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7 Liability Company

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9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
12

13 **EL ROVIA MOBILE HOME PARK, LLC,**)
A California Limited Liability Company,)

14)
15 Plaintiff,)

16)
17 vs.)

18 **CITY OF EL MONTE,** a California general)
19 law municipality, and DOES 1 through 100,)
inclusive,)

20)
21 Defendants)
22

Case No. 2:19-CV-7506

COMPLAINT FOR:

(1) Violation of Fifth Amendment

(2) Violation of Civil Rights under 42
U.S.C. §1983

23
24 Plaintiff, EL ROVIA MOBILE HOME PARK LLC, a California Limited Liability
25 Company ("Plaintiff") for its Complaint against the Defendant City of El Monte, alleges as
26 follows:

27 ///

28 ///

1 **Jurisdiction and Venue**

2 1. Plaintiff alleges this court has jurisdiction under 28 U.S.C. §§ 1331, 1343,
3 1367, 2201 and 2202 and pursuant to 42 U.S.C. § 1983 *et seq.*

4 2. Venue is proper in this district pursuant to 28 U.S.C. §1391 because
5 Defendant City of El Monte is located within the Central District of California. This action
6 arises out of events that occurred and continue to occur in El Monte, California.

7 **Parties**

8 3. Plaintiff is a limited liability company duly existing and the owner of a
9 mobilehome park described as El Rovia Mobile Home Park, located in the City of El
10 Monte (“El Rovia”). Plaintiff’s El Rovia contains 76 rental sites which have been subject
11 to Ordinance 2860 of the City of El Monte since August 4, 2015. Plaintiff purchased El
12 Rovia before Ordinance 2860 was proposed and then passed.

13 4. Plaintiff is informed and believes, and thereon alleges, that Defendant, City of
14 El Monte (hereafter “Defendant” or “the City”), is and at all times mentioned herein was a
15 duly incorporated general law municipal corporation located within the State of California
16 in the County of Los Angeles.

17 **Ripeness**

18 5. On or about August 4, 2015, the City passed Ordinance 2860 (El Monte
19 Municipal Code, Chapter 8.70 - Mobilehome Park Rent Stabilization) after Plaintiff had
20 purchased El Rovia. A true copy of Ordinance 2860¹ is attached and incorporated as
21 **Exhibit “1.”**

22 6. Plaintiff filed an action in this court on July 31, 2017 challenging the
23 constitutional validity of Ordinance 2860, Case No. 2:17-cv-05647-RGK-PJW, seeking,
24 *inter alia*, relief on two federal claims (violation of the Fifth Amendment and 42 U.S.C.
25 §1983). A First Amended Complaint was filed September 1, 2017.

26 _____
27 ¹ Ord. No. 2860, § 2, adopted Aug. 4, 2015, amended Ch. 8.70 in its entirety, in effect repealing and
28 reenacting said chapter to read as set out herein. The former Ch. 8.70, §§ 8.70.010—8.70.160, pertained to
similar subject matter and derived from Ord. No. 2829, § 1, adopted Sept. 3, 2013; Ord. No. 2837, § 2,
adopted May 13, 2014; Ord. No. 2843, § 2, adopted July 8, 2014; Ord. No. 2852, § 3, adopted March 30,
2015; and Ord. No. 2855, § 3, adopted June 2, 2015.

1 7. On September 28, 2017, Defendant moved the Court for an order to dismiss
2 the First Action. The Court granted the motion to dismiss on October 30, 2017 with
3 prejudice, but holding that the sufficiency of federal claims for relief in Claims #2 and #4,
4 would not be addressed as dismissal was upon jurisdictional grounds under *Williamson*
5 *County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172
6 (1985). A true copy of the Minute Order is attached as **Exhibit “2.”**

7 8. At the time of the dismissal of the First Action, *Knick v. Twp. of Scott* (2019)
8 ___U.S.___ [139 S.Ct. 2162, 204 L.Ed.2d 558] had not been decided. Then, ripeness by
9 exhaustion of state remedies was required. *Williamson County Regional Planning Comm'n*
10 *v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). *Williamson County* established a
11 two-prong test for determining ripeness of takings claims: (1) the claimant must have
12 obtained a final decision from the authority applying the regulation amounting to a taking;
13 and (2) all state remedies must have been exhausted. *Id.* at 190-91.

14 9. The order dismissing Plaintiff’s first action, attached as **Exhibit “2”**, states in
15 regard to claims #2 and #4, that:

16 “As an initial matter, the Complaint correctly acknowledges that its takings claim is
17 applicable to the City through 42 U.S.C. § 1983. The Court thus treats Plaintiff’s
18 takings claim (Claim 2) as merged with Plaintiff’s § 1983 claim (Claim 4).

19 [¶] Plaintiff alleges that Ordinance 2860 effects a wealth transfer from mobilehome
20 park owners to tenants that constitutes a public and private taking in violation of the
21 Fifth Amendment of the U.S. Constitution. The City argues that this federal takings
22 claim is unripe and thus, should be dismissed for lack of subject matter jurisdiction.

23 The Court agrees.

24 * * *

25 [¶] Plaintiff failed to allege that it pursued a Kavanau adjustment. Plaintiff’s
26 Opposition merely argues that state proceedings would be futile, but alleges no
27 supporting facts. Given Plaintiff’s limited arguments, conclusory allegations, and the
28 relevant Ninth Circuit authority, the Court finds that Plaintiff has failed to meet the

1 second prong. Thus, Plaintiff's federal takings claim is unripe.

2 [¶] Alternatively, the City argues Plaintiff's takings claim should be dismissed for
3 failure to state a claim. Because dismissal is proper on jurisdictional grounds, the
4 Court need not determine whether Plaintiff properly addressed the elements of a
5 public or private takings claim.”

6 **Exhibit “2”**, pp. 3-4.

7 10. Accordingly, Plaintiff then sued in state court to exhaust state remedies, while
8 preserving all federal claims. That action was dismissed on demurrer, then appealed and
9 reversed in part, ordering a trial to determine if there was a rational basis for Ordinance
10 2860 when it was alleged that no rational basis according to City is own admissions
11 (findings of, *inter alia*, Kenneth Baar, Phd.), that rent controls were not appropriate for
12 “small” (defined as 100 spaces or less) mobilehome parks. *El Rovia Mobile Home Park v.*
13 *City of El Monte* (Mar. 21, 2019), No. B288134) ___ Cal.App.5th ___ [2019 Cal. App.
14 Unpub. LEXIS 1951]. The state claims “had merit” ruled the Court of Appeal (“The
15 operative pleading, construed liberally, alleged that the City acknowledged there was no
16 justification for regulating smaller parks. Thus, plaintiff alleged an absence of
17 “constitutional facts” supporting the City's ordinance. The trial court erred in sustaining
18 the demurrer as to those allegations”). *Id.* at *2.

19 11. On June 21, 2019, the Supreme Court decided *Knick v. Twp. of Scott* (2019)
20 ___ U.S. ___ [139 S.Ct. 2162, 204 L.Ed.2d 558]. *Knick* explicitly overruled *Williamson*
21 *County*, and struck the requirement of prior exhaustion of remedies. *Id.* at 2167:

22 “The Williamson County Court anticipated that if the property owner failed to secure
23 just compensation under state law in state court, he would be able to bring a “ripe”
24 federal takings claim in federal court. See *id.*, at 194, 105 S. Ct. 3108, 87 L. Ed. 2d
25 126. But as we later held in *San Remo Hotel, L. P. v. City and County of San*
26 *Francisco*, 545 U. S. 323, 125 S. Ct. 2491, 162 L. Ed. 2d 315 (2005), a state court’s
27 resolution of a claim for just compensation under state law generally has preclusive
28 effect in any subsequent federal suit. The takings plaintiff thus finds himself in a

1 Catch-22: He cannot go to federal court without going to state court first; but if he
2 goes to state court and loses, his claim will be barred in federal court. The federal
3 claim dies aborning. [¶]The San Remo preclusion trap should tip us off that the
4 state-litigation requirement rests on a mistaken view of the Fifth Amendment.
5 (Footnote omitted) The Civil Rights Act of 1871, after all, guarantees “a federal
6 forum for claims of unconstitutional treatment at the hands of state officials,” and the
7 settled rule is that “exhaustion of state remedies ‘is not a prerequisite to an action
8 under [42 U. S. C.] §1983.’” Heck v. Humphrey, 512 U. S. 477, 480, 114 S. Ct.
9 2364, 129 L. Ed. 2d 383 (1994) (quoting Patsy v. Board of Regents of Fla., 457 U. S.
10 496, 501, 102 S. Ct. 2557, 73 L. Ed. 2d 172 (1982)). But the guarantee of a federal
11 forum rings hollow for takings plaintiffs, who are forced to litigate their claims in
12 state court. [¶]We now conclude that (footnote omitted) the state-litigation
13 requirement imposes an unjustifiable burden on takings plaintiffs, conflicts with the
14 rest of our takings jurisprudence, and must be overruled.”

15 *Knick v. Twp. of Scott* (2019) __ U.S. __ [139 S.Ct. 2162, 2167, 204 L.Ed.2d 558, 567].)

16 12. The First Action was timely filed. Claims #2 and #4 (federal takings claims)
17 were dismissed on jurisdictional grounds.

18 13. The statute of limitations is tolled during the pendency of the state court action
19 exhausting remedies. *See, e.g., Battle v. Ledford*, 912 F.3d 708 (4th Cir. 2019) (equitable
20 tolling while administrative remedies exhausted); *Sweger v. Chesney*, 294 F.3d 506 (3d Cir.
21 2002) (post-conviction petition tolled the statute of limitations); *Frandsen v. Brotherhood*
22 *of Ry., etc.*, 782 F.2d 674 (7th Cir. 1986) (the statute of limitations tolled employee exhausts
23 remedies).

24 14. Plaintiff actively pursued exhaustion of state remedies until such time as the
25 *Williamson County* requirement no longer applied, and Plaintiff now promptly continues its
26 pursuit of federally-based relief. As a continuum of continuing effort by Plaintiff for its
27 federal takings claims commenced originally in timely fashion, the statute of limitations is
28 tolled.

1 15. The claims for relief are timely for having been pursued as a requirement of
2 first, *Williamson County*, and now file promptly upon the abolishment of the exhaustion
3 rule announced in *Knick*. In accordance with the minute order from the First Action, this
4 action seeks relief for federal claims previously dismissed on jurisdiction grounds (under
5 *Williamson County*).

6 **Allegations Common to All Causes of Action**

7 (Plaintiff's Acquisition of El Rovia)

8 16. Plaintiff rents to tenants, who provide their own housing. All tenant-owned
9 units are portable, and connected to park utility outlets for natural gas, electricity and water
10 and sewers.

11 17. Mobilehomes generally remain in place after installation because it is more
12 profitable to sell them *in situ* under the guarantees of the Mobilehome Residency Law (*Cal.*
13 *Civil Code* §§798, *et seq.*) (hereinafter "MRL"), than to move them from site to site.

14 18. Mobilehome tenancies are governed by the MRL. Mobilehome tenancies are
15 not terminable (except for cause), and must be renewed on expiration of the term. *Cal. Civil*
16 *Code* §798.55(b). Absent cause, mobilehome tenancies are effectively "life estates"
17 (*Rancho Santa Paula Mobilehome Park, Ltd. v. Evans* (1994) 26 Cal.App.4th 1139, 1145
18 [32 Cal.Rptr.2d 464, 468]), which continue past death and may be assumed by qualified
19 tenant heirs. *Cal. Civil Code* §798.78.

20 19. Plaintiff exercised prudent and reasonable due diligence before acquiring El
21 Rovia. Personal meetings were taken with El Monte officials and staff, including the
22 Mayor. Plaintiff sought to ascertain if El Rovia was likely to be rent controlled in the
23 future. Plaintiff was told, in substance, that small parks were not the problem experienced
24 by the mobilehome residents of the City.

25 20. Plaintiff was advised by City officials that the Brookside park was the sole
26 source of resident complaints. Plaintiff was also told that rent regulations would not apply
27 if rent increase guidelines were followed: no more than \$50.00 per year without exceeding
28 approximately \$760.00 in monthly rents. Plaintiff complied with these limitations. Plaintiff

1 is informed and believes and thereon avers that no other park owner in the small class
2 group exceeded the guidelines set forth under Ordinance 2829 to remain exempt from rent
3 controls imposed on the class of large park owners.

4 21. Plaintiff purchased El Rovia on or about April 13, 2013. Plaintiff therefore
5 acquired its investment-backed expectations of ownership and operation before passage of
6 any rent freeze or ceiling was imposed. Plaintiff purchased: (1) 72 spaces, and: (2) leased
7 4 additional spaces until August 13, 2013, when a lot split procedure and Plaintiff's
8 purchase was completed.

9 21. El Rovia (and all small parks) was not regulated until Ordinance 2860 passed
10 August 4, 2015.

11 22. The pre-2013 history concerning El Monte and the enunciated policy that the
12 small owners were not a problem, resulted in Plaintiff's distinct investment-backed
13 expectations. Such expectations included: the continuing expectation of the ability to
14 charge market rents on the sale of mobilehomes and transfers of tenancies in the park; the
15 attainment of reasonable rent levels and rates based on fair assessment of the market at the
16 time a tenant unilaterally relinquished its "life estate" tenancy interest to the park owner;
17 the attainment of reasonable rents based on fair assessment of the market at the time of
18 death or involuntary termination of tenancy; the right to continue receiving real property
19 entitlements of ownership of the park business of El Rovia in an atmosphere free of rent
20 ceilings; the right to revenues, absence of income-truncating regulations applicable to the
21 business, including at the time of mobilehome tenancy transfers; and regulations and
22 limitations which restricted operations, and so restricted operations as to create a black
23 market of suppressed value in the pads, with such current rental value being sold in a lump
24 sum present value to new tenants, which is a black market rental premium which is the
25 effect of Ordinance 2860 and a taking of Plaintiff's property.

26 23. Plaintiff also expected to be without need to become embroiled in complicated,
27 time consuming and expensive administrative hearings, costs for lawyers and experts,
28 requirements of deposits and payment of city administrative costs and even hearing judges,

1 thusly and significantly frustrating the reasonable expectations of ownership and
2 operations.

3 24. Plaintiff’s investment-backed expectations of ownership and the investment at
4 the time of the purchase of the El Rovia park stand in stark contrast and direct
5 contradistinction compared to the plaintiff-owner in *Guggenheim v. City of Goleta* (9th Cir.
6 2010) 638 F.3d 1111, who acquired, with eyes wide open, after controls were known to be
7 in place. Plaintiff in this case was not given the choice the owners had in *Guggenheim*.
8 Plaintiff’s investment-backed expectations are palpable and cognizable for purposes of
9 scrutiny under *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978)
10 and *Guggenheim*.

11 25. As of 2012, the owners of one park— Brookside — were reportedly charging
12 more than \$1,000.00 in rent. By contrast, El Monte’s class of small mobilehome parks are
13 “mom and pops,” ranged from three spaces to one-hundred spaces, as the city-defined cut
14 off. The smaller parks are not the problem Plaintiff was told (and the City consultants
15 opined). The smaller parks in the City of El Monte, as registered with the California
16 Department of Housing and Community Development, are as follows:

17 MIDGET TP (19-0484-MP)	[11 spaces registered];
18 VICTORY TRAILER PARK (19-0263-MP)	[3 spaces registered];
19 PINE MP (19-1451-MP)	[4 spaces registered];
20 BARNHOUSE TRAILER CT (19-1547-MP)	[7 spaces registered];
21 N\V TP (19-0896-MP)	[8 spaces registered];
22 FELIPE TP (19-0218-MP)	[11 spaces registered];
23 EDWARDS TRAILER CT (19-0642-MP)	[13 spaces registered];
24 THE GARVEY TP (19-0843-MP)	[13 spaces registered];
25 SHADYLANE TP (19-0631-MP)	[17 spaces registered];
26 J & E TRAILER PARK (19-0537-MP)	[16 spaces registered];
27 MOUNTAIN VIEW TR CT (19-0446-MP)	[18 spaces registered];
28 EL RANCHITO (19-1215-MP)	[19 spaces registered];

1 28. El Monte designated the mobilehome parks into two discrete classes for
2 Ordinance 2829: a class of large parks deemed proper to regulate, composed of more than
3 100 spaces, and, “small” parks, those with less than 100 spaces (not necessitating price
4 regulation). The early history of El Monte rent control is discussed in *Brookside*
5 *Investments, Ltd. v. City of El Monte* (2016) 5 Cal. App. 5th 540 [209 Cal. Rptr. 3d 863].

6 29. *Brookside* summarized the City findings for its 2013 controls embodied in
7 Ordinance 2829:

8 “. . . Ordinance No. 2829 establishes \$760 per month as the "ceiling rent
9 amount" and permits monthly rent increases each year by an amount not to
10 exceed \$50 per month for spaces with rent less than the ceiling rent amount.

11 All proposed rent increases in excess of \$50 per month and any increases that
12 would result in monthly rent above the ceiling rent amount are subject to
13 review . . . ”

14 *Brookside Investments, Ltd. v. City of El Monte* (2016) 5 Cal. App. 5th 540, 546 [209 Cal.
15 Rptr. 3d 863].

16 30. A true copy of Ordinance 2829 is attached and incorporated as **Exhibit “3.”**
17 It, too, was passed after Plaintiff purchased El Rovia.

18 “On September 3, 2013, after receiving the study from its consultants, the City
19 Council enacted Ordinance No. 2829, adding chapter 8.70, Mobilehome Park
20 Rent Stabilization, to the El Monte Municipal Code. Ordinance No. 2829,
21 which took effect October 3, 2013, applies only to mobilehome parks with 101
22 or more spaces. (Brookside has 421 spaces; one or two other mobilehome
23 parks in El Monte also have more than 100 spaces.) *Id.*, at 546.

24 31. Before passage of Ordinance 2829, El Monte commissioned Waronzof and
25 Associates, Inc., to conduct a comprehensive study of the rental market. The study adduced
26 no reason for passage of rent controls by “small” park owners like Plaintiff (less than 100
27 spaces).

28 32. Ordinance 2829 was amended during the course of deliberations on or about

1 August 6, 2013 to exclude small mobilehome parks with less than 100 spaces. (**Exhibit**
2 **“3”**). Waronzof found only reasonableness and compassion:

3 “It is also appropriate to note that most of our respondents expressed care and
4 concern for their tenants, and pragmatic recognition that many of their
5 residents were low-income households, older persons on small, fixed incomes,
6 and otherwise limited in their ability to select the type, quality and cost of their
7 housing. The sense of care and concern they expressed came though clearly in
8 their responses to many of the discussion points and questions.

9 [4.2 Interview Findings and Observations]

10 Responses to Questions and Discussion Points About Rent, Fees, Vacancy,
11 and Turnover

- 12 • Rents were typically increased only a modest amount annually,
13 with several respondents mentioning an awareness of the inflation
14 rate in setting rent escalations.
- 15 • Increases were quite small, on the order of \$15 to \$30 per month
16 per year; in recent years, during poor economic conditions, there
17 were fewer and smaller increases in rents.

18 Mobile Home Park Baseline Analysis, City of El Monte July 25, 2013, Waronzof
19 Associates, Inc. & Stanley R. Hoffman Associates, Inc. Pp 4-2 - 4-3, of record and file with
20 the city agenda for hearing of the ordinance 2829. A true copy of the excerpt is attached as
21 **Exhibit “4.”**

22 33. Thus the City was advised by staff that Ordinance 2829 would not apply to
23 parks under 100 spaces, under \$760 rent per month, and \$50.00 or under rent adjustments.

24 The staff report of September 2013 states:

25 *“The proposed ordinance would only apply to mobilehome parks with more*
26 *than one hundred (100) mobilehome park spaces. For such parks, if the*
27 *monthly rent under a rental agreement in such a park is less than \$760*
28 *(exclusive of monthly metered utility charges of the MHP owner) as of*

1 October 1, 2013 (“Ceiling Rent Amount”), then the Park Owner would be
 2 allowed to raise the monthly rent on such a space each year after the effective
 3 date of this Chapter without Board approval after October 1, 2013 in an
 4 amount not to exceed fifty dollars (\$50.00) per month between the time when
 5 the space rent was last increased and the date of the proposed rent increase
 6 taking effect on or after October 1, 2013, up to the Ceiling Rent Amount
 7 (\$760, exclusive of monthly metered utility charges of the MHP owner).”
 8 (Emphasis supplied)

9
 10 (Ordinance 2860, August, 2015)

11 34. Before passage of Ordinance 2860, the City first commissioned Kenneth Baar,
 12 Phd., to study and report his findings. Baar, a leading advocate and expert on drafting and
 13 enforcing rent controls, said:

14 “VI. Annual Reporting of Rental and Other Tenancy Information”

15 “*In hearings and in its rent stabilization ordinance the City Council has*
 16 *indicated that rent increases in smaller parks are not an issue at this time.”²*

17 (Emphasis supplied).

18 35. There were and are no “constitutional facts showing ill effects of sufficient
 19 seriousness to make rent control a rational curative measure.” (*Birkenfeld v. City of*
 20 *Berkeley*, 17 Cal. 3d 129, 160 (1976)).

21 36. On or about August 4, 2015, despite its own findings, the City passed
 22 Ordinance 2860 (**Exhibit “1”**). The City has found, despite false, unsupported claims of
 23 cause, that stopping rental adjustments on sale of homes promotes rent controls.

24 37. Ordinance 2860 does not allow for adjustment of rent on transfer of the
 25 leasehold and home sale.

26 _____
 27 ² Mobilehome Park Housing in El Monte Issues and Policy Options (El Monte,
 28 California), Dr. Kenneth K. Baar, Feb 17, 2015.
[https://www.ci.el-monte.ca.us/DocumentCenter/View/262/Mobilehome-Report-Issue-an
 d-Policy-Options-PDF](https://www.ci.el-monte.ca.us/DocumentCenter/View/262/Mobilehome-Report-Issue-and-Policy-Options-PDF), last visited August 14, 2019.

1 “8.70.075 Rent levels for in-place sales of mobilehomes.

2 “A. The maximum rent which may be charged pursuant to this Chapter shall
3 not be modified upon an in-place transfer as defined Section 8.70.020 or the
4 replacement of the mobilehome by the homeowner.”

5 “B. With regard to an in-place transfer of a mobilehome in which the seller of
6 the mobilehome is the mobilehome park owner of the mobilehome park in
7 which such mobilehome is located, the maximum rent which may be charged
8 following the date of such sale of the mobilehome shall be the rent as of the
9 date in which such mobilehome park owner acquired the mobilehome,
10 adjusted by the percentage increase in the CPI since such acquisition date to
11 the month preceding the date of such sale.”

12 38. Ordinance 2860 prohibits the adjustment of rent by Plaintiff at the time of a
13 new tenancy. But the Ordinance authorizes the seller to charge the buyer the full market
14 rent value of the space at present value, in a lump sum at present value, like any assignment
15 of a premium lease. The buyer pays the full value of market rent (in cash or finances the
16 market rents)(“key money”), which destroys any vestige of protection for defenseless home
17 buyers. Rather, home-buyers pay the full market rent (which Plaintiff cannot charge) which
18 exploits and capitalizes on the shortage of housing by charging over market prices, in a
19 lump sum with the trailer they buy.

20 39. Ordinance 2860 seeks to impose a burden of preserving affordable housing on
21 Plaintiff when in fact housing affordability in mobilehome parks is composed of two
22 equally-significant elements: (1) price of the chattel home and (2) price of the leasing. Both
23 home and rent together comprise housing cost. If the housing provider is unregulated in
24 either of the two key elements, it is impossible to establish that there is any regulation of
25 housing cost.

26 40. Therefore, Ordinance 2860 intends— but fails— to squelch market rents,
27 because it controls only one element of a commodity composed of two elements (rent and
28 home value including true rental value). El Monte takes the value of the rent from Plaintiff

1 for the benefit of a profiteer, the selling tenant who sells the fair market rental value in a
2 lump sum at market value, paid for or financed by the home buyer.

3 41. Ordinance 2860 is not just bereft of a rational basis in its unavoidable effects
4 as alleged hereinabove, but is also antithetical to any licit public interest because it
5 authorizes exploitation of the public by offering prices which include market rent value
6 (“key money”). A space is transferred with a home sited thereon together with an assigned
7 tenancy, at full fair market value. This is the precise evil to be regulated in purpose and
8 intention of the City, undermining all stated purposes and recitals.

9 42. The City’s own expert report (Waronzof) had warned:

10 Mobile Home Park Rent Control May Contribute to Higher Mobile Home Unit
11 Prices. [¶] Among the controversial aspects of mobile home park rent control
12 is the allegation that one of the by-products of mobile home space rent control
13 is the creation of an increment of value in the mobile home unit that inures to
14 the benefit of the mobile home unit owner. Opponents of rent control assert
15 that limitations on space rent gives rise to higher unit prices borne by
16 subsequent unit owners. As such, the benefits of rent control may be illusory,
17 because any savings from rent control inure to the space tenant and are lost
18 when a premium is paid for the mobile home unit. This phenomenon was
19 addressed in the 2006 paper “An Examination of the Impact of Rent Control
20 on Mobile Home Prices in California” by Zheng, Deng, Gordon and
21 Dale-Johnson of the USC Lusk Center for Real Estate (among others), and
22 was discussed at length in the 2010 California Supreme Court ruling in
23 *Guggenheim vs. The City of Goleta. . .*”

24 Waronzof, Executive Summary, p. v., REGULAR MEETING AGENDA OF THE
25 CITY COUNCIL OF THE CITY OF EL MONTE.

26 43. This action presents a justiciable case or controversy and is now ripe for
27 determination by this Court following the decision in *Knick v. Twp. of Scott* (2019)
28 __U.S.__ [139 S.Ct. 2162, 2167, 204 L.Ed.2d 558, 567] because Ordinance 2860 bars any

1 adjustment to rents on transfer of tenancy, and thereby effects a taking of the plaintiff's
 2 property by building up value which is the Plaintiff's property created by increasingly
 3 under-market rents and depriving the Plaintiff of that property. The Ordinance authorizes
 4 the incumbent tenant to take that property and profit from it, in abject repugnance to the
 5 public interest. The profiteering by mobilehome sellers completely strips away any
 6 conceivable insulation from market forces El Monte contends rent controls offer.

7 44. Plaintiff need not receive a final decision in the state court, or otherwise prove it
 8 exhausted its state remedies. Ordinance 2860 is so ineffective at serving its stated public
 9 interest in affordable housing, that it fails to be rationally related to a legitimate state
 10 interest and indeed is a fuel that advances and promotes the evils it is intended to
 11 ameliorate. Therefore, Ordinance 2860 is, as a matter of law, unconstitutional. Its structure
 12 transfers wealth from mobile home park owners to one group of lucky tenants. The measure
 13 here is a wealth transfer, pure and simple, with none of the features of rent control thought
 14 legitimate governmental interests. As such, its enforcement violates due process and equal
 15 protection.

16 **FIRST CAUSE OF ACTION**

17 *Violation of Fifth Amendment*

18 *(2d Claim for Relief in First Suit, Dismissed on Jurisdictional Grounds)*

19 45. Plaintiff refers to, repeats and incorporates herein by reference as though fully
 20 set forth at length, the allegations contained in paragraphs 1 through 44, inclusive.

21 46. Section 8.70.075 (A) states that the maximum rent which may be charged
 22 pursuant to this Chapter shall not be modified upon an in-place transfer. . . ” Ordinance
 23 2860 prohibits Plaintiff's adjustment of rents of tenants/residents on change of ownership
 24 or occupancy of a mobilehome or a space otherwise becoming vacant. Ordinance 2860 also
 25 prohibits any rent adjustment upon a sale or vacancy in a space.

26 47. Ordinance 2860 effects a taking of property prohibited by the Fifth
 27 Amendment of the United States Constitution and Section 1983 of Title 42 of the United
 28 States Code. The “taking” is prohibited based on the following factors:

1 (1) the economic impact of the regulation on Plaintiff;

2 (2) the extent to which the regulation has interfered with distinct investment-
3 backed expectations; and

4 (3) the character of the governmental action. *Palazzolo v. Rhode Island*, 533
5 U.S. 606, 617, 121 S. Ct. 2448, 150 L. Ed. 2d 592 (2001) at 617, 121 S. Ct. 2448, 150 L.
6 Ed. 2d 592 (citing *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124, 98 S. Ct.
7 2646, 57 L. Ed. 2d 631 (1978)) as most recently articulated in *Murr v. Wisconsin*, 198 L.
8 Ed. 2d 497, 2017 U.S. LEXIS 4046, 137 S. Ct. 1933, 85 U.S.L.W. 4441, 47 ELR 20082
9 (2017).

10 48. As a result of Ordinance 2860, residents of Plaintiff's mobilehome parks in the
11 City may sell Plaintiff's property and property rights in conjunction with a sale of their
12 mobilehome together with lease rights at full value, upon surrender of tenancy and
13 departing the park. Such action causes a taking of property based on the violations of the
14 distinct investment-backed expectations of the Plaintiff, supported by the character of
15 Ordinance 2860 which is detrimental, indeed, antithetical to the interests in affordable
16 housing by promoting illicit capture of the value of actual tenancy, Plaintiff's property, and
17 taking it as rent control premium "key money."

18 49. The transfer of the under-market rent premium takes Plaintiff's property and
19 promotes exploitation of the incoming mobilehome purchaser/tenant, *i.e.*, by demanding
20 key money as integral consideration for a mobilehome. There is no rational basis for
21 predatory exploitation in a tight and regulated housing market; it is antithetical to any licit
22 public purpose, and so pernicious as to be criminalized. The effect of Ordinance 2860 on
23 its face, is the same as the New York Loft Law (Multiple Dwelling Law, Art. 7-C, §§
24 280-287 (L 1982, ch 349, § 1) which forbids sale of the premium (herein "key money") in
25 the case of improved lofts. The purpose of the Loft Law is, *inter alia*, to protect against
26 exiting tenants profiteering on under-market leaseholds. *Gavish v. Rapp*, 127 Misc.2d 255,
27 259, 485 N.Y.S.2d 407, 411 (N.Y.Sup.Ct. 1984) ("The law, however, was not designed to
28 permit an outgoing tenant to make a killing by demanding whatever the traffic would bear

1 for "improvements" when what is really being sold is the key. . . ”).

2 50. The City of El Monte proclaims that it seeks to promote affordable housing.
3 Instead, the City has promoted activity which is not just absent a rational, conceivable
4 basis, but is in violation of public policy and *malum in se*. It is the same as the interest
5 addressed in New York law which criminalizes the extraction of “key money” as rent
6 gouging; such conduct is a felony.³

7 51. Instead of controlling rents and the price of rental housing, Ordinance 2860
8 restricts the amount Plaintiff can charge for land rent, but allows mobilehome sellers to
9 charge whatever the market will bear for the same product in compressed form. As the
10 value of rent control increases the premium value of the mobilehome, the tenant is
11 incentivized to gouge buyers with a housing product inclusive of space rents, that is totally
12 unregulated, but enabled by Ordinance 2860.

13 52. Ordinance 2860 is without rational basis to a legitimate governmental interest,
14 is contrary to the public interest, and indeed *malum in se* in nature.

15 53. Ordinance 2860, on its face and as interpreted by the City, violates the Fifth
16 Amendment by, among other things, working a private taking of property, *i.e.*, a transfer of
17 property from one private party to another without a public purpose.

18 54. The sole effect of the law in this respect, is the taking of a lump sum market
19 value of rent and giving it to a selling tenant. This effects a taking of property prohibited by
20 the Fifth Amendment and 42 U.S.C. §1983.

21 55. The structure of Ordinance 2860 is designed and intended not to provide
22 housing rent control, but to transfer wealth from mobile home park owners to one group of
23 lucky tenants. The measure we deal with here is a wealth transfer, with none of the features
24

25 ³ McKinney's Consolidated Laws of New York Annotated Currentness Penal Law
26 §180.57 (“A person is guilty of rent gouging in the first degree when, in the course of a
27 scheme constituting a systematic ongoing course of conduct in connection with the leasing,
28 rental or use of three or more apartment units, the rental price of which is regulated pursuant
to the provisions of federal, state or local law, he solicits, accepts or agrees to accept from
one or more persons in three separate transactions some consideration of value . . [R]ent
gouging in the first degree is a class E felony”).

1 of rent control thought legitimate governmental interests. As such, its enforcement violates
2 due process and equal protection.”

3 56. Plaintiff is informed and believes, and thereon alleges, that an actual
4 controversy has arisen and now exists between Plaintiff and Defendant City relative to their
5 respective rights and duties concerning, *inter alia*, the following:

6 (a) Whether Ordinance 2860 has effected a taking of property; and

7 (b) Whether Ordinance 2860 constitutes a taking of property and / or constitutes a
8 violation of substantive due process because it promotes policy antithetical to the public
9 interest, and fuels housing market exploitation in mobilehome sales and transfers by
10 authorizing the sale of current market condition rent value in lump sum form ancillary and
11 included in chattel price;

12 (c) Whether Ordinance 2860 causes a taking of property by imposing a societal
13 burden upon a small distinct group in contravention of the principle enunciated in
14 *Armstrong v. United States, supra*; and

15 57. Plaintiff is informed and believes, and thereon alleges, that an actual
16 controversy has arisen and now exists between Plaintiff and Defendant, as alleged above,
17 wherein Plaintiff contends that City has taken a position, and final action, as of August 4,
18 2015, and continues to do so, which is violative of Plaintiff’s constitutional and federal
19 statutory rights as alleged above.

20 58. Plaintiff is informed and believes, and thereon alleges, that Defendant City
21 opposes such contentions and contends instead that the provisions of Ordinance 2860 are
22 valid and proper. Plaintiff is informed and believes, and thereon alleges, that the City
23 contends Ordinance 2860 may properly impose vacancy control (which deprives the park
24 owners of fair return and instead requires buyers to pay full value of full market rents in a
25 lump sum value at inception of tenancy). Plaintiff contends Ordinance 2860 may not
26 lawfully impose such vacancy control.

27 59. Ordinance 2860 constitutes a taking of property and is contrary to the Fifth
28 Amendment of the United States Constitution, as applied to Defendant through the

1 Fourteenth Amendment of the United States Constitution and 42 U.S.C. §1983.

2 60. Ordinance 2860 results in a taking of property; and imposes a societal burden
3 upon only Plaintiff and a select group of property owners without rational, conceivable
4 relation to any legitimate governmental interest in affordable housing or controlling rents
5 due to the unregulated right of charging full market rents, at full fair market value, in a
6 lump sum for placement rights.

7 61. Ordinance 2860 void and invalid. Plaintiff seeks a declaration from the Court
8 that Ordinance 2860 is therefore unconstitutional and therefore unenforceable by
9 Defendant. It should be restrained for failing to have a rational relation to any licit
10 government objective: instead, Ordinance 2860 fosters predatory behavior pitting tenants
11 against home-buyers in the free market without any regulation whatsoever, exploiting the
12 current housing crisis, and exploiting future home-seekers with price gouging.

13 62. Else, Plaintiff seeks monetary damages in an amount to compensate them for
14 the taking of their property as described herein in amount yet to be ascertained but in the
15 amount of \$5,000,000.00 or as proved at trial.

16 **SECOND CAUSE OF ACTION**

17 *(Violation of Civil Rights under 42 U.S.C. § 1983)*

18 63. Plaintiff refers to, repeats and incorporates herein by reference as though fully
19 set forth at length, all previous allegations contained herein.

20 64. Plaintiff is informed and believe, and thereon allege, that Defendant's actions
21 and positions, as alleged hereinabove, constitute state action in violation of 42 U.S.C. §
22 1983.

23 65. As a direct and proximate result of the above-described actions by Defendant,
24 Plaintiff has been damaged in an amount not fully known but in excess of 5,000,000.00 or
25 as proved at trial.

26 66. Plaintiff has incurred and will incur attorney's fees, expert witness fees, and
27 other fees and costs, as a result of this proceeding, in amounts that cannot yet be
28 ascertained but which are recoverable pursuant to the provisions of 42 U.S.C. §§ 1983 and

1 1988.

2 **WHEREFORE**, Plaintiff prays for judgment as follows:

3 1. For a declaration by this Court that the actions and positions of Defendant
4 regarding enactment, interpretation and enforcement of its Municipal Code and Ordinance
5 2860, are:

6 a. Unconstitutional and unlawful,

7 b. Unenforceable unless judgment is in favor of Plaintiff which severs
8 Ordinance 2860 to annul and invalidate authorization of the sale of current market rents, at
9 full market value, in a lump sum (discounted to present value), tied to tenancy transfers
10 (which thereby deprive Plaintiff of fundamental constitutional and statutory rights)

11 c. Unconstitutional because Defendant's actions constitute a taking of
12 property under the United States Constitution and have resulted in a violation of federal
13 constitutional rights as alleged;

14 2. For monetary damages as per proof at trial, and in the amount of
15 \$5,000,000.00, or such sum as is proved at trial;

16 3. For preliminary and permanent injunctive relief, according to proof;

17 4. For reimbursement of reasonable attorney's fees, and such other costs as are
18 recoverable pursuant to 42 U.S.C. § 1983 *et seq.*;

19 5. For costs of suit incurred herein; and

20 6. For such other and further relief as the Court deems just and proper.

21 Respectfully submitted this day, August 28, 2019.

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff hereby demands trial by jury on all issues to the extent permitted by law.
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25
26
27
28

1 Respectfully submitted this day, August 28, 2019.

2
3 **DOWDALL LAW OFFICES, A.P.C.**
4 Terry R. Dowdall, Esq.

5 / s /

6 By:
7 Terry R. Dowdall, Esq.
8 Attorneys for the Plaintiff,
9 EL ROVIA MOBILE HOME PARK, LLC, A
10 California Limited Liability Company
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