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16 Ronald Eastman, Pacific Legacy Real Estate & Investments, Inc., ANEO Properties, LLC, Amy
17 Fischer, and the Anaheim Rental Alliance

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

20 TALMADGE PRICE, ZOLKOS LLC, ALAN
21 BYNDER, GAIL AND RONALD
22 EASTMAN, PACIFIC LEGACY REAL
23 ESTATE & INVESTMENTS, INC., ANEO
24 PROPERTIES, LLC, AMY FISCHER, and
25 THE ANAHEIM RENTAL ALLIANCE, a
26 California non-profit corporation,

27 Petitioners and Plaintiffs,

28 vs.

THE CITY OF ANAHEIM, a California
municipal corporation; DOES 1-20, inclusive,

Respondents and Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
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30-2016-00869305-CU-WMM-CXC

CASE No.

Judge William Claster CX102

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

NOTICE TO COURT CLERK:

**This Petition includes a California
Environmental Quality Act (“CEQA”)
claim to be assigned to a judge designated in
accordance with Public Resources Code §
21167.1(b)**

Petitioners and Plaintiffs Talmadge Price, Zolkos LLC, Alan Bynder, Gail and Ronald
Eastman, Pacific Legacy Real Estate & Investments, Inc., ANEO Properties, LLC, Amy Fischer
and the Anaheim Rental Alliance (“ARA”; collectively “Petitioners”) file this Petition for Writ of
Mandate and Complaint for Declaratory and Injunctive Relief (“Petition”) against the City of
Anaheim (“City” or “Anaheim”), and allege as follows:

INTRODUCTION

1
2 1. This Petition seeks judicial relief from the City’s adoption of two unlawful
3 ordinances and one resolution, scheduled to take effect on August 11, 2016. Together, these
4 measures superimpose an extensive regime of additional regulations and new and higher fees onto
5 the existing short-term rental (“STR”) permits issued by the City, prohibit new short-term rentals
6 (“STRs”) in Anaheim’s residential zones, and, at the end of eighteen (18) months, fully revoke the
7 vested and fundamental vested rights of STR permit holders, subject only to individual permit
8 extensions through a hardship application process. Ordinance Number 6374 is referred to in this
9 Petition as the “Regulate and Ban Ordinance.” Ordinance Number 6375 is referred to as the
10 “Amortization Ordinance.” The two ordinances are collectively referred to as the “Revocation
11 Ordinances.” Resolution Number 2016-163 is referred to as the “Fee Resolution.”

12 2. These deprivations reflect the City’s punitive about-face. In May 2014, Anaheim
13 amended its zoning code to add STRs as a by-right land use in every residential zone in the City,
14 and simultaneously established a system for permitting and regulating STRs within its limits.
15 Ordinance No. 6299. The City defined “short-term rentals” as rentals for less than 30 days in a
16 zoning district allowing residential uses. Anaheim Municipal Code § 18.36.050.260. This 2014
17 legislation responded to the substantial growth in California over the prior several years in the use
18 of residential properties as STRs, fueled by the popularity of on-line hosting sites and the public’s
19 appetite for alternatives to more expensive hotels. This demand was especially present in a world
20 class tourist destination like Anaheim, which quickly recognized the value of STRs to its local
21 economy and embarked on a strategy to maximize and exploit that value.

22 3. Following its 2014 ordinance, Anaheim actively fostered the issuance of STR
23 permits in the City, which now number approximately 377. The regularity and predictability of
24 the City’s comprehensive procedures encouraged investment in STRs, which ultimately arrived in
25 an amount of some \$250 million. The City’s regulatory scheme made STRs subject to the City’s
26 15 percent Transient Occupancy Tax, by which the City has further benefitted to date to the tune
27 of several million dollars. But in late 2015, and for today, driven by a small but vocal minority,
28 the political winds in the City have turned against Anaheim’s STRs. Despite earlier incentivizing

1 STR investment and reaping the benefit of those investments, the City has summarily enacted the
2 Revocation Ordinances, which immediately materially diminish, or possibly eviscerate, and then
3 fully extinguish the vested rights, fundamental vested rights, and rational investments of STR
4 permittees.

5 4. In its recent rush to appease the opponents to the innovation and change of STRs,
6 the City bypassed, discarded, or simply ignored the procedural and substantive laws designed to
7 protect the rights of STR permit holders. Within a mere five days of releasing its *first draft* of the
8 Revocation Ordinances, totaling 45 single-spaced pages, the Anaheim City Council moved to
9 adopt them both. The City submitted no evidence or recommendation to support its 18-month
10 amortization period. The City did not pause to comply with the Anaheim Zoning Code, the
11 Anaheim City Charter or the California Environmental Quality Act ("CEQA). The City similarly
12 turned a blind eye to the constitutional, statutory, and common law safeguards that protect vested
13 and fundamental vested rights, hastily dogpiling on a raft of ill-conceived fees and regulations that
14 also impermissibly violate state and federal constitutional guarantees of due process, equal
15 protection under the law, and the right to be free from unreasonable searches and seizures.

16 5. The unlawful Revocation Ordinances and Fee Resolution cannot stand. Petitioners
17 seek injunctive relief to prohibit the City from enforcing the Revocation Ordinances and Fee
18 Resolution, and a declaration that the Revocation Ordinances and Fee Resolution would, if
19 imposed, violate Petitioners' constitutional rights based on defects on their face.

20 PARTIES

21 6. Petitioner and Plaintiff Talmadge Price ("Price") is an individual residing in
22 Carlsbad, California. Price currently owns seven properties in Anaheim which have been issued
23 permits by the City for use as STR properties. Price has invested a total of approximately
24 \$3,900,000 to acquire his Anaheim properties, and an additional \$1 million to improve those
25 properties. Price has been cited for 3 violations of the regulations governing STR properties since
26 he began operations. All of those violations were timely cured. Price is currently disputing two
27 additional alleged violations relating to trash cans that appear to have been staged and committed
28 on the Price STR properties by a community member(s) opposed to STRs.

1 7. Petitioner and Plaintiff Zolkos, LLC (“Zolkos”) is a California limited liability
2 company owned and operated by Jill Zolkos, with its principal place of business in Livermore,
3 California. Zolkos currently owns six properties in Anaheim which have been issued permits by
4 the City for use as STR properties. Zolkos has invested a total of approximately \$2,930,000 in its
5 Anaheim properties. Zolkos has been cited for no violations of the regulations governing STR
6 properties since it began operations.

7 8. Petitioner and Plaintiff Alan Bynder (“Bynder”) is an individual residing in
8 Newport Beach, California. Bynder currently owns two properties in Anaheim which have been
9 issued permits by the City for use as STR properties. Bynder has invested a total of approximately
10 \$1,885,000 in his Anaheim properties. Bynder has been cited for no violations of the regulations
11 governing STR properties since he began operations.

12 9. Petitioners and Plaintiffs Gail and Ronald Eastman (“the Eastmans”) are husband
13 and wife residing in Anaheim, California. Gail Eastman is a former Anaheim City Planning
14 Commissioner and City Council member. The Eastmans currently own one property in Anaheim
15 which has been issued a permit by the City for use as an STR property. The Eastmans have
16 invested a total of approximately \$700,000 in their Anaheim property. The Eastmans have been
17 cited for no violations of the regulations governing STR properties since they began operations.

18 10. Petitioners and Plaintiffs Pacific Legacy Real Estate & Investments, Inc. and
19 ANEO Properties, LLC (collectively, the “Olson Corporations”) are California corporations in
20 good standing and authorized to do business in California. Petitioner Pacific Legacy Real Estate
21 & Investments, Inc. owns 24 properties in Anaheim that have been issued permits by the City for
22 use as STR properties. Petitioner ANEO Properties, LLC owns eight properties in Anaheim that
23 have been issued permits by the City for use as STR properties. The Olson Corporations’ sole
24 shareholders are husband and wife Sam Olson and Anne Olson. The Olson Corporations have
25 invested a total of approximately \$21 million in their Anaheim properties. Together the Olson
26 Corporations have been cited for five violations of the regulations governing STR properties since
27 they began operations. All of those violations were timely cured and there are no current
28 outstanding violations against any Olson Corporation property.

1 11. Petitioner and Plaintiff Amy Fischer (“Fischer”) is an individual residing in
2 Livermore, California. Fischer has visited Anaheim as a tourist with her three family members
3 and has rented STRs for her family’s accommodations five times since 2015. Fischer intends to
4 continue to visit the City with her family in the future. Fischer will be displaced in her efforts to
5 visit Anaheim by the absence of the City’s STRs and cannot afford the rates of the luxury hotels
6 that the City has recently approved.

7 12. Petitioner ARA is a California non-profit corporation, formed in 2013 and
8 incorporated in 2015, whose exclusive purpose is to advance and protect the interests of the STR
9 operators in Anaheim that comply with all City laws and who share its commitment to caring for
10 Anaheim’s neighborhoods. The ARA has approximately 200 members.

11 13. Defendant and Respondent City of Anaheim is a municipal corporation, organized
12 and existing as a charter city under the laws of the State of California, located in Orange County.

13 14. The true names or capacities, whether individual, corporate, associate, or otherwise
14 of the Defendants and Respondents named herein as “Doe” are unknown to Petitioners, who
15 therefore sue those Defendants and Respondents by fictitious names. Petitioners will request
16 leave to amend this Petition to show the true names or capacities of these Defendants and
17 Respondents once they have been ascertained.

18 **JURISDICTION AND VENUE**

19 15. This Court has jurisdiction over this action pursuant to California Const. Art. 6,
20 section 10; sections 1085, 1060 and 187 of the Code of Civil Procedure; and sections 21167,
21 21167.5, and 21168.5 of the Public Resources Code. This Court also has concurrent jurisdiction
22 over claims brought under 42 U.S.C. § 1983. An action under section 1983 may be heard in either
23 state or federal court. *Martinez v. California* (1980) 444 U.S. 277, 283, fn. 7; *Williams v. Horvath*
24 (1976) 16 Cal.3d 834; *Kreutzer v. County of San Diego* (1984) 153 Cal.App.3d 62, 69.

25 16. Venue is proper in Orange County Superior Court. The Revocation Ordinances
26 and Fee Resolution regulate land uses and conduct in the City. The City is situated in Orange
27 County. Code of Civil Procedure § 394(a).

28 17. The validity of a statute, ordinance or resolution may be challenged in an action for

1 declaratory relief under Code of Civil Procedure Section 1060. *Alameda County Land Use Assn.*
2 *v. City of Hayward* (1995) 38 Cal. App. 4th 1716, 1723. An actual controversy currently exists
3 between the parties regarding the validity of the Revocation Ordinances and the Fee Resolution.
4 Petitioners are thus entitled to a judicial declaration concerning their rights and duties thereunder.

5 18. Pursuant to Public Resources Code section 21167.5, Petitioners are notifying the
6 City by personal service of the filing of this action and, in that notice, request that the City prepare
7 the record of proceedings in accordance with Public Resources Code section 21167.6(b)(2). A
8 copy of the Notice of Commencement of Action and Request for Preparation of Record of
9 Proceedings is filed concurrently herewith.

10 19. Pursuant to Public Resources Code section 21167.4, Petitioners request a hearing in
11 this matter. A copy of the Request for Hearing under Public Resources Code Section 21167.4,
12 which Petitioners shall serve on all parties, is filed concurrently herewith.

13 20. Petitioners are causing a copy of this pleading to be served on the California
14 Attorney General within 10 days of the commencement of this proceeding, as required by Public
15 Resources Code section 21167.7 and Code of Civil Procedure section 388. A copy of the Proof of
16 Service on the Attorney General is filed concurrently herewith.

17 **EXHAUSTION OF REMEDIES**

18 21. Petitioners have satisfied each exhaustion of remedies requirement that must be
19 satisfied in order to maintain this proceeding. Government Code § 65009. Public Resources Code
20 § 21177. The issues raised in this Petition, including the failure of the City to comply with CEQA,
21 the Anaheim Municipal Code, and the City Charter, were raised with the City by the ARA,
22 through its counsel, in letters dated May 10, 2016, June 23, 2016, June 28, 2016, July 12, 2016,
23 and August 9, 2016. In addition, members of the ARA and other members of the public objected
24 during the Anaheim City Council meetings held on June 29, 2016, July 12, 2016 and August 9,
25 2016, prior to the close of the public hearing on the Revocation Ordinances and Fee Resolution.

26 22. Alternatively, Petitioners are excused from exhausting available administrative
27 remedies because the City failed to provide notice as required by Government Code § 65009
28 (b)(2). The failure to provide such notice constitutes a waiver of the doctrine of exhaustion of

1 remedies. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 740.

2 23. Any attempt by Petitioners to seek a variance or special exception from the facial
3 terms of the Revocation Ordinances and Fee Resolution would be futile. Under California law,
4 changes of use cannot lawfully be implemented through the variance process. Government Code
5 § 65906. In addition, the ordinances and resolution in this case were adopted despite the City's
6 issuance of contradictory STR permits to Petitioners, in contemplation of Petitioners' current
7 operation of STR properties, and for the express purpose of burdening and eliminating that use. In
8 such a situation, further applications or attempts to circumvent the ordinances and resolution
9 through administrative action are not required, as they would be futile. *Palazzolo v. Rhode Island*
10 (2001) 533 U.S. 606; *Hoene v. County of San Benito* (9th Cir. 1989) 870 F.2d 529. Petitioners
11 thus have no administrative remedy available to them and have performed all steps required on
12 their part to be performed prior to initiating this action.

13 **STANDING AND RIPENESS**

14 24. Petitioners bring this action to protect the fundamental vested and constitutional
15 rights of STR permit holders, to advocate for the continued vitality of STR land uses and
16 operations, to guard against the decay, degradation or displacement of the City's STR uses and
17 neighborhoods, and to ensure that the City engages in responsible, informed and lawful decision-
18 making. Petitioners' interests including protecting the Anaheim community from environmental
19 impacts that have not been analyzed and mitigated in accordance with CEQA. As owners and
20 representatives of STRs, and as an STR guest, Petitioners have a direct interest in the proper
21 enforcement and execution of laws affecting the quality of life in Anaheim, in the City's duty to
22 prepare an environmental impact report prior to exercising its discretion in a manner that
23 negatively impacts the local environment, and in protecting the region's air quality, minimizing
24 and ameliorating traffic, and ensuring that only considered and responsible growth occurs.
25 Petitioners are directly, adversely, and irreparably affected and prejudiced by the Revocation
26 Ordinances and Fee Resolution.

27 25. Petitioner ARA has standing to prosecute this action under the doctrine of
28 associational standing as articulated in the case of *Hunt v. Wash. State Apple Advertising Comm'n*

1 (1977) 432 U.S. 333. Further, as a nonprofit California corporation, ARA has a beneficial interest
2 in this action because: (a) representatives of ARA attended the City's hearings on the Revocation
3 Ordinances and Fee Resolution, testified, and submitted letters prior to close of the public hearings
4 objecting on behalf of Petitioners to the failures of Anaheim to comply with the law as set forth in
5 this Petition, (b) ARA's members would otherwise have standing to sue on their own behalf, (c)
6 the interests ARA seeks to protect in this lawsuit are germane to the organization's purpose, and
7 (d) neither the claims asserted herein, nor the relief requested, requires the individual participation
8 of ARA's members in this proceeding. This action involves public rights, and ARA also brings
9 this action as an interested citizen seeking to procure enforcement of the public duties of the City
10 and compliance by the City with all applicable law.

11 26. Petitioners have no plain, speedy, adequate remedy in the ordinary course of law,
12 since they, their fellow ARA members, other STR permit holders, members of the general public,
13 and the environment will suffer immediate and irreparable harm as a result of the City's violations
14 of the Anaheim Zoning Code, the Anaheim City Charter, CEQA, and our state and federal
15 constitutions. The City's adoption of the Revocation Ordinance and Fee Resolution rests on its
16 failure to satisfy its clear and present duty to comply with applicable law and to exercise its
17 discretion consistent with these laws.

18 27. Petitioners have no obligation to satisfy any "final decision" requirement before
19 seeking the relief requested in this Petition. Among other reasons, facial challenges to a
20 regulation, such as those asserted in this Petition, are ripe upon enactment of the contested law.
21 Facial challenges "by definition, derive from the ordinance's enactment, not any implementing
22 action on the part of the government authorities." *Ventura Mobilehome Communities Owners*
23 *Ass'n v. City of San Buenaventura* (9th Cir. 2004) 371 F.3d 1046, 1052; see also *Guggenheim v.*
24 *City of Goleta* (9th Cir. 2010) 638 F.3d 1111, 1117.

25 FACTUAL ALLEGATIONS

26 The STR Ordinance

27 28. On May 13, 2014, Anaheim passed Ordinance Number 6299 (the "STR
28 Ordinance"), which made material changes to Title 18 of the Anaheim Municipal Code,

1 Anaheim's Zoning Code. Specifically, the STR Ordinance revised Anaheim Zoning Code
2 Sections 18.04.030, 18.06.030, and 18.36.050. Those revisions had the effect of defining, for the
3 first time, the short-term rental of dwelling units and expressly allowing this use in all single-
4 family and multi-family residential zones in Anaheim. The STR Ordinance also added chapter
5 4.05 to Title 4 of the Anaheim Municipal Code. That addition created a system whereby STR
6 owners were required to apply to the City for a permit to operate, and set forth a series of
7 conditions regulating the issuance and renewal of STR permits and the operation of STRs.

8 29. Significantly, Section 4.05.080 of the STR Ordinance, entitled Denial of Permit,
9 stated in relevant part:

10 No application for an initial short-term rental permit or a subsequent renewal
11 thereof shall be denied if the application meets the conditions of permit issuance
12 pursuant to [this chapter,] unless a short-term rental permit issued to the same
13 owner for the short-term rental unit(s) has been revoked or is in the process of
14 being revoked pursuant to [this chapter.] The denial of a short-term rental permit
15 for any reason may be appealed in accordance with the provisions of [this chapter.]

16 30. In adopting the STR Ordinance, and especially its permit system that provided for
17 the automatic renewal of qualifying permits in the absence of revocation proceedings, the City
18 created an inducement to invest in STRs in Anaheim. The permit system enabled Petitioners to
19 form reasonable and distinct investment-backed expectations. Petitioners made substantial
20 investments in Anaheim STRs, both in their acquisition and in their upgrades to satisfy STR
21 guests and the City's regulations, all in reliance on the City's inducements and issuance of STR
22 permits. Petitioners' livelihoods became and are inextricably tied to their ability to operate and
23 reap the financial benefits of their STR properties. By its conduct, the City established and the
24 STR permit holders obtained vested rights, as well as fundamental vested rights, to continue to
25 operate their properties so long as they complied with the terms of the STR Ordinance.

26 **The Moratorium Ordinances**

27 31. On September 15, 2015, only 15 months after the adoption of the STR Ordinance,
28 Anaheim adopted Ordinance Number 6343, which imposed a 45-day moratorium on the

1 commencement, establishment, and/or operation of new STRs, and on applications for the renewal
2 of existing STR permits or for new STR permits still pending on the date of its adoption.

3 32. On October 20, 2015, Anaheim adopted Ordinance Number 6347, which extended
4 all of the terms and provisions of Ordinance Number 6343 for an additional 186 days, i.e., until
5 May 3, 2016.

6 33. On April 12, 2016, Anaheim adopted Ordinance Number 6369, which extended all
7 of the terms and provisions of Ordinance Number 6343 for an additional year, i.e., until May 3,
8 2017. Ordinance Numbers 6343, 6347, and 6369 are referred to collectively as the “Moratorium
9 Ordinances.”

10 34. The stated purpose of the Moratorium Ordinances was to enable the City to study
11 “the potential impacts and regulation of STRs, and possible amendments to the City’s zoning
12 ordinance and related provisions of the Code” to ensure adequate development standards and
13 implementation regulations, including possible repeal of the STR Ordinance. Ordinance No.
14 6374, p. 1. During the period of the Moratorium Ordinances, with the exception of those STRs
15 already lawfully existing, “a Short-Term Rental shall be considered a prohibited use in any zoning
16 district of the City and neither the Planning Commission, the City Council nor City staff shall
17 approve any use permit, license, certificate of occupancy, zoning code or general plan amendment
18 allowing the use of any land within the City as a Short-Term Rental.” Ordinance No. 6343, § 5.

19 35. Each Moratorium Ordinance recited that it was adopted by the City pursuant to
20 Government Code Section 65858. This provision, which expressly applies to charter cities, is a
21 zoning measure located in Title 7, Planning and Land Use, Division 1, Planning and Zoning,
22 Chapter 4, Zoning Regulations, of the Government Code. Section 65858 authorizes cities to adopt
23 interim ordinances “prohibiting any uses that may be in conflict with a contemplated general plan,
24 specific plan, or zoning proposal that the legislative body, planning commission or the planning
25 department is considering or studying or intends to study within a reasonable time.”

26 36. The provisions of the Moratorium Ordinances that precluded the renewal of an
27 existing STR permit had no impact on existing STR permit holders, because: (a) their permits did
28 not require renewal until July 31, 2016; and (b) the City issued a letter of interpretation on May

1 11, 2016 that the continued operation of permitted STRs without issuance of the annual renewal,
2 even after July 31, 2016, would not be deemed a violation under then City law.

3 **The Regulate and Ban Ordinance**

4 37. On July 12, 2016, with an effective date of August 11, 2016, the City adopted the
5 Regulate and Ban Ordinance, Number 6374, the stated purpose of which was:

6 To establish that short-term rentals will no longer be allowable uses on any
7 property within single-family residential zones (as defined in Section 18.04.020 of
8 this code), multiple-family residential zones (as defined in Section 18.06.020 of
9 this code), or any other zoning district in the City, including all underlying or base
10 zones, overlay zones and adopted specific plans, in which residential uses are a
11 permitted or conditionally permitted use.

12 38. In addition to revoking the STR land use, the Regulate and Ban Ordinance
13 prohibits the issuance of STR permits, except for the potential renewal of STR permits for: (a)
14 owners who had already received a permit to operate an STR, and (b) owners who had filed permit
15 applications prior to September 16, 2015 and whose applications had not yet been approved. A
16 permit system is also provided for one STR operating within the "C-G Commercial Zone" that
17 was authorized pursuant to a conditional use permit before September 15, 2015.

18 39. The Regulate and Ban Ordinance contains the following unlawful provisions:

19 (a) § 4.05.040.080. Existing STR permit holders must file an entirely new application,
20 subject to fresh scrutiny and new rules, if they wish to "renew" their current permit. They lose all
21 automatic renewal rights, are not grandfathered or allowed to continue to operate as non-
22 conforming uses in accordance with the Anaheim Municipal Code, and are not otherwise deemed
23 compliant with the City's STR laws based on their existing permits.

24 (b) § 4.05.040.120. STR owners may not increase the home's square footage or add a
25 bedroom within its current square footage. This applies to any STR, no matter its size or number
26 of bedrooms relative to other homes on the same City block.

27 (c) § 4.05.060. Among other renewal application provisions, the Planning Director
28 may require an on-site property inspection (.060), shall deny the permit if the property is subject to

1 any outstanding code enforcement matter, whether or not proven (.070), and may impose such
2 other unidentified conditions as he or she deems necessary in his or her discretion (.090).

3 (d) § 4.05.070.020. STR permits are barred from running with the land like all other
4 land use permits (.020), and cannot be transferred like other land use permits to a new owner of
5 the STR property except upon application and payment of a substantial transfer fee (.040).

6 (e) § 4.05.070.080. Renewal of an STR permit requires the Planning Director to find
7 that “no circumstances existed during the term of the permit which would cause a violation to
8 exist,” thus creating almost unlimited discretion in the City to find disqualifying and undefined
9 “circumstances” of a violation.

10 (f) § 4.05.100.0103(e). An STR permit holder must install an interior automatic fire
11 sprinkler system if its permitted occupancy is more than 10 persons. Thousands of single family
12 homes in Anaheim are permitted this occupancy level without being subject to this requirement, as
13 are residential care facilities, group care facilities, and bed and breakfasts.

14 (g) § 4.05.100.0103(j). Only STRs, and no other comparably-used properties,
15 including residential care facilities, group care facilities, supportive housing, transitional housing,
16 or bed and breakfasts, must install a door directly exiting to the exterior from at least one bedroom
17 if the STR may be rented to a non-ambulatory occupant.

18 (h) § 4.05.100.0104. The City has the authority to conduct random inspections of STR
19 properties, without reason, probable cause or entry warrant.

20 (i) § 4.05.100.0111. The number of occupants allowed per STR is reduced by 25-30%
21 from the occupancy levels authorized under existing STR permits and on which STR investment
22 decisions and financial projections relied.

23 (j) § 4.05.100.0112. All cars at STRs must be parked in the home’s driveway. STR
24 occupants are prohibited from parking on a public street, including at the curb in front of the STR
25 property, where they would be free to park if they were not STR users.

26 (k) § 4.05.100.0115. If an enforcement officer receives any complaint concerning any
27 suspected STR violation, or if the enforcement officer has an undefined “reason to believe” that
28 any violation has occurred, any adult occupant of an STR must, upon presentation of reasonable

1 identification by the enforcement officer, grant the officer immediate entry, whereupon the officer
2 may then conduct a warrantless search of the premises.

3 (l) § 4.05.100.0121. In addition to complying with the defined standards of the City's
4 Loud and Unreasonable Noise Ordinance, STR owners, occupants and persons present must obey
5 a subjective prohibition on making any "loud, unnecessary or unusual noise which disturbs the
6 peace and quiet of any neighborhood."

7 (m) § 4.05.140.030. The Planning Director may revoke an STR permit for two "major
8 violations," or four "minor violations" of the same type in 12 months. The list of major violations
9 is extensive and includes such infractions as any outside activity during "quiet time" hours from
10 10 pm to 9 am. Every non-major ordinance violation constitutes a minor violation, including such
11 missteps as a car bumper parked inches over the sidewalk, trash cans still on the street after 8 pm
12 on the day of trash pickup, and any padlocked exterior gate. This regime invites STR opponents
13 to continue, with nothing at stake, to harass STRs by filing complaints, while authorizing the City
14 to indiscriminately revoke for trivial reasons what are currently fully vested STR permits.

15 (n) § 4.05.170. This provision states that STRs do not have vested rights, "except in
16 instances where constitutional principles or binding state or federal otherwise provide." This self-
17 serving passage overlooks that state and federal law have already conferred vested rights on the
18 existing STR permit holders.

19 The Amortization Ordinance

20 40. On July 12, 2016, with an effective date of August 11, 2016, Anaheim also adopted
21 Ordinance Number 6375, which was conditioned upon the adoption of the Regulate and Ban
22 Ordinance. This Amortization Ordinance was enacted by City Council votes of three in favor and
23 two opposed at each of the two City Council readings of the ordinance. This measure provides
24 that pre-moratorium STRs will become a prohibited use in all residential zones in Anaheim 18
25 months after the August 11, 2016 effective date of the ordinance. Once again, the one STR within
26 the "C-G General Commercial Zone" is allowed to continue.

27 41. The stated purpose of the 18-month time period set forth in the Amortization
28 Ordinance is "to provide a reasonable amortization period to the owners of properties with pre-

1 moratorium short-term rentals within which they may recoup the costs they reasonably invested
2 for short-term rental use to the extent such costs could not already have been reasonably recouped
3 during the period of short-term rental use of the property and cannot be recouped once the short-
4 term rental use is terminated.”

5 42. The Amortization Ordinance also establishes a putative “hardship exception,”
6 whereby STR owners can submit evidence to the City that the owner would be unable to recoup
7 his or her invested costs within the 18-month period provided for by the ordinance, upon which
8 showing the amortization period could potentially be extended. The ordinance gives unfettered
9 power to grant or reject an STR owner’s hardship application to the City’s Planning Director.

10 43. The Amortization Ordinance contains the following unlawful provisions:

11 (a) § 4.05.180.010. The presumptive 18-month amortization period is arbitrary and
12 capricious, having been adopted by the City with no basis, reasonable belief or evidentiary
13 support, and in derogation of evidence submitted by STR owners that the amortization period
14 necessary to allow the majority of them to recoup their investments is ten or more years. Indeed,
15 when the Amortization Ordinance was presented to the City Council by staff, the length of the
16 amortization period in the body of the ordinance was left blank; staff’s recommended period, also
17 without evidentiary support of any kind, was three to five years.

18 (b) § 4.05.180.020. The hardship extension process grants the City virtually unlimited
19 discretion to decide hardship applications, without sufficient governing rules or standards to
20 provide guidance to STR owners. In addition to acting on hardship applications, the Planning
21 Director is authorized to request “any additional information” above and beyond the voluminous
22 required material, may deem an application incomplete, and may reject an application.

23 (c) § 4.05.180.020. The hardship process allows an extension only for the period of
24 time necessary for the STR owner to *recoup costs invested* in the STR (.0202). This limitation
25 precludes the recovery of any reasonable return, commensurate with legitimate STR investment-
26 backed and other similar rational expectations. Costs for improvements that were purchased to
27 create an STR but that might have any possible useful purpose for other than an STR may be
28 excluded (.0203(j)). If a sale of the STR occurs after the Revocation Ordinances, and despite the

1 fact that the sale price provides evidence of unrecouped costs, proof of that price is excluded from
2 the establishment of a hardship exemption (.0202).

3 **The Fee Resolution**

4 44. On August 9, 2016, with an effective date of August 11, 2016, Anaheim further
5 adopted City Council Resolution Number 2016-163 (the "Fee Resolution.") The Fee Resolution
6 was enacted upon a single reading with three City Council votes in favor and two opposed. The
7 stated purpose of this resolution was "to amend the fees, charges and rates in effect prior to the
8 adoption of Ordinance Numbers 6374 and 6375 and to impose new fees, charges and rates
9 necessitated by the comprehensive amendment of the Short-Term Rentals ordinance which more
10 fully recover the actual costs incurred by the City in processing pending applications and renewal
11 applications for permits or other approvals and for the expense of direct regulation, inspections, re-
12 inspections, appeals and other services and activities relating to the administration of the Short-
13 Term Rentals ordinance."

14 45. The Fee Resolution contains the following unlawful provisions:

15 (a) The City's existing STR permit system, together with the City's overall course of
16 conduct since 2014, has created in current STR operators a fundamental vested right to continue to
17 operate their businesses. STR permit holders have made substantial investments in the purchase,
18 modification, conversion, equipment, enlargement, improvement, management, and marketing of
19 their STR properties. They have made additional expenditures specifically required to comply
20 with the terms of the existing STR Ordinance. All of these expenditures were material and
21 substantial, and were made in good faith reliance on the STR permits issued by the City.
22 Moreover, under the original STR Ordinance, existing permit holders were entitled to renewal as a
23 matter of right, so long as their properties complied with applicable regulations. Under that
24 regime, permit holders were subject only to a reasonable annual renewal fee of \$250. The new
25 proposed fee schedule, on the other hand, is arbitrary and capricious; the fees proposed are
26 excessive and duplicative; and the new scheme imposes an undue and impermissible burden on
27 the fundamental vested right of STR permit holders to continue to operate their businesses so long
28 as they comply with applicable regulations.

1 (b) The proposed new fee schedule contains a provision whereby STR permit holders
2 adversely affected by any decision regarding their permit, whether it be modification, change of
3 ownership, or renewal, would be required to pay the cost of the appeal from that adverse
4 determination. To the extent that such costs include either the direct or indirect costs of a hearing
5 officer, or other costs directly associated with the process of adjudicating the appeals of permit
6 holders, such costs must be borne by the City, and cannot be passed through to permit holders in
7 the form of a fee. See *Florio v. City of Ontario* (2005) 130 Cal.App.4th 1462.

8 (c) The proposed new fee schedule is an indivisible part of the City's new STR
9 regulatory framework reflected by the recent enactment of Ordinance Numbers 6374 and 6375,
10 and is therefore subject to the requirements of the California Environmental Quality Act
11 ("CEQA"). The new STR regulatory scheme, including the proposed new fee schedule, together
12 constitute a single unitary "project," and together impact the environment. Specifically, the
13 proposed fee schedule increases the likelihood of urban decay and blight because it imposes
14 excessive burdens on STR permit holders so as to increase the likelihood that those permit holders
15 will be unable to continue to upgrade and maintain their STR properties as they have under the
16 prior regulatory scheme.

17 **FIRST CAUSE OF ACTION**

18 **Writ of Mandate to Set Aside The Revocation Ordinances**
19 **and Fee Resolution For Failure to Comply With CEQA**

20 **[California Public Resources Code § 21100, et seq.]**

21 46. Petitioners incorporate by this reference the allegations of paragraphs 1 through 45
22 above.

23 47. The California Environmental Quality Act is the principal statute mandating
24 environmental impact review of governmental actions in California. Public Resources Code §
25 21000, *et. seq.* The Guidelines for the Implementation of the California Environmental Quality
26 Act ("CEQA Guidelines"), as codified in Title 14, Chapter 3, sections 15000, *et seq.*, of the
27 California Code of Regulations, are prescribed by the Secretary of the Resources Agency to be
28 followed by all government agencies in California.

1 48. The Revocation Ordinances and the Fee Resolution state that the City is the “lead
2 agency” for the preparation and consideration of environmental documents for these measures.
3 They also state that the City Council finds and declares that all three measures are not subject to
4 CEQA because, in the case of Revocation Ordinances, they will not result in a direct or reasonably
5 foreseeable indirect physical change to the environment and are not “projects” as defined by
6 Section 15378 of the CEQA Guidelines, and because the Fee Resolution is an instance of setting
7 or modifying fees to meet operating expenses and is therefore exempt pursuant to Public
8 Resources Code § 20180.(b)(8).

9 49. The City Council’s CEQA findings violate Public Resources section 21080.
10 Section 21080 provides that the “enactment and amendment of zoning ordinances” is categorically
11 the type of discretionary project that *is* subject to CEQA. By enacting subdivision (a) of section
12 21080, the State Legislature determined that certain activities, including the enactment and
13 amendment of zoning ordinances, always have the potential to cause a direct physical change or a
14 reasonably foreseeable indirect physical change in the environment.

15 50. With limited exceptions, the Revocation Ordinances prohibit the STR use of land
16 from all of the City’s residential zones. Regulate and Ban Ordinance § 4.05.020. Amortization
17 Ordinance § 4.05.180.010. Because they govern the use of land in all residential zones, they are
18 zoning ordinances. CEQA categorically includes zoning ordinances within the definition of
19 “projects” that must comply with CEQA. The Fee Resolution, passed as a direct result of the
20 enactment of Ordinances 6374 and 6375, is an integral part of Anaheim’s new STR revocation
21 scheme, and together with those ordinances constitute a single, indivisible “project” that cannot
22 properly be piecemealed into an unrelated or detached measures.

23 51. Because the Revocation Ordinances and Fee Resolution are zoning measures,
24 Anaheim was required by CEQA to either: (a) identify an exemption from CEQA for the entirety
25 of them, or (b) analyze and mitigate their potential environmental impacts in a negative
26 declaration or environmental impact report. *Rominger v. County of Colusa* (2014) 229 Cal. App.
27 4th 690, 703. The City took neither of these mandatory CEQA steps. The City may also have
28 failed to satisfy the required prerequisite CEQA of conducting a preliminary review to determine

1 whether these measures were an activity subject to CEQA. *Creed-21 v. City of San Diego* (2015)
2 234 Cal. App. 4th 488, 500.

3 52. The Revocation Ordinances and Fee Resolution are not exempt from CEQA. They
4 will have a significant impact on the environment. Conservatively estimated, the City's existing
5 STRs provide more than 1500 guest bedrooms for Anaheim's visitors. The Revocation
6 Ordinances and Fee Resolution eliminate and displace this essential tourist resource, and, as STRs
7 are abandoned, sold or repurposed, may also lead to the degradation of Anaheim's residential
8 neighborhoods. The City neglected to consider the environmental impacts of this certain
9 displacement and potential for decay. Ironically, at the same July 12, 2016 public hearing at
10 which the City Council completed its enactment of the Revocation Ordinances, the Council took
11 actions to advance three four-diamond hotels in the City, in furtherance of the City's June 2015
12 Luxury Hotel Incentive Program. The two final approval actions, one for a 580-room hotel and
13 the other for a 634-room hotel, were each accompanied by supplements to full environmental
14 impact reports certified by the City in accordance with CEQA.

15 53. The City has failed to act in the manner required by CEQA. The City violated
16 CEQA by failing to identify the Revocation Ordinances (together with the Fee Resolution) as a
17 "project" subject to CEQA. The City also violated CEQA by neglecting to preliminarily or
18 permanently assess whether the Revocation Ordinances, combined with the Fee Resolution, will
19 have a significant effect upon the environment. The City further violated CEQA by failing to
20 identify an applicable exemption from CEQA for the Revocation Ordinances and Fee Resolution,
21 the environmentally superior alternatives to them, their cumulative environmental impacts, or
22 mitigations that would reduce their impacts to the level of insignificance. In sum, the City
23 violated CEQA by failing to prepare a negative declaration or environmental impact report to
24 consider the environmental consequences of the Revocation Ordinances and Fee Resolution. In
25 each of these actions, the City acted without evidence or information.

26 54. The failure of the City to conduct the requisite informed decision-making under
27 CEQA requires invalidation of the Revocation Ordinances and the Fee Resolution.

28 55. Petitioners and other members of the public have been harmed as a result of the

1 City's violations of CEQA. They have been denied the benefits and protections provided by
2 compliance with CEQA.

3 56. The "private attorney general" theory codified at CCP 1021.5 applies to actions to
4 enforce CEQA. *City of Carmel-by-the-Sea v. Bd. of Supervisors* (1986) 183 Cal. App. 3d 299,
5 254. Accordingly, Petitioners seek an award of attorney fees pursuant to CCP § 1021.5, to the
6 fullest extent permitted by law.

7 **SECOND CAUSE OF ACTION**

8 **Writ of Mandate to Set Aside The Revocation Ordinances**

9 **For Violations of Title 18 of The Anaheim Municipal Code**

10 **[Anaheim Municipal Code, Title 18, Zoning]**

11 57. Petitioners incorporate by this reference the allegations of paragraphs 1 through 56
12 above.

13 58. Zoning in Anaheim is governed by Title 18 of the Anaheim Municipal Code ("Title
14 18"), which is named the Anaheim Zoning Code. That title currently defines the STR use and
15 authorizes the STR land use, by right, in "every single-family residential zone of the City," subject
16 only to the permit requirements of the STR Ordinance. Anaheim Municipal Code ("AMC") §§
17 18.36.050.260, 18.04.030, and 18.06.030.

18 59. Title 18 provides procedures for amending its text. AMC § 18.76. Any and all
19 amendments to the text of Title 18 must be reviewed by the City's Planning Commission. AMC §
20 18.76.050.020. The City's Planning Commission must then, by motion, recommend approval or
21 denial of such amendments. AMC § 18.76.050.020.0201. The City Council may act on such an
22 amendment only after receiving a formal recommendation of approval from the City's Planning
23 Commission. AMC § 18.76.060.010. Unless an appeal is initiated as prescribed, the City Council
24 may take no further action on an amendment upon receipt of a formal recommendation of denial
25 from the Planning Commission. AMC § 18.76.060.020.

26 60. Title 18 also defines, governs and controls nonconforming land uses in the City.
27 AMC § 18.56. A "nonconforming use" is defined as a use that was legal and allowed when
28 established, but that does not conform to the current permitted use regulations (including use-

1 specific permitting requirements and use-specific criteria) for the zone in which it is situated.
2 AMC § 18.92. Title 18 provides that a nonconforming use *may be continued*, including interior
3 modifications and change of ownership, subject to the provisions of AMC Section 18.56.030.

4 61. Title 18 further authorizes the discontinuance of a nonconforming use only when
5 the provisions of AMC Chapter 18.56 require that the use be terminated or made conforming
6 within a fixed period of time. AMC § 18.56.100. Any such authorized discontinuance is subject
7 to the procedures set forth in Title 18. Importantly, Title 18 requires that the establishment of a
8 reasonable amortization period may only be fixed by the City's Planning Commission, after notice
9 to the owner and an evidentiary hearing held before the Planning Commission. AMC 18.56.100.

10 62. The Revocation Ordinances violate Title 18 by, *inter alia*, changing its text to
11 eliminate the current by-right STR land use from all of the City's residential zones without City
12 Planning Commission review or recommendation of approval, by disallowing the continuation of
13 STRs as nonconforming uses, and by establishing an amortization period without either authority
14 under Title 18 or affording property owners the required Planning Commission notice, hearing and
15 determination. The Revocation Ordinances are therefore invalid, and Petitioners are entitled to a
16 Writ of Mandate ordering that they be set aside, and that no action be taken to enforce them.

17 **THIRD CAUSE OF ACTION**

18 **Writ of Mandate to Set Aside The Amortization Ordinance**
19 **and Fee Resolution For Violation of The Anaheim City Charter**

20 **[Anaheim City Charter Section 511]**

21 63. Petitioners incorporate by this reference the allegations of paragraphs 1 through 62
22 above.

23 64. Section 511 of the Anaheim City Charter states: "Unless a higher vote is required
24 by other provisions of this Charter, the affirmative votes of at least four members of the City
25 Council shall be required for the enactment of any ordinance or resolution, or for the making or
26 approving of any order for the payment of money. All ordinances and resolutions shall be signed
27 by the mayor and attested by the City Clerk."

28 65. The four-vote requirement of Section 511 was placed on the ballot by the Anaheim

1 City Council and voted into law by the City's electorate as part of Charter Amendment Measure
2 "M" on November 4, 2014, and became effective on that date.

3 66. At its first reading before the City Council on June 29, 2016, the Amortization
4 Ordinance received only three votes in favor of adoption. The result was the same at the second
5 reading of the Amortization Ordinance before the City Council on July 12, 2016.

6 67. The Amortization Ordinance never received the four affirmative votes required for
7 passage by Section 511 of the Anaheim City Charter. As a result, the Amortization Ordinance is
8 invalid, and Petitioners are entitled to a Writ of Mandate ordering that it be set aside and that no
9 action be taken to enforce it.

10 68. The Fee Resolution was on the agenda for the City Council's August 9, 2016
11 meeting. At the conclusion of that meeting, the City Council purported to adopt the Fee
12 Resolution by a vote of 3 for and 2 against. The Fee Resolution did not receive the 4 votes
13 required by Charter Section 511. As a result it also is invalid, and Petitioners are entitled to a Writ
14 of Mandate that it be set aside and that no action be taken to enforce it.

15 **FOURTH CAUSE OF ACTION**

16 **Writ of Mandate to Set Aside the Revocation Ordinances**

17 **and Fee Resolution Based on Equitable Estoppel**

18 **[California Doctrine of Equitable Estoppel]**

19 69. Petitioners incorporate by this reference the allegations of paragraphs 1 through 68
20 above.

21 70. The City is equitably estopped from enforcing the Revocation Ordinances and Fee
22 Resolution against Petitioners by reason of the City's own actions in intentionally inducing
23 Petitioners to rely on the STR Ordinance, and then causing substantial economic and personal
24 harm by the sudden, unwarranted adoption of the Revocation Ordinances and Fee Resolution.

25 71. Under the STR Ordinance, Petitioners were authorized to use their properties as
26 STRs in residential zones. The STR Ordinance was adopted after study and discussion by the City
27 Council. As is typical with municipal regulations, the STR Ordinance contained no sunset
28 provision or termination date. Although annual renewal of the STR permits was required, along

1 with payment of an annual renewal fee, Petitioners were unequivocally entitled to automatic
2 renewal after the initial permit issuance so long as they complied with the STR Ordinance.

3 72. Petitioners made substantial investments in the purchase, modification, conversion,
4 equipment, enlargement, improvement, management and marketing of their STR Properties.
5 Petitioners have made additional expenditures specifically required to comply with the terms of
6 the STR Ordinance. Evidence submitted to the City Council was that investments totaling more
7 than \$250 million were made in the purchase and start-up of STRs within the City in reliance of
8 the STR Ordinance. In many cases, Petitioners acquired their properties for the specific purpose
9 of operating STRs, paying higher prices and incurring additional debt in reliance on their STR
10 designation and on the City's well-articulated permit and regulatory system..

11 73. Petitioners have also made long-term financial commitments and other decisions in
12 good faith reliance on the STR Ordinance including, but not limited to, mortgages, improvement
13 loans, personal relocation, employment contracts, and other actions affecting their livelihoods and
14 those of their families. In some cases, Petitioners have financed their purchases at higher interest
15 rates, based on the higher market values of STRs when compared to single-family residences
16 without STR uses. The fair market value of a property authorized for STR use is approximately
17 34 percent higher than an equivalent property with STR use prohibited.

18 74. The City Council was aware when it adopted the STR Ordinance that the ordinance
19 authorized STR use within all residential zones and the automatic renewal of STR permits. The
20 City recognized that STRs provide alternative lodging opportunities for tourists and visitors, and
21 intended to make them available subject to reasonable regulation and supervision. The City
22 Council was further aware that STRs were operated by non-resident owners, who operated them as
23 income-producing properties. The STR Ordinance imposed financial and management obligations
24 on the property owners, and required affirmative maintenance and compliance with all regulations.
25 The STR Ordinance allowed the City Planning Director to impose additional conditions on STR
26 operators as determined necessary. In short, the City Council was aware that establishment of
27 STRs required start-up investments, that some owners were non-resident and the STR Ordinance
28 provided them with assurances with respect to the security of their investments.

1 75. The City Council further intended that property owners rely on the STR Ordinance
2 by restricting STR operations to residential zones, obtaining STR permits and maintaining the
3 STRs in accordance with the requirements of the STR Ordinance. By issuing STR permits with
4 automatic renewal provisions, the City induced Petitioners to make substantial investments in STR
5 uses and otherwise act in reliance on the STR Ordinance.

6 76. At the time of their application for and receipt of STR permits, Petitioners were not
7 aware that their investments in STR uses in reliance on the STR Ordinance would be subject to a
8 moratorium within 15 months, would be gutted by the imposition of a new regulatory scheme and
9 excessive fees 10 months later, and that their right to continued use would then be revoked within
10 18 months. No reasonable person would have made long-term investments or commitments in
11 reliance on an ordinance and permits if they had known these vested rights would be rescinded
12 within two years.

13 77. Petitioners have been injured by their reliance on the STR Ordinance through the
14 immediate reduction in the income-producing and market value of their properties, their
15 investment in improvements that would have been unnecessary for single-family residential use,
16 their financial commitments based on the expectation of continued STR income, and other losses.

17 78. The elements of equitable estoppel against a city include the following: (a) the
18 party to be estopped must be apprised of the facts; (b) he must intend that his conduct shall be
19 acted upon, or must so act that the party asserting the estoppel had a right to believe it was so
20 intended; (c) the other party must be ignorant of the true state of facts; and (d) he must rely upon
21 the conduct to his injury. *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462.

22 79. The principle of equitable estoppel to resolve land use issues is well accepted in
23 California. *Congregation ETZ Chaim v. City of Los Angeles* (2004) 371 F.23 1122. A building
24 permit is an implied promise that the proposed use will not be prohibited by subsequent
25 regulations. *Hock Investment Co. v. City and County of San Francisco* (1989) 215 Cal.App.3d
26 438. When a property owner incurs substantial expense in reasonable and good faith reliance on
27 some governmental act, the principle of estoppel prohibits a governmental entity from exercising
28 its regulatory power to prohibit the land use. *Toigo v. Town of Ross* (1998) 70 Cal.App. 4th 309.

1 85. 42 U.S.C. § 1988 (b) states: “In any action or proceeding to enforce a provision of
2 Section[] ...1983... the Court in its discretion, may allow the prevailing party, other than the
3 United States, a reasonable attorney’s fee as part of the costs....”

4 86. California and federal law both provide that a property owner who has performed
5 substantial work and incurred substantial liabilities, in good faith reliance upon a permit lawfully
6 issued by the government, acquires a vested property interest in the rights granted by the permit.
7 *Avco Community Developers v. South Coast Regional Commission* (1976) 17 Cal.3d 785; *Dobbins*
8 *v. City of Los Angeles* (1904) 195 U.S. 223.

9 87. Once a property owner has secured a vested right in the completion of construction
10 or continued operation of a business in reliance on a legitimately-acquired permit, the government
11 may not, by virtue of a later change in the law, prevent the property owner from activities
12 undertaken in compliance with the lawful permit.

13 88. Under California law, a vested right that affects a property owner’s livelihood and
14 economic future is deemed a “fundamental vested right,” requiring both independent judicial
15 review and a heightened level of scrutiny. Interference with the right to continue an established
16 business is far more serious than denial of the right to establish a business in the first instance.
17 *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App. 4th 519.

18 89. Petitioners own or operate STR properties within Anaheim that are subject to the
19 Revocation Ordinances and the Fee Resolution. However, Petitioners hold existing STR permits
20 lawfully issued by Anaheim pursuant to the STR Ordinance. Petitioners have made substantial
21 investments in the purchase, modification, conversion, equipment, enlargement, improvement,
22 management and marketing of their STR Properties. Petitioners have made additional
23 expenditures specifically required to comply with the terms of the STR Ordinance. All of these
24 expenditures were material and substantial, and all were undertaken in good faith reliance on the
25 STR permits issued by Anaheim.

26 90. Petitioners have also made long-term financial commitments and other decisions in
27 good faith reliance on the STR Ordinance including, but not limited to, mortgages, improvement
28 loans, personal relocation, employment contracts and other actions affecting their livelihoods and

1 those of their families.

2 91. Under the STR Ordinance, Petitioners have vested their rights to continue to use
3 their properties as STRs through substantial expenditures in good faith reliance on the provisions
4 of the STR Ordinance authorizing STRs as by-right permitted uses within all residential zones
5 under the City's Zoning Code, AMC Title 18.

6 92. On their face, the Revocation Ordinances do not purport to amend the City's
7 Zoning Code, and to the extent they do in fact amend or modify Title 18, they are unlawful and
8 ineffective, as set forth in Paragraphs 57 to 62 above. Petitioners therefore have the right to
9 continued use of their properties as STRs in accordance with the *currently applicable* and effective
10 zoning.

11 93. Even if Revocation Ordinances are found to modify the current zoning under Title
12 18 by implication, Petitioners have vested their rights to continue use of their properties as STRs
13 as legal non-conforming uses under the Zoning Code. *Hansen Brothers Enterprises, Inc. v. Board*
14 *of Supervisors* (1996) 12 Cal. 4th 533. As non-conforming uses, the STR properties may continue
15 at their current locations as lawfully vested uses.

16 94. Under the STR Ordinance, Petitioners have vested their rights to continue to
17 operate their STR properties through substantial good faith reliance on the STR permits issued by
18 the City. Under Section 4.05.080 of the STR Ordinance, Petitioners vested their rights to
19 automatic renewal of their STR permits, unless properly revoked for cause. *Stewart Enterprises,*
20 *Inc. v. City of Oakland* (2016) 248 Cal.App. 4th 410. Moreover, even if the STR permits had not
21 vested under the provisions of the STR Ordinance, subsequently enacted licensing requirements
22 cannot be applied to preclude the continued operation of a vested use, either conforming or non-
23 conforming. *Baltimore v. Dembo* (1998) 719 A.2d 1007.

24 95. As regulations governing business activities under AMC Title 4.05, the Revocation
25 Ordinances are not effective to deprive property owners of their vested rights to continued use of
26 their STR properties under the applicable residential zoning. The Revocation Ordinances impair
27 Petitioners' vested rights to continued use of their STR properties by imposing discretionary
28 requirements that cannot be unilaterally satisfied by the property owner. *Stewart Enterprises, Inc.*

1 v. *City of Oakland* (2016) 248 Cal.App. 4th 410.

2 96. Once a use permit has been lawfully issued and the property owner's rights have
3 vested, the power of a municipality to revoke it is limited to circumstances of compelling public
4 necessity. The question of whether public necessity justified the City's attempted impairment of
5 Petitioners' vested rights is a question of law, requiring that the court find substantial evidence
6 that STRs in residential zones posed a danger or menace to the public health or safety, or
7 constituted a public nuisance. *Stewart Enterprises, Inc. v. City of Oakland* (2016) 248 Cal.App.
8 4th 410.

9 97. The Revocation Ordinances are not based on any danger to public health or safety
10 from the continued operations of STRs within residential zones. No substantial evidence of
11 danger to the public health or safety resulting from STR operations was presented to or relied on
12 by the City Council in adopting the Revocation Ordinances. No reports, studies or other
13 documentation demonstrating any danger, menace or nuisance from STR operations was relied on
14 by the City Council.

15 98. The Revocation Ordinances also are not based on any factual findings that
16 operation of STRs in accordance with the STR Ordinance is a public nuisance. No substantial
17 evidence of nuisance resulting from STR operations was presented to or relied on by the City
18 Council in adopting the Revocation Ordinances. The evidence presented to the City Council did
19 not demonstrate that lawfully-operated STRs constituted a public nuisance, nor did the City
20 Council make any such determination.

21 99. No compelling necessity or interest in banning STRs was presented to the City
22 Council in support of the Revocation Ordinances. In fact, the City did not even attempt to
23 demonstrate a compelling interest in elimination of STR uses from residential zones. The City's
24 findings were limited to a general conclusion that regulating the issuance of and operative
25 conditions attached to STR permits is "necessary to protect the public peace, health, safety and/or
26 welfare" because STRs "can, in certain circumstances, escalate the demand for City services,
27 negatively affect surrounding residential neighborhoods, and place increased demands on public
28 services." These findings, even if they had been supported by substantial evidence, are not enough

1 to support a ban on STRs as vested uses.

2 100. The Revocation Ordinances therefore unconstitutionally deprive Petitioners of their
3 fundamental vested rights to continued use of their properties as STRs under the City's Zoning
4 Code as conforming or non-conforming uses. The Revocation Ordinances unconstitutionally
5 deprive Petitioners of their vested rights to continued automatic renewal of their STR permits in
6 accordance with the STR Ordinance as it existed when the permits were issued, as well as their
7 vested rights to continue operating their properties as STRs under permits lawfully issued in
8 accordance with the City's business regulations.

9 101. The Revocation Ordinances are therefore invalid and unconstitutional in that they
10 deprive Petitioners of their vested rights in violation of the guarantees of just compensation for the
11 taking or damaging of private property under the California and United States Constitutions.

12 102. The City's conduct as alleged above constitutes a deprivation of Petitioners' civil
13 rights in violation of 42 U.S.C. § 1983. To the extent Petitioners are deemed to be the prevailing
14 parties on this cause of action, they are entitled to an award of reasonable attorney fees pursuant to
15 42 U.S.C. § 1988.

16 **SIXTH CAUSE OF ACTION**

17 **Declaratory Relief for Taking Without Just Compensation**

18 **[U.S. Constitution Amendment 5 and 14, 42 U.S.C. Section 1983;**

19 **California Constitution Article 1, Sections 7 and 19]**

20 103. Petitioners incorporate by this reference the allegations of paragraphs 1 through
21 102 above.

22 104. Article 1, Section 7 of the California Constitution states: "A person may not be
23 deprived of life, liberty or property without due process of law." The Fourteenth Amendment to
24 the United States Constitution has a parallel provision.

25 105. Article 1, Section 19 of the California Constitution states: "Private property may
26 be taken or damaged for a public use and only when just compensation ... has first been paid to ...
27 the owner." The Fifth Amendment to the United States Constitution, as applied to the States, has
28 a parallel, though not identical, provision.

1 106. 42 U.S.C. § 1983 states: “Every person who, under color of any statute, ordinance,
2 regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or
3 causes to be subjected, any citizen of the United States or other person within the jurisdiction
4 thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and
5 laws, shall be liable to the party injured in an action at law, suit in equity, or other proper
6 proceeding for redress.....”

7 107. 42 U.S.C. § 1988 (b) states: “In any action or proceeding to enforce a provision of
8 Section[]... 1983... the Court in its discretion, may allow the prevailing party, other than the
9 United States, a reasonable attorney’s fee as part of the costs....”

10 108. On its face, the Regulate and Ban Ordinance deprives Petitioners of the use and
11 benefit of their STR properties in violation of these State and Federal constitutional provisions.
12 *Penn Central Transportation Co. v. New York City* (1978) 438 U.S. 104.

13 109. Under *Penn Central*, a regulation that allows a property owner to retain some value
14 in the subject property may nonetheless be an unconstitutional taking, depending on the economic
15 impact of the regulation, the reasonable investment-backed expectations of the property owners,
16 and the nature of the government action.

17 110. Petitioners have suffered significant economic loss and damage to the value of their
18 properties as a result of the City’s adoption of the Revocation Ordinances. Under the terms of the
19 Regulate and Ban Ordinance, the issuance of STR renewal permits are now subject to a new
20 application process, do not receive automatic renewal, only authorize the rental of an STR rental
21 to a reduced number of guests, prohibit enlargements to the STR, are personal to the owner, and
22 no longer run with the land. Similarly, owners who sell STR properties after adoption of the
23 Revocation Ordinances cannot use that reduced sales price to obtain an extension of their STR
24 permit, according to the Amortization Ordinance.

25 111. Simply as a result of the adoption of the Revocation Ordinances, therefore, the
26 value of Petitioners’ STR properties has been depressed by at least 25 percent, as demonstrated by
27 evidence submitted by Petitioners and others to the City. The Revocation Ordinances allow for no
28 variances, other than a potential extension to allow for amortization of expenses incurred prior to

1 August 11, 2016. The resulting reduction in value is immediate, based on the facial effect of the
2 Revocation Ordinances on the uses that can be made of the properties, as well as the market value
3 of STRs compared to traditional single-family uses. In some cases, the reduced value of the STR
4 properties is less than the amount required to service loans for the purchase and improvement of
5 the properties. The Revocation Ordinances not only interfered with Petitioners' reasonable
6 investment-back expectations, they will destroy them.

7 112. Petitioners had reasonable investment-backed expectations that the STR properties
8 could continue to be used for STR purposes for more than a few years after the STR Ordinance
9 was adopted. These expectations were backed by substantial investments reasonably undertaken
10 in reliance on the STR zoning, STR permits and building permits issued for STR uses by the City.

11 113. Petitioners have been singled out by the arbitrary and unreasonable conduct of the
12 City in attempting to revoke permits and rights granted less than two years previously with the full
13 intention of inducing reliance by Petitioners.

14 114. The Revocation Ordinances are not saved from unconstitutionality by purportedly
15 allowing Petitioners to continue operating permitted pre-moratorium STRs until January 2018.
16 The terms and conditions of the Regulate and Ban Ordinance are onerous, effectively decreasing
17 the value of the STR properties through numerous illegal means, including retroactive limits on
18 occupancy and off-street parking. The economic impact of the Regulate and Ban Ordinance on
19 Petitioners' property values occurred upon adoption, and will only worsen as the termination date
20 approaches. In effect, the City has condemned Petitioners' property through adoption of the
21 Regulate and Ban Ordinance, even though the ban as to all STRs is not yet fully in effect.
22 *Klopping v. City of Whittier* (1972) 8 Cal.3d 39.

23 115. The Revocation Ordinances are not saved from unconstitutionality by purportedly
24 allowing Petitioners to recoup their investment through discretionary extensions granted pursuant
25 to the Amortization Ordinance. The Amortization Ordinance is facially inadequate to compensate
26 Petitioners for their investment in the STR properties, by disallowing normal profit and
27 prohibiting compensation for required modifications, among other defects. The Amortization
28 Ordinance is uncertain, discretionary and retroactive in its operation, all preventing the City from

1 relying on it to avoid the City's liability for an unconstitutional taking.

2 116. The City's conduct as alleged above constitutes a deprivation of Petitioners' civil
3 rights in violation of 42 U.S.C. § 1983. To the extent Petitioners are deemed to be the prevailing
4 parties on this cause of action, they are entitled to an award of reasonable attorney fees pursuant to
5 42 U.S.C. § 1988.

6 **SEVENTH CAUSE OF ACTION**

7 **Declaratory Relief for Taking Without Just Compensation**

8 **[U.S. Constitution Amendment 5 and 14, 42 U.S.C. Section 1983;**

9 **California Constitution Article 1, Sections 7 and 19]**

10 117. Petitioners incorporate by this reference the allegations of paragraphs 1 through
11 116 above.

12 118. Article 1, Section 7 of the California Constitution states: "A person may not be
13 deprived of life, liberty or property without due process of law." The Fourteenth Amendment to
14 the United States Constitution has a parallel provision.

15 119. Article 1, Section 19 of the California Constitution states: "Private property may be
16 taken or damaged for a public use and only when just compensation ... has first been paid to ...
17 the owner." The Fifth Amendment to the United States Constitution, as applied to the States, has
18 a parallel, though not identical, provision.

19 120. 42 U.S.C. § 1983 states: "Every person who, under color of any statute, ordinance,
20 regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or
21 causes to be subjected, any citizen of the United States or other person within the jurisdiction
22 thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and
23 laws, shall be liable to the party injured in an action at law, suit in equity, or other proper
24 proceeding for redress...."

25 121. 42 U.S.C. § 1988 (b) states: "In any action or proceeding to enforce a provision of
26 Section[...] 1983... the Court in its discretion, may allow the prevailing party, other than the
27 United States, a reasonable attorney's fee as part of the costs...."

28 122. Under the State and Federal Constitutions, the City could eliminate STRs

1 immediately by payment of just compensation or require removal without compensation following
2 a reasonable amortization period. *City of Los Angeles v. Gage* (1954) 127 Cal.App.2d 442.

3 123. Determination of the length of a reasonable period of amortization involves a
4 process of weighing the public gain to be derived from the speedy removal of the nonconforming
5 use against the private loss which removal of the use would entail. In addition, the amortization
6 period must be commensurate with the investment involved. *Metromedia Inc. v. City of San*
7 *Diego* (1980) 26 Cal. 848. Finally, amortization provisions are intended to allow property owners
8 to make long-range plans for liquidation or relocation.

9 124. The Amortization Ordinance allows Petitioners 18 months in which to recoup their
10 reasonable investment in the STR Properties, unless the period is extended by discretionary action
11 of the City Planning Director.

12 125. On its face, the 18-month amortization period deprives Petitioners of the use and
13 benefit of their STR properties in violation of these State and Federal constitutional provisions.
14 *National Advertising Co. v. County of Monterey* 91970) 1 Cal.3d 875. One year amortization
15 periods have been rejected as inadequate, even for billboards, by the California courts. Nationally,
16 amortization periods of less than three years are virtually unknown, with most ordinances allowing
17 periods of five years or longer. The City also violates constitutional requirements by terminating
18 all STR permits after the patently inadequate 18-month amortization period, and then requiring the
19 STR owners to bear the burden of demonstrating the inadequacy of the period as applied. Under
20 constitutional precedent, the City is required to allow a reasonable period for amortization, which
21 it may then revoke on the basis of adequate evidence, with the City bearing the burden of proof.
22 *Livingston Rock etc. Co. v. County of Los Angeles* (1954) 43 Cal.2d 121; *Dolan v. City of Tigard*
23 (1994) 512 U.S. 374.

24 126. On its face, the 18-month amortization period also fails to allow Petitioners to
25 recoup their reasonable investment in the STR properties, which is the standard affirmatively
26 established by the City in adopting the Amortization Ordinance. The 18-month period does not
27 consider any of the relevant considerations established by the California courts, such as the
28 amount of the individual investment. Instead, it adopts an unduly abbreviated, one-size-fits-all

1 amortization period and attempts to shift the burden of proving its illegitimacy to the STR owners.

2 127. Factually, evidence submitted to the City Council prior to adoption of the
3 Amortization Ordinance demonstrated that 18 months was insufficient to allow 85 percent of STR
4 owners to recoup their investment. Given the size of the investment required to operate an STR,
5 an amortization period longer than ten years would be required to allow recoupment of the
6 owners' reasonable costs. Evidence submitted to the City Council prior to adoption of the
7 Amortization Ordinance also demonstrated that STRs invariably have negative cash flow during
8 their initial months, ranging from six to 17 months. Under the 18-month amortization period,
9 most owners would lose more than 35 percent of their purchase price, assuming standard loan
10 terms and market values. No testimony or evidence was submitted contradicting these factual
11 conclusions, their methodology or the supporting data. The City Council was fully aware that 18
12 months was inadequate to meet constitutional standards for the majority of Petitioners , and the
13 City's adoption of the Amortization Ordinance was arbitrary and capricious, as well as
14 unsupported by any substantial evidence in the record.

15 128. The Amortization Ordinance is not saved by the purported availability of a
16 discretionary hardship extension. On its face, the ordinance does not require consideration of
17 present value or make any allowance for normal profits on real estate investments. The ordinance
18 requires the STR applicant to submit detailed documentation covering periods prior to adoption,
19 effectively imposing retroactive record-keeping requirements. The ordinance requires submittal of
20 a hodge-podge of detailed valuation information, based on inconsistent analytic methods for
21 determining hardship, without indicating the method to be used by the City and, apparently,
22 allowing the City to use any methodology that shortens the potential amortization period in a
23 particular case. For instance, the Amortization Ordinance requires an STR applicant to provide
24 information about fair market value, investment value, monopoly value and operating income and
25 expenses, despite the fact that they relate to completely different financial analyses, with different
26 results in terms of timing and potential recoupment. The ordinance prohibits consideration of
27 improvements installed after its adoption, despite the Regulate and Ban Ordinance requirement
28 that fire sprinklers and other costly modifications be installed as a condition of receiving a

1 hardship exception. This requirement alone is sufficient to invalidate the Amortization Ordinance
2 on its face. The ordinance does not address the availability of a hardship extension for new
3 owners, except to state that their costs and investment may not be considered. The ordinance
4 appears to disregard the reasonableness of investments made after adoption of the Moratorium
5 Ordinances, even though Petitioners' properties were neither subject to the moratoria nor proposed
6 for elimination. The ordinance requires consideration of other irrelevant information including,
7 but not limited to, income received prior to adoption of the Amortization Ordinance, which may
8 not lawfully be considered in determining the length of the amortization period. *People v. Tolman*
9 (1980) 110 Cal.App.3d Supp. 6.

10 129. The City's conduct as alleged above constitutes a deprivation of Petitioners' civil
11 rights in violation of 42 U.S.C. § 1983. To the extent Petitioners are deemed to be the prevailing
12 parties on this cause of action, they are entitled to an award of reasonable attorney fees pursuant to
13 42 U.S.C. § 1988.

14 **EIGHTH CAUSE OF ACTION**

15 **Declaratory Relief For Violation of Right to Due Process of Law**

16 **[U.S. Constitution Amendment 14, 42 U.S.C. Section 1983;**

17 **California Constitution Article 1, Section 7]**

18 130. Petitioners incorporate by this reference the allegations of paragraphs 1 through
19 129 above.

20 131. The 14th Amendment to the United States Constitution provides that "no state shall
21 make or enforce any law which shall abridge the privileges or immunities of citizens of the United
22 States; nor shall any state deprive any person of life, liberty, or property, without due process of
23 law." Article 1 § 7 of the California Constitution provides the same protection, stating "a person
24 may not be deprived of life, liberty, or property without due process of law or denied equal
25 protection of the laws"

26 132. 42 U.S.C. § 1983 states: "Every person who, under color of any statute, ordinance,
27 regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or
28 causes to be subjected, any citizen of the United States or other person within the jurisdiction

1 thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and
2 laws, shall be liable to the party injured in an action at law, suit in equity, or other proper
3 proceeding for redress....”

4 133. 42 U.S.C. § 1988 (b) states: “In any action or proceeding to enforce a provision of
5 Section[]... 1983 ... the Court in its discretion, may allow the prevailing party, other than the
6 United States, a reasonable attorney’s fee as part of the costs....”

7 134. The Revocation Ordinances and Fee Resolution violate Petitioners’ right to
8 substantive due process of law in that their provisions purporting to regulate, impose duplicative
9 fees upon, and ultimately eliminate, STRs are arbitrary, capricious, unsupported by evidence, and
10 lack any reasonable connection to a valid public purpose. Substantive due process redresses
11 improper government interference with property rights and irrational actions by government
12 decision-makers. *County of Sacramento v. Lewis* (1998) 523 U.S. 833, 846 (“the substantive due
13 process guarantee protects against government power arbitrarily and oppressively exercised.”);
14 *Dodd v. Hood River County* (9th Cir. 1995) 59 F.3d 852, 864.

15 135. By way of example only, the Revocation Ordinances deprive STR permit holders
16 of valuable property rights without substantive due process of law, in violation of both United
17 States and California Constitutions, as follows:

18 (a) Section 4.05.040.120 of the Regulate and Ban Ordinance prevents STR
19 homeowners from increasing a home’s square footage or adding a bedroom. This provision is
20 arbitrary and capricious, and impairs the value of the subject property without rational basis and
21 without just compensation.

22 (b) Section 4.05.060.070 of the Regulate and Ban ordinance provides that renewal of
23 an STR permit may be denied if the property is subject even to a “notice of violation.” Because a
24 notice of violation is merely an allegation, and not an adjudication of a violation, this provision
25 potentially imposes liability on STR permit holders and deprives them of the rights associated
26 with their permit without due process of law.

27 (c) Section 4.05.100.0111 of the Regulate and Ban Ordinance reduces the maximum
28 occupancy in most existing STRs by 25% to 30% from what is currently allowed, without any

1 evidence or finding that current occupancy levels pose any risk to the peace, health, safety or
2 welfare of Anaheim or its residents. As such, this limitation is arbitrary and capricious, and fails
3 to provide due process of law.

4 (d) Section 4.05.070.080 of the Regulate and Ban Ordinance provides that renewal of a
5 STR permit requires the City Planning Director to find that “no circumstances existed during the
6 term of the permit which would cause a violation to exist,” thus creating almost unlimited
7 discretion in the City to find disqualifying and undefined “circumstances” which would cause a
8 violation. This provision is arbitrary and capricious, and fails to provide due process of law.

9 (e) Sections 4.05.100.0104 and 4.05.100.0115 of the Regulate and Ban Ordinance
10 authorize the City to conduct random inspections of STR properties, without reason, probable
11 cause or entry warrant. Substantive due process has been held to protect the right to privacy. See,
12 e.g., *Roe v. Wade* (1973) 410 U.S. 113.

13 (f) The Amortization Ordinance violates due process protections because its
14 presumptive 18 month amortization period is arbitrary and capricious, having been adopted by the
15 City without any evidentiary support, and in derogation of evidence submitted by STR owners that
16 the amortization period necessary to allow a majority of them to recoup their investments was
17 substantially longer. Indeed, the City’s chosen amortization period of 18 months was plucked out
18 of thin air by the City Council during the hearing on the ordinance, and was less than half of City
19 staff’s recommended period of three to five years, which itself lacked any evidentiary foundation.

20 (g) The Amortization Ordinance further violates due process because its hardship
21 extension process grants the City virtually unlimited discretion to decide hardship applications,
22 without any governing rules or standards.

23 (h) Finally, the Amortization Ordinance further violates due process protections
24 because it excludes from its criteria for a hardship extension any return on investment, thereby
25 depriving STR permit holders of valuable property rights without due process or just
26 compensation.

27 (i) The Fee Resolution imposes unreasonably high, repetitive and duplicative fees
28 upon the rights of STR permit holders to renew, continue, and transfer ownership to those existing

1 vested permits.

2 136. The Revocation Ordinances and Fee Resolution violate Petitioner's right to
3 procedural due process of law by, *inter alia*, purporting to set an arbitrary amortization period
4 without the notice and hearing required by the Anaheim Municipal Code, AMC 18.56.100. Title
5 18 of the Anaheim Municipal Code specifies that the establishment of a reasonable amortization
6 period may only be fixed by the City's Planning Commission, after notice to the owner and an
7 evidentiary hearing held before the Planning Commission. AMC 18.56.100. See *Zinermon v.*
8 *Burch* (1990) 494 U.S. 113, 125-126. Procedural due process requires that a property owner be
9 provided notice and an opportunity to be heard before the government may deprive the owner of a
10 protected property right. *Goldberg v. Kelly* (1970) 397 U.S. 254, 267. These requirements have
11 been held to include the right to a fair hearing before unbiased decision-makers. *Morongo Band of*
12 *Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 371; *Nasha LLC v. City*
13 *of Los Angeles* (2004) 125 Cal.App.4th 470, 483; *Gai v. Selma* (1998) 68 Cal.App.4th 213, 219.

14 137. For the foregoing reasons, the Revocation Ordinances violate Petitioners' right to
15 due process of law, and Petitioners seek a judicial declaration that the City's actions have violated
16 the rights secured to them by the 14th Amendment to the United States Constitution and by Article
17 1 § 7 of the California Constitution.

18 138. The City's conduct as alleged above constitutes a deprivation of Petitioners' civil
19 rights in violation of 42 U.S.C. § 1983. To the extent Petitioners are deemed to be the prevailing
20 parties on this cause of action, they are entitled to an award of reasonable attorney fees pursuant to
21 42 U.S.C. § 1988.

22 **NINTH CAUSE OF ACTION**

23 **Declaratory Relief For Violation of Constitutional**

24 **Right to Be Free From Unreasonable Search**

25 **[U.S. Constitution Amendment 4, 42 U.S.C. 1983;**

26 **California Constitution Article 1, Section 13]**

27 139. Petitioners incorporate by this reference the allegations of paragraphs 1 through
28 138 above.

1 140. The 4th Amendment to the United States Constitution states: “The right of the
2 people to be secure in their persons, houses, papers, and effects against unreasonable seizures and
3 searches may not be violated; and a warrant may not issue except on probable cause, supported by
4 oath or affirmation, particularly describing the place to be searched and the persons and things to
5 be seized.” California Constitution Article 1, § 13 is identical.

6 141. 42 U.S.C. § 1983 states: “Every person who, under color of any statute, ordinance,
7 regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or
8 causes to be subjected, any citizen of the United States or other person within the jurisdiction
9 thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and
10 laws, shall be liable to the party injured in an action at law, suit in equity, or other proper
11 proceeding for redress....”

12 142. 42 U.S.C. § 1988 (b) states: “In any action or proceeding to enforce a provision of
13 Section[]... 1983 ... the Court in its discretion, may allow the prevailing party, other than the
14 United States, a reasonable attorney’s fee as part of the costs....”

15 143. Section 4.05.100.0104 of the Regulate and Ban Ordinance authorizes the City to
16 conduct random inspections of STR properties, without reason, probable cause or entry warrant.
17 Section 4.05.100.0115 of the Regulate and Ban Ordinance provides that if an enforcement officer
18 has received a complaint concerning any suspected STR violation, or if the enforcement officer
19 has an undefined “reason to believe” that such a violation has occurred, any adult occupant of an
20 STR must, upon presentation of reasonable identification by the enforcement officer, grant that
21 officer immediate entry, where the officer may then conduct a warrantless search of the premises.

22 144. Sections 4.05.100.0104 and 4.05.100.0115 described above violate the protections
23 of both the United States and California constitutions against unreasonable searches by requiring
24 occupants of STRs to permit searches of properties, in which they are then residing and in which
25 they have a reasonable expectation of privacy, and to submit to searches unsupported either by a
26 warrant or by legally defined cause.

27 145. For the foregoing reasons, the Regulate and Ban Ordinance violates Petitioners’
28 rights under the United States and California Constitutions to be free from unreasonable searches,

1 and Petitioners seek a judicial declaration that the City's actions have violated the rights secured to
2 them by the 4th Amendment to the United States Constitution and by Article 1, § 13 of the
3 California Constitution.

4 146. The City's conduct as alleged above constitutes a deprivation of Petitioners' civil
5 rights in violation of 42 U.S.C. § 1983. To the extent Petitioners are deemed to be the prevailing
6 parties on this cause of action, they are entitled to an award of reasonable attorney fees pursuant to
7 42 U.S.C. § 1988.

8 **TENTH CAUSE OF ACTION**

9 **Declaratory Relief For Violation of Equal Protection of Laws**

10 **[U.S. Constitution 14th Amendment, 42 U.S.C. Section 1983;**

11 **California Constitution Article 1, Section 7]**

12 147. Petitioners incorporate by this reference the allegations of paragraphs 1 through
13 146 above.

14 148. The equal protection clause of the 14th Amendment of the United States
15 Constitution provides that no state shall ... "deny to any person within its jurisdiction the equal
16 protection of the laws." Article 1 § 7 of the California Constitution similarly provides that "a
17 person may not be ...denied equal protection of the laws" The guarantee of equal protection
18 is violated where the government exposes a person to arbitrary discrimination by treating them
19 differently under the law than others similarly situated, without a rational basis for such treatment.
20 *Village of Willowbrook v. Olech* (2000) 528 U.S. 562, 564. The federal equal protection clause
21 and its California counterpart provide that persons who are similarly situated with respect to the
22 legitimate purpose of a law must be treated alike under the law. *Cleburne v. Cleburne Living*
23 *Center, Inc.* (1985) 473 U.S. 432, 439; *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253;
24 *College Area Renters & Landlord Ass'n v. City of San Diego* (1996) 43 Cal.App.4th 677, 686;
25 *City of New Orleans v. Dukes* (1976) 427 U.S. 297, 303.

26 149. 42 U.S.C. § 1983 states: "Every person who, under color of any statute, ordinance,
27 regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or
28 causes to be subjected, any citizen of the United States or other person within the jurisdiction

1 thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and
2 laws, shall be liable to the party injured in an action at law, suit in equity, or other proper
3 proceeding for redress....”

4 150. 42 U.S.C. § 1988 (b) states: “In any action or proceeding to enforce a provision of
5 Section[] ... 1983 ... the Court in its discretion, may allow the prevailing party, other than the
6 United States, a reasonable attorney’s fee as part of the costs....”

7 151. The Regulate and Ban Ordinance deprives STR permit holders of their
8 constitutional right to equal protection of the laws in its arbitrary discrimination between persons
9 similarly situated, to the detriment of STR owners and without a rational basis, as follows:

10 (a) Section 4.05.040.120 of the Regulate and Ban Ordinance prevents STR owners
11 from increasing the home’s square footage or adding a bedroom. This provision does not allow
12 the STR to increase in size or bedrooms to become comparable to other homes on its same block;
13 it applies without regard to such similarly situated property owners.

14 (b) Section 4.05.100.0103(e) requires STR permit holders to install an interior
15 automatic fire-sprinkler system if the property’s permitted occupancy is more than ten persons.
16 This provision disregards the thousands of single family homes in Anaheim that are permitted this
17 occupancy level without being subject to this requirement; it also treats STR properties differently
18 from residential care facilities, group care facilities, and bed and breakfasts, none of which are
19 subject to the fire sprinkler requirement.

20 (c) Section 4.05.100.0103(j) of the Regulate and Ban Ordinance requires STRs to
21 install doors directly exiting to the exterior from at least one bedroom if the STR may be rented to
22 a non-ambulatory occupant. This provision treats STR owners differently from other similarly
23 situated property owners, including residential care facilities, group care facilities, supportive
24 housing, transitional housing, and bed and breakfasts, without rational basis.

25 (d) Section 4.05.100.0012 of the Regulate and Ban Ordinance prohibits STR occupants
26 from parking on public streets, a right enjoyed by all other residents of and visitors to Anaheim,
27 including those at group living facilities, such as residential care facilities, group care facilities,
28 and bed and breakfasts, that may be located in single family neighborhoods.

1 (e) Section 4.05.100.0121 of the Regulate and Ban Ordinance prohibits STR occupants
2 from creating any “loud, unnecessary or unusual noise.” This requirement exists in addition to the
3 City’s “Loud and Unreasonable Noise Ordinance” already in place, and imposes an additional
4 restriction on STR occupants only without any rational basis therefor.

5 152. For the foregoing reasons, the Regulate and Ban Ordinance violates Plaintiffs’ right
6 to equal protection of the laws, and Plaintiffs seek a judicial declaration that, the City’s actions
7 have violated the rights secured to them by the 14th Amendment to the United States Constitution,
8 and by Article 1 § 7 of the California Constitution.

9 153. The City’s conduct as alleged above constitutes a deprivation of Petitioners’ civil
10 rights in violation of 42 U.S.C. § 1983. To the extent Petitioners are deemed to be the prevailing
11 parties on this cause of action, they are entitled to an award of reasonable attorney fees pursuant to
12 42 U.S.C. § 1988.

13 **ELEVENTH CAUSE OF ACTION**

14 **Injunction Against Enforcement of**

15 **Revocation Ordinances and Fee Resolution**

16 154. Petitioners incorporate by this reference the allegations of paragraphs 1 through
17 153 above.

18 155. For the reasons stated in the First through Tenth causes of action above, the
19 Revocation Ordinances and Fee Resolution were enacted in violation of the California
20 Environmental Quality Act, the Anaheim Municipal Code, and the Anaheim City Charter, and
21 would violate both the United States and California Constitutions if enforced. For all the reasons
22 set forth above, the Revocation Ordinances and Fee Resolution are void *ab initio*, and enforcement
23 of those enactments by the City should be permanently enjoined.

24 **PRAYER FOR RELIEF**

25 1. Under the First Cause of Action, for a Writ of Mandate setting aside the Revocation
26 Ordinances and the Fee Resolution for failure to comply with CEQA, coupled with an order that
27 no action be taken to enforce the Revocation Ordinances.

28 2. Under the Second Cause of Action, for a Writ of Mandate setting aside the

1 Revocation Ordinances for violation of Title 18 of the Anaheim Municipal Code, coupled with an
2 order that no action be taken to enforce the Revocation Ordinances.

3 3. Under the Third Cause of Action, for a Writ of Mandate setting aside the
4 Amortization Ordinance and the Fee Resolution for violation of the Anaheim City Charter,
5 coupled with an order that no action be taken to enforce the Amortization Ordinance or the Fee
6 Resolution.

7 4. Under the Fourth Cause of Action, for a Writ of Mandate to set aside the
8 Revocation Ordinances and the Fee Resolution based on equitable estoppel.

9 5. Under the Fifth Cause of Action, for a Writ of Mandate setting aside the
10 Revocation Ordinances and the Fee Resolution for deprivation of fundamental vested rights under
11 the United States and California constitutions as alleged herein.

12 6. Under the Fifth through Tenth Causes of Action, for a judicial declaration that the
13 Revocation Ordinances and Fee Resolution violate Petitioners' rights under the United States and
14 California constitutions as alleged herein.

15 7. Under the First through the Eleventh Causes of Action, for a permanent injunction
16 barring the City from enforcement of the Revocation Ordinances and the Fee Resolution.

17 8. Under the Fifth through Eleventh Causes of Action, for an award of attorney fees
18 under the Civil Rights Attorney's Fee Award Act of 1976, 42 U.S.C. § 1988.

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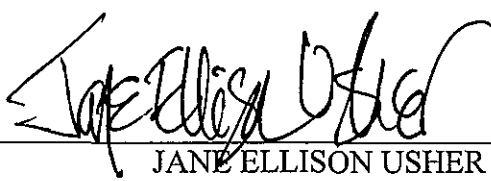
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9. Under the First through the Eleventh Causes of Action, for an award of attorney fees under California's Private Attorney General Act, Code of Civil Procedure § 1021.5.

10. For such other relief as the Court may deem just and proper.

DATED: August 12, 2016

MUSICK, PEELER & GARRETT LLP

By: 

JANE ELLISON USHER
Attorneys for Petitioners and Plaintiffs
TALMADGE PRICE, ZOLKOS LLC, ALAN
BYNDER, GAIL and RONALD EASTMAN,
PACIFIC LEGACY REAL ESTATE &
INVESTMENTS, INC., ANEO PROPERTIES,
LLC, AMY FISCHER, and THE ANAHEIM
RENTAL ALLIANCE

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

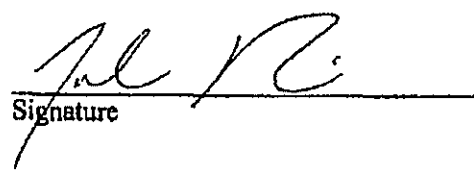
I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on August 6, 2016, at Carlsbad, California.

Talmadge Price


Signature

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents.

I am the Dwain of Zolkos LLC, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

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

Executed on August 7, 2016, at 2570 Normandy Cir, Lino Hills California.

Zolkos LLC

By: Will M. Zolkos
Print name

[Signature]
Signature

Its: Dwain
Title

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

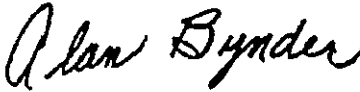
I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on August 7, 2016, at Corona Del Mar, California.

Alan Bynder



Signature

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

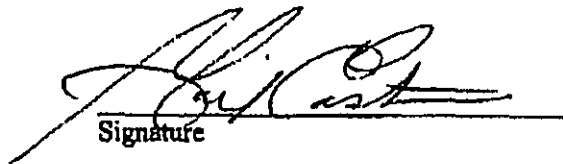
I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on August 6, 2016, at Anaheim, California.

Gail Eastman



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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE


I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on August 6, 2016, at Anaheim, California.

Ronald Eastman


Signature

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents.

I am the President of Pacific Legacy Real Estate & Investments, Inc., a party to this action, and am authorized to make this verification for and on its behalf, and make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

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

Executed on August 7, 2016, at Villa Park, California.

Pacific Legacy Real Estate & Investments, Inc.

By: Sam Olson
Print name

[Signature]
Signature

Its: President
Title

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents.

I am the General Partner of ANEO Properties, LLC, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

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

Executed on August 7, 2016, at Villa Park, California.

ANEO Properties, LLC

By: Sam Olson
Print name

[Signature]
Signature

Is: General Partner
Title

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on August 6 2016, at Livermore, California.

Amy Fischer


Signature

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents.

I am the board member of The Anaheim Rental Alliance, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

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

Executed on August 6, 2016, at Custisland, California.

The Anaheim Rental Alliance

By: Talmanaye Price
Print name

[Signature]
Signature

Its: BOARD MEMBER
Title