or invalidly imposed;

28 (b) For injunctive relief directing Defendant City to immediately refund all
Fees imposed and collected from Plaintiff and Class;

1 4. On the **Fifth Cause of Action** based on Due Process violations of the Fifth and
2 Fourteenth Amendments:

3 (a) For a declaratory judgment ruling that the Ordinance has been illegally
4 and unconstitutionally imposed and/or invalidly imposed;

5 For injunctive relief directing Defendant City to immediately refund all Fees
6 imposed and collected from Plaintiff and Class;

7 5. On each and all Causes of Action:

8 (a) For restitution to the Class and disgorgement of the monies due and
9 owed to Plaintiff and the Class;

10 (b) For recovery of any and all penalties and interest paid by plaintiffs, and
11 cancellation of any and all penalties and interest billed or deemed to have accrued under the
12 Ordinance;

13 (c) For attorney fees;

14 (d) For such other and further relief as the Court deems just and proper.

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16
17 DATED: March 5, 2010

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19 
20 Edward M. Teyssier, Esq.
21 Attorney for Plaintiff Carrico and Class
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EXHIBITS

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- EXHIBIT 1: Encinitas City Council Ordinance No. 2006-05, (“Ordinance”)
- EXHIBIT 2: Encinitas City Council Resolution No. 2006-32 (“Resolution”)
- EXHIBIT 3: Examples of City-issued STR Permits Evidencing Payment of Fee.
- EXHIBIT 4: City’s Letter Response to Carrico’s “Notification” Letter.
- EXHIBIT 5: Carrico’s Claim Filed on City’s Claim Form, Dated 8/20/2009
- EXHIBIT 6: Carrico’s Amended Claim for Refund, Cover Letter Dated 9/19/2009
- EXHIBIT 7: City’s RETURN OF LATE CLAIM Letter, Dated 10/05/2009, Amended from /05/2009.
- EXHIBIT 8: Carrico Letter Challenging Grounds for “Lateness,” Dated 10/8/2009
- EXHIBIT 9: City Denial Letter Dated October 7 and 8, 2009

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
SOLO PARA USO DE LA CORTE)
FILED
CIVIL BUSINESS OFFICE 18
CENTRAL DIVISION

2010 MAR -9 P 2: 08

CLERK - SUPERIOR COURT
SAN DIEGO COUNTY, CA

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

CITY OF ENCINITAS, a municipal corporation, and Does 1 through 10

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Chris CARRICO, an individual, and Roes 1 through 200.

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Hall of Justice
330 W. Broadway, San Diego, California, 92101

CASE NUMBER:
(Número del Caso):
37-2010-00087289-CU-MC-CTL

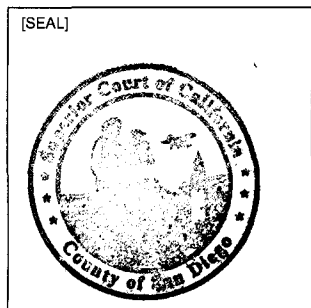
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Edward Teyssier, 3200 Highland Ave. #300, National City, CA., 91950, 619-474-7500 x202

DATE: **MAR 09 2010**
(Fecha)

Clerk, by Wynnies S. Abella, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

WYNNIE S. ABELLA



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): CITY OF ENCINITAS
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify): CCP 416.50 (Municipal Corporation)
- by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, county number, and address):

FOR COURT USE ONLY

EDWARD M. TEYSSIER, SBN 234872
3200 Highland Ave. #300
National City, CA 91950
TELEPHONE NO.: 619-474-7500 x202 FAX NO.: 619-474-7003
ATTORNEY FOR (Name): Plaintiff Chris Carrico & Roes 1 through 200

FILED
CIVIL BUSINESS OFFICE 18
CENTRAL DIVISION
2010 MAR -9 P 2:08
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
STREET ADDRESS: 330 W. Broadway
MAILING ADDRESS: 330 W. Broadway
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: Hall of Justice, Main Branch

CASE NAME:
CARRICO, et. al., v. CITY OF ENCINITAS, et. al.

CIVIL CASE COVER SHEET
Unlimited (Amount demanded exceeds \$25,000) [checked]
Limited (Amount demanded is \$25,000 or less) []
Complex Case Designation: Counter [], Joinder []
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) []
CASE NUMBER: 37-2010-00087200-CU-MC-CTL
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
Auto Tort: Auto (22) [], Uninsured motorist (46) []
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort: Asbestos (04) [], Product liability (24) [], Medical malpractice (45) [], Other PI/PD/WD (23) []
Non-PI/PD/WD (Other) Tort: Business tort/unfair business practice (07) [], Civil rights (08) [], Defamation (13) [], Fraud (16) [], Intellectual property (19) [], Professional negligence (25) [], Other non-PI/PD/WD tort (35) []
Employment: Wrongful termination (36) [], Other employment (15) []
Contract: Breach of contract/warranty (06) [], Rule 3.740 collections (09) [], Other collections (09) [], Insurance coverage (18) [], Other contract (37) []
Real Property: Eminent domain/Inverse condemnation (14) [], Wrongful eviction (33) [], Other real property (26) []
Unlawful Detainer: Commercial (31) [], Residential (32) [], Drugs (38) []
Judicial Review: Asset forfeiture (05) [], Petition re: arbitration award (11) [], Writ of mandate (02) [], Other judicial review (39) []
Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403): Antitrust/Trade regulation (03) [], Construction defect (10) [], Mass tort (40) [], Securities litigation (28) [], Environmental/Toxic tort (30) [], Insurance coverage claims arising from the above listed provisionally complex case types (41) []
Enforcement of Judgment: Enforcement of judgment (20) []
Miscellaneous Civil Complaint: RICO (27) [], Other complaint (not specified above) (42) [checked]
Miscellaneous Civil Petition: Partnership and corporate governance (21) [], Other petition (not specified above) (43) []

2. This case [] is [checked] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
a. [] Large number of separately represented parties
b. [] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. [] Substantial amount of documentary evidence
d. [] Large number of witnesses
e. [] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. [] Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. [checked] monetary b. [checked] nonmonetary; declaratory or injunctive relief c. [] punitive
4. Number of causes of action (specify): Violations of Cal. Const. Art. XIII C, D; 5th, 14th Amend. Const. Trust
5. This case [checked] is [] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 8, 2010
Edward M. Teyssier, Esq.
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
File this cover sheet in addition to any cover sheet required by local court rule.
If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller
Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition