

1 RICHARD H. CLOSE (Bar No. 50298)
THOMAS W. CASPARIAN (Bar No. 169763)
2 YEN N. NGUYEN (Bar No. 233880)
GILCHRIST & RUTTER
3 Professional Corporation
Wilshire Palisades Building
4 1299 Ocean Avenue, Suite 900
Santa Monica, California 90401-1000
5 Telephone: (310) 393-4000
Facsimile: (310) 394-4700

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

SEP 17 2007

C. REGALADO

6 L. SUE LOFTIN (Bar No. 92016)
7 THE LOFTIN FIRM
5760 Fleet Street, Suite 110
8 Carlsbad, California 92008
Telephone: (760) 431-2111
9 Fascimile: (760) 431-2003

10 Attorneys for Plaintiff Palm Springs Investment
Company, L.P. a California limited partnership

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF RIVERSIDE, INDIO DIVISION
13

14 PALM SPRINGS INVESTMENT COMPANY,
15 L.P., a California limited partnership,

CASE NO INC 070629

VERIFIED COMPLAINT FOR
DECLARATORY RELIEF, INJUNCTIVE
RELIEF, AND INVERSE CONDEMNATION

16 Plaintiff,

17 vs.

18 CITY OF PALM SPRINGS, a municipal
corporation; DOES 1 through 10, individuals,

19 Defendants.
20

21
22 Plaintiff Palm Springs Investment Company, L.P., ("Plaintiff") by this verified complaint
23 ("Complaint") hereby alleges as follows:

24 THE PARTIES

25 1. Plaintiff is a limited partnership duly authorized and existing under and by virtue of
26 the laws of the State of California.

27 2. Plaintiff is informed and believes, and thereon alleges, that defendant City of Palm
28 Springs ("City" or "Defendant") is a political subdivision within the State of California.

LAW OFFICES
GILCHRIST & RUTTER
PROFESSIONAL CORPORATION
1299 OCEAN AVENUE, SUITE 900
SANTA MONICA, CALIFORNIA 90401-1000
TEL (310) 393-4000 • FAX (310) 394-4700

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1 3. The true names and capacities, whether individual, corporate, associate,
2 governmental or otherwise, of Defendants Does 1-10, inclusive, are unknown to Plaintiff at this
3 time and Plaintiff therefore sues said Defendants by such fictitious names. Leave of Court will be
4 requested to amend this Complaint to show their true names and capacities when the same have
5 been ascertained. City and Does 1-50, inclusive, are sometimes hereinafter collectively referred to
6 as "Defendants." Plaintiff is further informed and believes, and thereon alleges that Defendants,
7 and each of them, in doing the things hereinafter alleged were acting pursuant to the course and
8 scope of their authority as agents, servants, and employees of one another and with the permission
9 and consent of their co-Defendants.

10 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants and
11 each of them conspired and acted in concert with each other Defendants with respect to the events
12 and happenings referred to herein which proximately caused the damages hereinafter alleged.

VENUE AND JURISDICTION

14 5. This Court has personal jurisdiction over Defendants as they are, and at all relevant
15 times hereinafter mentioned were, political subdivisions, cities, political and administrative
16 bodies, domiciliaries, and/or residents of the State of California.

17 6. Venue is properly placed in the County of Riverside, State of California for the
18 following reasons, among others: (a) the wrongful conduct, acts and omissions of Defendants
19 hereinafter alleged occurred and took place in the County of Riverside, State of California; (b) the
20 effects of such wrongful conduct and the damages resulting therefrom to Plaintiff have occurred in
21 the County of Riverside, State of California; (c) the Defendants, their employees and
22 representatives and most of the witnesses to the conduct alleged herein reside in or around the
23 County of Riverside or have their principal places of business and conduct their businesses within
24 the County of Riverside, State of California.

25 7. On or around August 15, 2007, Plaintiff filed a claim with City, pursuant to
26 Government Code sections 810 et seq., otherwise known as the California Tort Claims Act,
27 relating to City's Resolution No. 21941, adopted on June 20, 2007, denying Plaintiff's application
28

LAW OFFICES
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PROFESSIONAL CORPORATION
1299 OCEAN AVENUE, SUITE 900
SANTA MONICA, CALIFORNIA 90401-1000
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1 for the conversion of its mobilehome park from a rental-only facilities to resident ownership
2 within the City of Palm Springs.

3 GENERAL FACTUAL ALLEGATIONS

4 A. Introduction

5 8. Plaintiff is the owner of Palm Springs View Estates Mobile Home Park (the
6 "Park"), a mobilehome park located in the City of Palm Springs. Plaintiff was and is seeking to
7 convert the Park to resident ownership pursuant to California Government Code section 66427.5.
8 Such a conversion would mean that the residents of the Park would own their own real estate
9 units, as well as an undivided interest in the common areas, as opposed to a rental-only facility
10 owned by Plaintiff. When a mobilehome park is converted to condominium-style ownership, each
11 lot in the mobilehome park becomes separately transferable pursuant to State law and subject to
12 applicable covenants, conditions, and restrictions. State law provides for its own form of rent
13 control applicable in a resident-owned park and preempts any otherwise applicable local rent
14 control.

15 9. California has adopted a comprehensive statutory scheme governing conversion of
16 mobilehome parks from rental facilities to resident-owned, or condominium-style, parks. The
17 agency principally responsible for administering that statutory scheme is the California
18 Department of Real Estate. Under California law, the authority of local bodies such as City is
19 limited to determining compliance of an application with the provisions of Government Code
20 section 66427.5 (within the Subdivision Map Act, Government Code section 66410 *et seq.*). Such
21 a map, along with the subsequent Department of Real Estate approvals, has the effect of
22 subdividing the single parcel into separately transferable real estate units, as well as interests in
23 undivided common areas. No construction or physical development at the mobilehome park is
24 contemplated or necessary. Rather, the subdivision is a legal division whereby separate sellable
25 interests are created within the park.

26 10. A local agency's, such as City's, consideration of such an application is governed
27 by Government Code section 66427.5, which provides specific and detailed requirements for
28 conversions of rental mobilehome parks to resident ownership and limits the local government's

1 review of the application to the question of whether the requirements of Government Code section
2 66427.5 have been satisfied. Section 66427.5 of the Government Code requires, in sum, (i) that
3 existing tenants each receive an option to either purchase their lot or continue their tenancy, (ii)
4 that the applicant file a tenant impact report on the conversion ("Tenant Impact Report" or "TIR"),
5 (iii) that the applicant submit a survey of support for the proposed conversion by written ballot
6 from the residents, (iv) that the applicant shall be subject to a hearing by the local government
7 limited to the issue of compliance with Section 66427.5, and (v) that State rent control, as detailed
8 in subdivision (f), applies to all tenants who elect not to exercise their right to purchase. Gov't
9 Code § 66427.5.

10 11. After the local government approves the subdivision maps, the California
11 Department of Real Estate ("DRE") regulates creation of condominium "airspace" units within the
12 mobilehome park, and the marketing and sale of those individual units.

13 B. The Application

14 12. Pursuant to this statutory framework, Plaintiff's predecessor in interest, Nevada
15 Commercial, Ltd., submitted an application for a tentative tract map to subdivide the Park for
16 condominium purposes ("Application") in June 2006. The Application does not contemplate any
17 new building or development; it merely authorizes the subdivision of the property into separate
18 interests to be offered to the residents of the Park.

19 13. In a letter dated August 8, 2006, City, through its staff at the Department of
20 Planning Services ("City Staff" or "Staff"), deemed Plaintiff's Application complete as of July 5,
21 2006.

22 14. In a letter dated October 20, 2006, Staff requested Plaintiff submit a revised Tenant
23 Impact Report disclosing certain information not required under Government Code Section
24 66427.5. In a follow up email dated November 7, 2006, Staff further clarified that it was requiring
25 that the Tenant Impact Report provide further information as to who is responsible for
26 maintenance of the common areas.

27 15. In an email dated November 11, 2006, Plaintiff advised City that maintenance
28 issues are outside the scope of the TIR. However, in order to facilitate approval of the

1 Application, Plaintiff also addressed Staff's concerns and advised City that responsibility for
2 maintenance of the common areas is allocated in the Enabling Declaration of Conditions,
3 Covenants and Restrictions (CC&Rs) and that the California Department of Real Estate is
4 responsible for reviewing the CC&Rs for compliance with the law and adequacy of protection for
5 the consumers (i.e., park residents). Plaintiff assumed the issue had been resolved to City's
6 satisfaction when it did not receive a response from City to its November 11, 2007 email.

7 C. Planning Commission Resolution No. 6099

8 16. On April 11, 2007, a hearing was held before the City's Planning Commission (the
9 "Commission") regarding Plaintiff's Application. In preparation for that hearing, City Staff issued
10 a comprehensive and detailed report ("April Staff Report") addressed to the attention of, and for
11 the benefit of, the Commission in ruling on the Application. The April Staff Report analyzed the
12 Application and "recommend[ed]. . . approval of the proposed [Application] to the City Council. .
13 .." The April Staff Report found that "the park owner has complied with the state law that governs
14 the conversion of existing rental mobile home parks to condominium parks" and reported that the
15 Petitioner's Application was compliant with the applicable zoning requirements.

16 17. However, during the April 11, 2007 hearing, members of the Commission
17 expressed some confusion concerning the TIR and the scope of the City's review throughout the
18 conversion process. Accordingly, in order to furnish the Commission with an updated TIR and in
19 order to allow for the City Attorney to be present to address the Commission's questions, the April
20 11, 2007 hearing was continued until May 9, 2007.

21 18. Following the April 11, 2007 meeting, Plaintiff addressed the issues raised at the
22 meeting. However, in an inexplicable reversal of the April Staff Report, and before Plaintiff could
23 submit a revised TIR, City Staff circulated another staff report shortly before the May 9, 2007
24 hearing ("May Staff Report") advising the Commission that Plaintiff had failed to revise the TIR
25 to include certain required disclosures as set forth in Staff's October 20, 2006 letter, which
26 disclosure requirements, as further clarified in Staff's November 7, 2006 email, Plaintiff had
27 addressed in its November 11, 2006 email.

28

1 19. In direct contradiction to the April Staff Report, the May Staff Report
2 recommended the Commission deny the Application based on the allegedly inadequate TIR.
3 Accordingly, at the May 9, 2007 hearing, the Commission adopted Resolution No. 6099
4 (“Resolution No. 6099”), recommending that City Council deny the Application on the grounds
5 that Plaintiff’s Tenant Impact Report did not provide all disclosures required by City. A true and
6 correct copy of Resolution No. 6099 is attached hereto as Exhibit “A.”

7 20. In a letter dated June 4, 2007, Plaintiff again advised City that pursuant to
8 Government Code section 66427.5, the subdivider is merely required to file “a report on the
9 impact of the conversion upon the residents” and that the disclosures City required exceeded the
10 scope of Section 66427.5. Among other things, City required disclosures concerning fire, access,
11 flood and engineering related potential impacts, which are not impacts on residents as a result of
12 the conversion but rather are existing conditions which impact residents regardless of whether the
13 conversion takes place. However, in an effort to facilitate the approval of its Application by the
14 City Council, Plaintiff revised its TIR to address the Commission’s concerns and recirculated the
15 same to residents in or around May 23, 2007 (“Revised TIR”).

16 D. City Council Resolution No. 21941

17 21. Nevertheless, in June 2007, City Staff issued a staff report to the City Council
18 recommending City Council adopt a proposed resolution denying Plaintiff’s application (“June
19 Staff Report”). The June Staff Report again alleged that Plaintiff needed to disclose certain
20 information concerning fire related, access, flood and engineering related potential impacts in the
21 TIR, which requirements were not only beyond City’s jurisdiction pursuant to Government Code
22 section 66427.5 but had been addressed by Plaintiff in its Revised TIR. Furthermore, the June
23 Staff Report alleged, for the first time, that Plaintiff’s resident survey of support (“Survey”) did
24 not evidence a bona fide resident conversion, although no definition of “bona fide resident
25 conversion” was provided in the June Staff Report or attached proposed resolution denying the
26 Application.

27 22. In two separate letters dated June 20, 2007, counsel for Plaintiff urged City not to
28 adopt the proposed resolution denying Plaintiff’s Application as, among other things, City’s

1 authority in the area of mobilehome park conversions was limited to determining compliance with
2 Government Code section 66427.5 and Plaintiff had fully complied with Section 66427.5.

3 23. Counsel for Plaintiff advised City that Plaintiff has submitted a Tenant Impact
4 Report in full compliance with Government Code section 66427.5, subd. (c), which only provides
5 that at the time the subdivider submits an application for a tentative tract map pursuant to
6 Government Code section 66427.5, "The subdivider shall file a report **on the impact of the**
7 **conversion** upon residents of the mobilehome park to be converted to resident owned subdivided
8 interest." Gov't Code § 66427.5(c) (emphasis added). Plaintiff's TIR adequately addressed the
9 impact of the conversion upon the residents. Indeed, City's April Staff Report had concluded,
10 "[Plaintiff] has complied with the state law that governs the conversion of existing rental mobile
11 home parks to condominium parks."

12 24. Counsel for Plaintiff further advised City that Plaintiff has fully complied with the
13 provisions of Government Code section 66427.5, subd. (d) relating to the Survey. Specifically,
14 Plaintiff had fully complied with Section 66427.5, subd. (d)'s provision that:

- 15 (1) The subdivider shall obtain a survey of support of residents of
16 the mobilehome park for the proposed conversion.
- 17 (2) The survey of support shall be conducted in accordance with an
18 agreement between the subdivider and a resident homeowners'
19 association, if any, that is independent of the subdivider or
20 mobilehome park owner.
- 21 (3) The survey shall be obtained pursuant to a written ballot.
- 22 (4) The survey shall be conducted so that each occupied
23 mobilehome space has one vote.
- 24 (5) The results of the survey shall be submitted to the local agency
25 upon the filing of the tentative or parcel map, to be considered
26 as part of the subdivision map hearing prescribed by subdivision
27 (e). Gov't Code § 66427.5(d).
- 28

1 Accordingly, City abused its discretion by finding, pursuant to the proposed resolution, that “the
2 applicant has failed to obtain a survey of support and otherwise provide evidence that the proposed
3 conversion is a bona fide conversion to resident ownership” because “only 9 out of 116
4 responding residents support the proposed conversion, out of 186 spaces.” Section 66427.5, subd.
5 (d) does not require that the Survey evidence a “bona fide conversion.” In fact, neither the City
6 nor Section 66427.5 provide any definition of “bona fide resident conversion.”

7 25. Counsel for Plaintiff urged City to continue the hearing on the proposed resolution
8 to allow the Plaintiff and park residents to continue to meet and negotiate a mutually agreeable
9 resolution of some of the resident concerns reflected in the City’s Tenant Impact Report
10 requirements.

11 26. However, City failed and refused to honor Plaintiff’s request to continue the
12 hearing on the proposed resolution. Instead, at the June 20, 2007 hearing, City, through its City
13 Council, adopted Resolution No. 21941 (the “Resolution” or “Resolution No. 21941”), denying
14 Plaintiff’s Application on the grounds that Plaintiff’s TIR and Revised TIR failed to meet City’s
15 disclosure requirements (“TIR Condition”)¹ and that Plaintiff had “failed to obtain a survey of
16 support and otherwise provide evidence that the proposed conversion is a bona fide conversion to
17 resident ownership” (“Survey Condition”). A true and correct copy of the Resolution is attached
18 hereto as Exhibit “B.”

19 27. In order to expedite resolution on the validity of the Resolution and pursuant to the
20 Supreme Court’s decision in *Kavanau v. Santa Monica Rent Control Board*, Plaintiff has also filed
21 a separate Petition for Writ of Administrative Mandamus relating to the Resolution concurrently
22 with this Complaint. 16 Cal. 4th 761, 779 (1997) (“[I]f a property owner brings a timely action to
23

24 ¹ Specifically, the TIR Condition mandates that Plaintiff disclose and analyze all impacts
25 of the proposed conversion with respect to : (1) fire hydrant flow and spacing; (2) access concerns
26 and time delays for emergency responses when the roadway in the wash is inaccessible; (3) fire
27 department response delays if the roadway wash is inaccessible; (4) secondary emergency access
28 requirements; (5) turning radius of roadways for fire department access; (6) location of southern
portion of the Park in a FEMA Flood Zone – A; (7) physical road being located in the east 60 feet
of the parcel and thus not within the record easement; and (8) Grand Deed reserves the road and
waterline easement for the benefit of certain individuals and no mention is made to their
“successor and assigns.” (Ex. A.)

1 set aside or void a regulation, he may *but need not* join a claim for damages. Instead, he may
2 bring a damages claim separately after successfully challenging the regulation.”).

3 FIRST CAUSE OF ACTION

4 (For Declaratory Relief Against City and Does 1 – 10)

5 28. Plaintiff re-alleges and incorporates herein by this reference Paragraphs 1 through
6 27, inclusive, as if set forth in full herein.

7 29. An actual controversy has arisen and now exists between Plaintiff and Defendants,
8 and each of them, regarding their respective rights, duties, and obligations under Government
9 Code section 66427.5, California law, and the Resolution in that Plaintiff contends Defendants
10 acted illegally in adopting the Resolution as, pursuant to California law, local authority in the area
11 of mobilehome conversions to resident ownership is limited to confirming that applications for
12 conversion comply with the requirements contained in Government Code section 66427.5 (within
13 the Subdivision Map Act, Government Code sections 66410 *et seq.*), local governments are
14 strictly prohibited from imposing additional requirements not contained in Government Code
15 section 66427.5, and the City’s TIR Condition and Survey Condition are not contained in
16 Government Code section 66427.5, whereas Defendants dispute these contentions.

17 30. Plaintiff desires a judicial determination of the respective rights and duties of
18 Plaintiff and of Defendants with respect to Government Code sections 66427.5, California law,
19 and the Resolution. In particular, Plaintiff desires a declaration that Government Code section
20 66427.5 and California law render the Resolution invalid in its present form;

21 31. Such a declaration is necessary and appropriate at this time in order that Plaintiff
22 may ascertain Plaintiff’s rights and duties with respect to Government Code sections 66427.5,
23 California law, and the Resolution.

24 SECOND CAUSE OF ACTION

25 (For a Preliminary Injunction and a Permanent Injunction Against City and Does 1 – 10)

26 32. Plaintiff re-alleges and incorporates herein by this reference Paragraphs 1 through
27 31, inclusive, as if set forth in full herein.

28

1 33. Plaintiff seeks a preliminary and permanent injunction to enjoin Defendants from
2 enforcing the Resolution in its present form.

3 34. Plaintiff has demanded that Defendants stop their wrongful conduct described
4 above and to vacate the Resolution. Defendants, and each of them, have refused to comply with
5 Plaintiff's demands and have continued to uphold and enforce the Resolution, notwithstanding
6 Plaintiff's request that City cease enforcing the Resolution and immediately vacate the same.

7 35. Unless and until enjoined and restrained by this Court, Defendants' conduct has
8 caused and will continue to cause Plaintiff to suffer grave and irreparable injury. Plaintiff's lawful
9 use of its property has been unlawfully stymied by the Resolution. Among other things, Plaintiff
10 is unable to convert its Park to residential ownership, thereby facing loss in the fair market value
11 of the Park and loss of income. Plaintiff's injuries are continuous and ongoing.

12 36. Plaintiff is likely to prevail on the merits of this action as Defendants clearly acted
13 without legal authority in enacting the Resolution in that, pursuant to California law, local
14 authority in the area of mobilehome conversions is limited to confirming that applications for
15 conversion comply with the requirements contained in Government Code section 66427.5 (within
16 the Subdivision Map Act, Government Code sections 66410 *et seq.*). Local governments are
17 strictly prohibited from imposing additional requirements not contained in Government Code
18 section 66427.5. City's TIR Condition and Survey Condition, as presented in the Resolution, are
19 in excess of those requirements contained in Government Code section 66427.5, and contravene
20 its purpose of state-wide uniformity.

21 37. Plaintiff has no plain, speedy, or adequate remedy at law, and injunctive relief is
22 authorized by California Code of Civil Procedure section 526.

23 THIRD CAUSE OF ACTION

24 (For Inverse Condemnation Against City and Does 1 – 10)

25 38. Plaintiff re-alleges and incorporates by reference each and all of the allegations
26 contained in paragraph numbers 1 through 37, as if set out in full.

27 39. Plaintiff has a legal right to convert its mobilehome Park to resident ownership.
28 City's adoption of the Resolution amounts to an unconstitutional taking and fails substantially to

1 advance legitimate government interests as required by the Takings Clause of the Fifth
2 Amendment to the United States Constitution and Article I, Section 19 of the California
3 Constitution. By enacting the Resolution, City exceeded its authority and jurisdiction and
4 interfered with the statutory and regulatory process as established by the California Legislature.
5 The Resolution frustrates the state law which is intended to establish uniform state-wide standards
6 designed to regulate mobilehome parks.

7 40. The Resolution works an unconstitutional taking of Plaintiff's private property for
8 public use because it does not advance any legitimate interest of City and it constitutes an illegal
9 exaction imposed on Plaintiff. State law prohibits the enactment of the Resolution. Plaintiff is
10 informed and believes, and based on such information and belief alleges, that City enacted the
11 Resolution knowing that it had no power to do so.

12 41. Plaintiff is further informed and believes, and based on such information and belief
13 alleges, that City enacted the Resolution knowing that they did not advance any legitimate
14 governmental interests.

15 42. Even assuming City had the power to enact the Resolution, Plaintiff is informed
16 and believes, and based on such information and belief alleges, that there is not an essential nexus
17 between the conditions imposed in the Resolution and any authority City may have to enact either
18 the Resolution. Moreover, Plaintiff is informed and believes, and based on such information and
19 belief alleges, that the conditions imposed in the Resolution are not roughly proportional to the
20 effects of the conversion of Plaintiff's mobilehome Park. Rather, the Resolution prevents Plaintiff
21 from exercising a legitimate right to convert its Park to resident ownership and forces Plaintiff, a
22 single property owner, to bear a disproportionate share of the cost of allegedly protecting the
23 public safety, health and welfare.

24 43. Plaintiff has suffered and continues to suffer damages, in an amount to be proven at
25 trial, as a result of City's unconstitutional taking of its private property. Plaintiff's lawful use of
26 its property has been unlawfully stymied and the value of the Park have been damaged by the
27 imposition of the illegally enacted Resolution, resulting in damages for a taking in an amount to be
28 proven at trial but believed to be not less than \$23,900,000.00.

LAW OFFICES
GILCHRIST & RUTTER
PROFESSIONAL CORPORATION
1298 OCEAN AVENUE, SUITE 900
SANTA MONICA, CALIFORNIA 90401-1000
TEL (310) 393-4000 • FAX (310) 394-4700

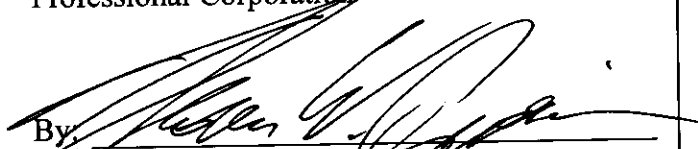
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WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For a judicial declaration of the respective rights and duties of Plaintiff and of Defendants with respect to Government Code section 66427.5, California law, and the Resolution. In particular, Plaintiff desires a declaration that the Resolution's violations of Government Code section 66427.5 and California law render the Resolution invalid in its present form;
2. For a preliminary injunction and permanent injunction prohibiting Defendants from enforcing the Resolution in its present form;
3. For recovery of damages against Defendants in an amount to be proven at trial, but not less than \$23,900,000.00;
4. For an award of costs of suit, expenses, and reasonable attorneys' fees against Defendants; and
5. For such other further relief as the Court deems just and proper.

DATED: September 14, 2007

GILCHRIST & RUTTER
Professional Corporation

By: 
Thomas W. Casparian
Attorneys for Plaintiff Palm Springs
Investment Company, L.P., a California
limited partnership

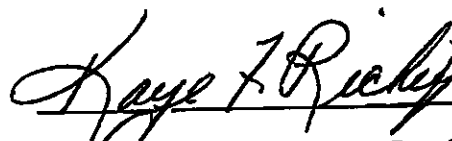
VERIFICATION

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I, Kaye F. Richey, am the Sr. Vice President of Investment Concepts, Inc., a California corporation, General Partner of Palm Springs Investment Company, L.P., a California limited partnership, and am authorized to make this verification on its behalf. I have personally viewed and am familiar with the records, files, and proceedings described herein. I know the facts set forth in the Verified Complaint to be true. I know the exhibits attached to the Verified Complaint to be true and correct copies of the documents described.

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

Executed on September 13, 2007, at Orange, California.



Kaye F. Richey, Sr. Vice President

LAW OFFICES
GILCHRIST & RUTTER
PROFESSIONAL CORPORATION
1296 OCEAN AVENUE, SUITE 900
SANTA MONICA, CALIFORNIA 90401-1000
TEL (310) 393-4000 • FAX (310) 394-4700

RESOLUTION NO. 6099

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PALM SPRINGS, CALIFORNIA, DENYING TENTATIVE TRACT MAP 34627 FOR THE CONVERSION OF AN EXISTING 184 SPACE RENTAL MOBILEHOME PARK TO A CONDOMINIUM PARK LOCATED AT 6300 BOLERO DRIVE ZONED R-MHP (MOBILEHOME PARK) SECTION 29

WHEREAS, The Loftin Firm (applicant), on behalf of Nevada Commercial, LTD (owners), have filed an application with the City pursuant the Palm Springs Municipal Code Section 9.60 for a Tentative Tract Map to subdivide approximately 25.9 acres of land into 184 condominium lots located at 6300 Bolero Drive, Zone R-MHP Section 29; and

WHEREAS, the Applicant has filed Tentative Tract Map 34627 with the City and has paid the required filing fees; and

WHEREAS, said Tentative Tract Map was submitted to appropriate agencies as required by the subdivision requirements of the Palm Springs Municipal Code, with the request for their review, comments, and requirements; and

WHEREAS, notice of the public hearing of the Planning Commission of the City of Palm Springs to consider Tentative Tract Map 34627, was given in accordance with applicable law; and

WHEREAS, on May 9, 2007, a public hearing on the application for Tentative Tract Map 34627 was held by the Planning Commission in accordance with applicable law; and

WHEREAS, the proposed conversion of the existing 184 space rental mobile home park to a condominium park, Tentative Tract Map 34627 is considered a "project" pursuant to the terms of the California Environmental Quality Act ("CEQA"), and a Negative Declaration has been prepared in accordance with the guidelines of the California Environmental Quality Act ("CEQA").

WHEREAS, the Planning Commission has carefully reviewed and considered all of the evidence presented in connection with the meeting on the Project, including but not limited to the staff report and all written and oral testimony presented.

THE PLANNING COMMISSION HEREBY FINDS AS FOLLOWS:

Section 1 Pursuant to Government Code Section 66427.5 the Planning Commission finds that the proposed Tentative Tract Map Case No. TTM 34627 for the conversion of the existing 184 lot rental Mobilehome Park to a resident owned condominium park did not comply with all the provisions of Section 66427.5, therefore; recommends that the City Council deny Case No. TTM 34627.

Section 2 Pursuant to Government Code Section 66427.5 (Subdivision Map Act), the Planning Commission finds that the Tentative Tract Map did not comply with all of the provisions of this section as follows:

Ex A

- (a) *The subdivider shall offer each existing tenant an option to either purchase his or her condominium or subdivided unit, which is to be created by the conversion of the park to resident ownership, or to continue residency as a tenant.*

This has been satisfactorily stated in Sections 1 and 2 of the Draft Tenant Impact Report (TIR) dated May 2006.

- (b) *The subdivider shall file a report on the impact of the conversion upon residents of the Mobilehome Park to be converted to resident owned subdivided interest.*

The applicant submitted the Tenant Impact Report along with the application for Tentative Tract Map. The staff reviewed this report to determine if it adequately disclosed all potential economic impact on displacement of nonpurchasing residents.

Staff has prepared a list of potential upgrades that might be necessary for the continued operation of the development that should be disclosed in the TIR. The information is necessary because there is a potential for negative financial impact to the new Homeowner's Association if a problem arises in the areas outlined below:

Fire Related Potential Impacts:

1. Fire hydrant flow and spacing.
2. Access concerns and time delays for emergency responses when the roadway in the wash is inaccessible.
3. If roadway in the wash is inaccessible, fire department response will be significantly delayed.
4. Secondary emergency access requirements.
5. Turning radius of roadways for fire department access.

Engineering Related Potential Impacts:

A record document referred to on TTM34627 that is identified as providing the Palm Springs View Mobile Home Park with access across the Palm Canyon Wash for road and water line purposes was found and is a Grant Deed recorded on Oct. 6, 1958, in Book 2343, Page 222. It is a Grant Deed from Lawrence and Martha Crossley to the "Coachella Valley County Water District", apparently conveying the parcel located in the Palm Canyon Wash, which is located between the parcels comprising the mobile home park. The

Grant Deed reserved an easement for road and waterline purposes over the east 60 feet of the parcel.

In reviewing the document there are 2 concerns:

1. The physical road is not located in the east 60 feet of the parcel located in the wash, and thus, not within the record easement; and
2. The Grant Deed merely reserved the road and waterline easement for the benefit of Lawrence and Martha Crossley – no mention was made to their “successor and assigns”.

A recorded document is needed that more clearly establishes the current access rights because the physical road is not located within that easement. Therefore, the current mobile home park owners would need to establish through quiet title action or prescriptive rights, the access rights over the RCFC parcel where the road is physically located.

The issue associated with the access road through the RCFC parcel is an “impact” that should be disclosed as part of the Tenant Impact Report.

The above information and request for a revised TIR to address the above issues was made known to The Loftin Firm by letter dated October 20, 2006. The Loftin Firm has not, as of April 23, 2007, submitted a revised TIR to address these concerns.

- (c) *The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.*

There was testimony from the residents, that not every resident received a copy of the TIR, at the April 11, 2007 Planning Commission Meeting, There was also concerns on the part of the Planning Commission members that the TIR did not address all of the tenant impacts and needed to be revised.

- (d) (1) *The subdivider shall obtain a survey of support of residents of the mobilehome park for the proposed conversion.*
- (2) *The survey of support shall be conducted in accordance with an agreement between the subdivider and a resident homeowners’ association, if any, that is independent of the subdivider or mobilehome park owner.*
- (3) *The survey shall be obtained pursuant to a written ballot.*

- (4) The survey shall be conducted so that each occupied mobilehome space has one vote.*
- (5) The results of the survey shall be submitted to the local agency upon the filing of the tentative or parcel map, to be considered as part of the subdivision map hearing prescribed by subsection*
- (e) The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section.*

A Public hearing has been scheduled for the Planning Commission and the Palm Springs City Council.

- (f) The subdivider shall be required to avoid the economic displacement of all nonpurchasing residents in accordance with the following:*
 - (1) As to nonpurchasing residents who are not lower income households, as defined in section 50079.5 of the Health and Safety Code, the monthly rent , including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent to market levels, as defined in an appraisal conducted in accordance with nationally recognized professional appraisal standards, in equal annual increases over a four-year period.*
 - (2) As to nonpurchasing residents who are lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent , including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period.*

Planning Commission Resolution
TTM 34627

May 9, 2007

NOW, THEREFORE, BE IT RESOLVED that, based upon the foregoing, the Planning Commission hereby recommends that the City Council deny Tentative Tract Map 34627.

ADOPTED this 9th day of May, 2007.

AYES:	5	/	Hutcheson, Ringlein, Marantz, Hochanadel, Cohen
NOES:	None		
ABSENT:	2	/	Caffery, Scott
ABSTENTIONS:	None		

ATTEST:

CITY OF PALM SPRINGS, CALIFORNIA



Craig A. Ewing, AICP
Director of Planning Services

RESOLUTION NO. 21941

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, DENYING TENTATIVE TRACT MAP 34627 FOR THE CONVERSION OF AN EXISTING 184 SPACE RENTAL MOBILEHOME PARK TO A RESIDENT OWNED CONDOMINIUM PARK LOCATED AT 6300 BOLERO DRIVE ON PROPERTY ZONED R-MHP (MOBILEHOME PARK) SECTION 29.

WHEREAS, The Loftin Firm (Applicant), on behalf of Nevada Commercial, LTD (owners), have filed an application with the City pursuant the Palm Springs Municipal Code Section 9.60 for a Tentative Tract Map to subdivide approximately 25.9 acres of land into 184 condominium lots located at 6300 Bolero Drive, Zone R-MHP Section 29; and

WHEREAS, the Applicant has filed Tentative Tract Map 34627 with the City and has paid the required filing fees; and

WHEREAS, said Tentative Tract Map was submitted to appropriate agencies as required by the subdivision requirements of the Palm Springs Municipal Code, with the request for their review, comments, and requirements; and

WHEREAS, notice of the public hearing of the City Council of the City of Palm Springs to consider Tentative Tract Map 34627, was given in accordance with applicable law; and

WHEREAS, on April 11, 2007, a public hearing on the application for Tentative Tract Map 34627 was held by the Planning Commission in accordance with applicable law and on May 9, 2007, recommended denial of the application; and

WHEREAS, the City Council has carefully reviewed and considered all of the evidence presented in connection with the Project, including but not limited to the staff report and all written and oral testimony presented.

THE CITY COUNCIL HEREBY FINDS AS FOLLOWS:

Section 1: The Tenant Impact Report and Revised Tenant Impact Report provided to the residents and reviewed by the City fails to disclose and properly analyze all impacts of the proposed conversion of the Mobilehome Park to resident ownership with respect to the following:

Fire Related Potential Impacts:

1. Fire hydrant flow and spacing.

Ex B

2. Access concerns and time delays for emergency responses when the roadway in the wash is inaccessible.
3. If the roadway in the wash is inaccessible, fire department response will be significantly delayed.
4. Secondary emergency access requirements.
5. Turning radius of roadways for fire department access.

Engineering Related Potential Impacts:

1. The southern portion of the Mobilehome Park is located in a FEMA Flood Zone - A. This will have a direct financial impact on the residents of the Park that live in the Flood Zone. If they intend to obtain a mortgage loan they will be required to have flood insurance, which can be costly. Therefore, this information needs to be contained in the Tenant Impact Report.
2. The physical road is not located in the east 60 feet of the parcel located in the wash, and thus, not within the record easement; and
3. The Grant Deed merely reserved the road and waterline easement for the benefit of Lawrence and Martha Crossley – no mention was made to their “successor and assigns”.

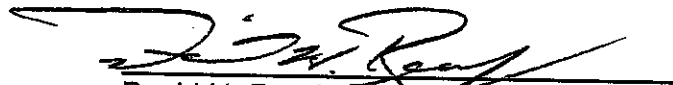
The City Council further finds that the revised Tenant Impact Report makes only conclusory remarks pertaining to the foregoing and other impacts to the residents of the proposed conversion of the mobilehome park community to resident ownership.

Section 2: The mobilehome park community proposed to be converted to resident ownership consists of 184 units. The applicant conducted a survey pursuant to Section 66427.5 of the Government Code and received 116 responses of which 9 were for support of the proposed conversion, 77 opposed the proposed conversion, and 30 declined to respond whether they would support or oppose the proposed conversion. Furthermore, Assembly Bill No. 930 (Chapter 1143, 2002 Statutes), Section 2, provides the following legislative findings pertaining to the requirement of the applicant to obtain a survey of support of the residents: “It is the intent of the Legislature to address the conversion of a mobilehome park to resident ownership that is not a bona fide resident conversion, as described by the Court of Appeal in *El Dorado Palm Springs, Ltd. v. City of Palm Springs* (2002) 96 Cal.App.4th 1153. The court in this case concluded that the subdivision map approval process specified in Section 66427.5 of the Government Code may not provide local agencies with the authority to prevent nonbona fide resident conversions. The court explained how a conversion of a mobilehome park to resident ownership could occur without the support of the residents and result in economic

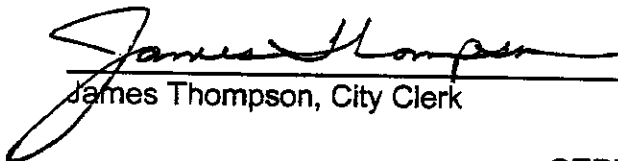
displacement. It is, therefore, the intent of the Legislature in enacting this act to ensure that conversions pursuant to Section 66427.5 of the Government Code are bona fide resident conversions." Consistent with the foregoing legislative findings, and the fact that only 9 of 116 responding residents support the proposed conversion, out of 186 spaces, the applicant has failed to obtain a survey of support and otherwise provide evidence that the proposed conversion is a bona fide conversion to resident ownership.

NOW, THEREFORE, BE IT RESOLVED that, based upon the foregoing, the City Council hereby denies Tentative Tract Map 34627.

ADOPTED THIS 20TH DAY OF JUNE, 2007.


David H. Ready, City Manager

ATTEST:

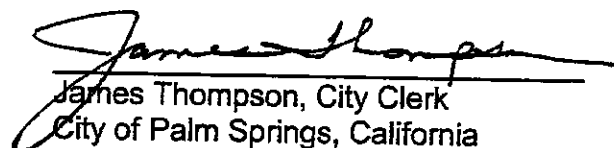

James Thompson, City Clerk

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. 21941 is a full, true, and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on the 20th day of June, 2007, by the following vote:

AYES: Councilmember Foat, Councilmember McCulloch, Councilmember Mills,
Mayor Pro Tem Pougnet, and Mayor Oden.
NOES: None.
ABSENT: None.
ABSTAIN: None.


James Thompson, City Clerk
City of Palm Springs, California

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Thomas W. Casparian (Bar No. 169763) Gilchrist & Rutter 1299 Ocean Avenue, Suite 900 Santa Monica, CA 90401-1000 TELEPHONE NO.: (310) 393-4000 FAX NO.: (310) 394-4700 ATTORNEY FOR (Name): Plaintiff Palm Springs Investment Company, L.P.		FOR COURT USE ONLY CASE NUMBER: 070629 JUDGE: DEPT:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside STREET ADDRESS: 46-200 Oasis Street MAILING ADDRESS: Same CITY AND ZIP CODE: Indio, CA 92201 BRANCH NAME: Indio Court		
CASE NAME: Palm Springs Investment Company, L.P. v. City of Palm Springs		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

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

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

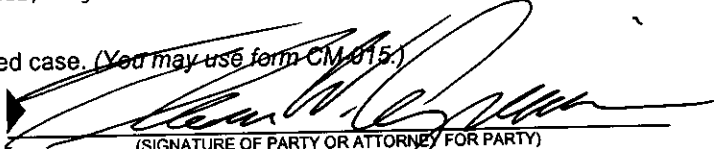
3. Type of remedies sought (check all that apply):
 a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): Three - declaratory relief, injunctive relief, and inverse condemnation

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 14, 2007
 Thomas W. Casparian (Bar No. 169763)
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

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

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

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

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

CASE TYPES AND EXAMPLES

Auto Tort

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

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

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

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
 Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
 Defamation (e.g., slander, libel) (13)
 Fraud (16)
 Intellectual Property (19)
 Professional Negligence (25)
 Legal Malpractice
 Other Professional Malpractice (*not medical or legal*)
 Other Non-PI/PD/WD Tort (35)
Employment
 Wrongful Termination (36)
 Other Employment (15)

Contract

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

Real Property

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

Unlawful Detainer

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

Judicial Review

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

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

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

Enforcement of Judgment

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

Miscellaneous Civil Complaint

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

Miscellaneous Civil Petition

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