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JAMES B. GILPIN, Bar No. 151466  
TYREE K. DORWARD, Bar No. 211086  
MATTHEW L. GREEN, Bar No. 227904  
BEST BEST & KRIEGER LLP  
655 West Broadway, 15th Floor  
San Diego, California 92101  
Telephone: (619) 525-1300  
Telecopier: (619) 233-6118

Attorneys for Plaintiff and Petitioner  
ENCINITAS UNION SCHOOL DISTRICT

EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT  
CODE SECTION 6103  
2011 JUL -7 PM 3:24

CLERK OF SUPERIOR COURT  
SAN DIEGO COUNTY, CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO  
NORTH COUNTY REGIONAL CENTER

ENCINITAS UNION SCHOOL  
DISTRICT, a school district,  
  
Plaintiff and Petitioner,  
  
v.  
  
THE CITY OF ENCINITAS, a municipal  
corporation; and DOES 1 THROUGH 10  
inclusive,  
  
Defendants and  
Respondents.

37-2011-00058665-CU-WM-NC  
Case No.  
Judge:  
  
VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY RELIEF

1 Plaintiff and Petitioner Encinitas Union School District alleges the following:

2 INTRODUCTION

3 1. The California Legislature has declared that unused school sites represent a  
4 potentially major source of revenue for school districts and has declared its intent to ensure that  
5 such sites can be developed to the same extent as is permitted on adjacent property.

6 2. In order to facilitate the ability of school districts to generate revenue from unused  
7 school sites, the Legislature enacted legislation to expedite the process for rezoning such sites,  
8 which has been codified as California Government Code section 65852.9.

9 3. Pursuant to California Government Code section 65852.9(b), the city with zoning  
10 jurisdiction over an unused school site must grant the request of a school district to rezone an  
11 unused schoolsite to the same zoning designation assigned to adjacent property.

12 4. This action is brought as a result of Defendant and Respondent City of Encinitas'  
13 failure to perform its duty under California Government Code section 65852.9(b), and pursuant to  
14 California Code of Civil Procedure sections 1060 (declaratory relief) and 1085 (writ of mandate).

15 THE PARTIES

16 5. Plaintiff and Petitioner Encinitas Union School District ("EUSD") is, and at all  
17 times mentioned herein was, a union school district. EUSD serves the City of Encinitas and the  
18 La Costa area of Carlsbad in North San Diego County and has approximately 5,600 students in  
19 Kindergarten through Sixth Grade enrolled in its schools.

20 6. Defendant and Respondent City of Encinitas ("City") is, and at all times  
21 mentioned herein was, a municipal corporation and general law city operating under the general  
22 laws of the State of California, with its City Hall located at 505 S. Vulcan Avenue in Encinitas,  
23 California.

24 7. EUSD is currently unaware of the true names and capacities of those defendants  
25 and respondents sued herein as Does 1 through 10, inclusive, and therefore sues those parties by  
26 fictitious names. EUSD is informed and believes that Does 1 through 10 are public bodies,  
27 agencies, officers or constituents that are responsible for the processing or decision making on a  
28 zoning amendment application. EUSD will seek leave to amend this Petition and Complaint to

1 state the true names and capacities of the fictitiously named parties when the same have been  
2 ascertained.

3 8. The City and Does 1 through 10, and each of them, are and were at all times  
4 mentioned herein agents, employees, or partners of each other, and, in doing the acts alleged  
5 herein, each defendant and respondent was acting within the scope of his, her, or its authority as  
6 such agent, employee, or partner, with the information and consent of each defendant and  
7 respondent, and each ratified or approved the conduct of the defendants and respondents alleged  
8 herein.

9 GENERAL ALLEGATIONS

10 9. In 1953, Pacific View Elementary School (originally named Encinitas Elementary  
11 School) was constructed on a 2.82-acre site located at 608 Third Street, between W. E Street and  
12 W. F Street in Encinitas, California ("Site"). After serving the community for 50 years, Pacific  
13 View Elementary School was closed in 2003 due to low student enrollment and major repairs  
14 needed for the buildings. Currently, the Site does not serve EUSD students, generate revenue that  
15 would help EUSD serve students, and/or serve any other educational purpose.

16 10. Since the closure of Pacific View Elementary School, EUSD and members of the  
17 community have discussed and deliberated on the future use of the Site. For example, in 2005,  
18 EUSD created the Pacific View Advisory Committee ("PVAC"), which was tasked with creating  
19 a conceptual plan for the potential development of the Site. The PVAC consisted of community  
20 residents, the Downtown Encinitas Mainstreet Association, the Encinitas Historical Society,  
21 members of the school district, and other interested parties. With the assistance of City staff, the  
22 PVAC's conceptual plan was submitted to the City's Planning Commission for consideration.  
23 The Planning Commission declined the request to submit the PVAC's conceptual plan to the City  
24 Council for approval, and instead suggested EUSD simply seek a zone change for the Site  
25 consistent with the surrounding properties.

26 11. On or about May 7, 2009, EUSD submitted a letter to the City inquiring as to  
27 whether the City would be interested in purchasing the Site for use as a public park or historical  
28 site. The matter went before the City Council on June 10, 2009, which resulted in a 2-2 vote and

1 no action being taken by the City. To date, the City has not expressed any interest in purchasing  
2 the Site.

3 12. On October 13, 2009, EUSD's Board of Trustees ("Board") established a Real  
4 Property Advisory Committee ("Committee") to review EUSD's needs for potential school use of  
5 the Site pursuant to California Education Code sections 17385 et seq. The Committee and its  
6 eleven members were asked to review, analyze, and make recommendations for the Board's  
7 consideration regarding the potential designation of the Site as surplus property.

8 13. The Committee held its first meeting on October 29, 2009, and met five times  
9 through January 14, 2010, before presenting a final written report to the Board on January 19,  
10 2010. The Committee reached consensus to recommend to the Board that the Site be declared as  
11 surplus and acknowledged that the Site is not needed as a school facility.

12 14. As a result of the Committee's findings, as well as communications between  
13 EUSD and the City, on or about January 14, 2010, EUSD submitted an application proposing a  
14 General Plan Amendment (GPA), Local Coastal Program Land Use Plan Amendment (LCPA),  
15 and Downtown Encinitas Specific Plan Amendment (SPA) to modify the land use designation  
16 and zoning classification of the Site under California Government Code section 65852.9 and  
17 Chapter 30.72 of the City's Municipal Code.

18 15. Pursuant to its application for zoning amendment, EUSD requested that the City  
19 change the land use designation and zoning classification for the Site to be consistent and  
20 compatible with property adjacent to the Site. Specifically, EUSD requested that the City change  
21 the land use designation from Public/Semi-Public (P/SP) to Residential 15 (R15), and change the  
22 zoning classification from Downtown Encinitas – Public/Semi-Public (D-P/SP) to Downtown  
23 Encinitas – Residential 15 (D-R15).

24 16. No development of the Site was proposed with EUSD's application nor was a new  
25 zone being proposed. Rather, the D-R15 zone surrounds the Site, and EUSD's application would  
26 bring the Site into conformance with the surrounding residential zoning.

27 17. On February 16, 2010, the Board declared the Site as surplus under California  
28 Education Code section 17464 and California Government Code section 54222. Accordingly, on

1 March 19, 2010, EUSD offered the property for sale or lease to other public agencies, including  
2 but not limited to the City, the County of San Diego, the California Natural Resources Agency,  
3 San Dieguito Union High School District, the San Diego County Office of Housing and  
4 Redevelopment, the Department of General Services of the State of California, the California  
5 State University, and the Regents of the University of California. To date, no public agency has  
6 expressed any interest in purchasing or leasing the Site.

7 18. On March 10, 2010, EUSD conducted a Citizen's Participation Meeting regarding  
8 the proposed rezoning.

9 19. Pursuant to the California Environmental Quality Act (CEQA), the City performed  
10 an Environmental Initial Study (EIS), which determined that no significant environmental effects  
11 would result from the land use amendments proposed by EUSD. Accordingly, a draft Negative  
12 Declaration was available for public review from June 4, 2010, through July 5, 2010.

13 20. During the 30-day public review period, only one comment letter was received by  
14 the City. This comment letter expressed concerns regarding the future development of the Site,  
15 but not the proposed rezoning itself.

16 21. On August 5, 2010, the City's Planning Commission held a public hearing on  
17 EUSD's zoning amendment application. At the hearing, the Planning Commission expressed  
18 support for EUSD's application and proposed zoning designation, but directed City staff to  
19 include additional language in the proposed amendments to guide the design of future  
20 development of the Site. Accordingly, the Planning Commission continued the item to the next  
21 public hearing on September 6, 2010.

22 22. On September 6, 2010, after incorporation of City staff's modifications and  
23 additional edits, the Planning Commission voted 3-0 to recommend approval of EUSD's  
24 application for zoning amendment by the City Council.

25 23. Following receipt of the Planning Commission's recommendation, the City  
26 Council held a public hearing on the proposed zoning amendment on November 10, 2010. At the  
27 hearing, the City Council considered adoption of City Council Resolution No. 2010-51 approving  
28 a General Plan Amendment (GPA) and introduction of City Council Ordinance No. 2010-22

1 approving a General Plan Amendment, Local Coastal Program Land Use Plan Amendment  
2 (LCPA) and Downtown Encinitas Specific Plan Amendment (SPA).

3 24. In connection with the November 10, 2010 hearing, City staff prepared an Agenda  
4 Report recommending that the City Council adopt the Final Negative Declaration and approve  
5 EUSD's zoning amendment application.

6 25. Despite the recommendation of City staff and the Planning Commission, at the  
7 November 10, 2010 hearing, the City Council determined to deny EUSD's zoning amendment  
8 request and directed City staff to return with a Resolution of Denial.

9 26. On or about November 29, 2010, EUSD transmitted a letter to the City responding  
10 to concerns expressed by the City at the November 10, 2010 hearing and asking the City to  
11 reconsider its decision to deny the zoning amendment. On or about January 11, 2011, EUSD sent  
12 another letter to the City further addressing the City's concerns and reminding the City of its duty  
13 to grant the rezoning under California Government Code section 65852.9.

14 27. On January 12, 2011, the City Council adopted City Council Resolution No. 2011-  
15 01 denying a General Plan Amendment (GPA), Local Coastal Program Amendment (LCPA) and  
16 Specific Plan Amendment (SPA) to change the current land use designation for the Site from  
17 Public/Semi-Public (P/SP) to Residential 15 (R15) and change the current zoning classification  
18 for the Site from Downtown Encinitas-Public/Semi-Public (D-P/SP) to Downtown Encinitas-  
19 Residential 15 (D-R15).

20 28. Following the January 12, 2011 City Council meeting, EUSD and the City entered  
21 into a tolling agreement and engaged in further discussions in an attempt to resolve the issues  
22 between them relating to the City's denial of EUSD's zoning amendment application. As a result  
23 of these discussions, EUSD made certain revisions to its amendment request.

24 29. On August 17, 2011, the City Council held a public hearing to consider EUSD's  
25 revised amendment request. Despite City staff's recommendation that the City Council approve  
26 the request, as well as the Planning Commission's prior recommendation, the hearing resulted in  
27 a 2-2 vote, after the recusal of one council member, and therefore no action was taken.

28 ///

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
655 WEST BROADWAY, 15TH FLOOR  
SAN DIEGO, CALIFORNIA 92101

1 FIRST CAUSE OF ACTION

2 WRIT OF MANDATE UNDER CODE OF CIVIL PROCEDURE SECTION 1085

3 (Violation of California Government Code section 65852.9 – Failure to Grant EUSD’s Request to  
4 Rezone Unused Schoolsite to Same Zoning Designation as Adjacent Property)

5 30. EUSD realleges paragraphs 1 through 29, which by reference are fully  
6 incorporated herein.

7 31. California Government Code section 65852.9 provides, in relevant part, that if  
8 other public entities decline a school district’s offer to sell or lease an unused school site, the city  
9 having zoning jurisdiction over the unused school site shall, upon request of the school district,  
10 change the zoning designation for the unused school site to the same designation as adjacent  
11 property.

12 32. All of the public entities enumerated in California Education Code section 17489  
13 declined EUSD’s offer to sell or lease the Site. EUSD requested that the City, the city having  
14 zoning jurisdiction over the Site, change the land use designation and zoning classification to the  
15 same land use designation and zoning classification as adjacent property. EUSD therefore  
16 actually or, in the alternative, substantially complied with California Government Code section  
17 65852.9. Accordingly, the City, acting through its City Council, was required to grant EUSD’s  
18 requested zoning change.

19 33. The City failed to comply with California Government Code section 65852.9 by  
20 denying EUSD’s zoning amendment application. Despite EUSD’s request for the City to correct  
21 its error, the City has refused, and continues to refuse, to perform its mandatory duties under  
22 California Government Code section 65852.9.

23 34. California Code of Civil Procedure section 1085 provides that “[a] writ of mandate  
24 may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the  
25 performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or  
26 station[] ....”

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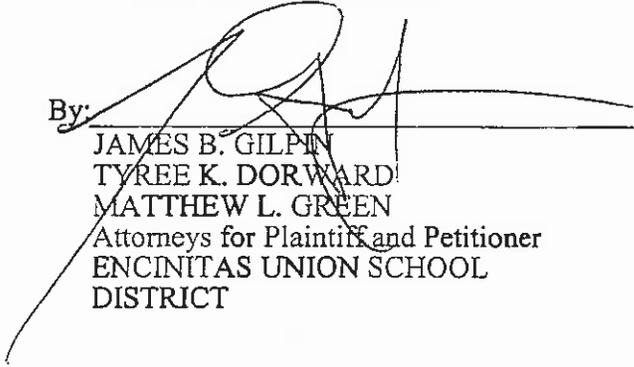
LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
655 WEST BROADWAY, 15TH FLOOR  
SAN DIEGO, CALIFORNIA 92101

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- B. That the Court enter an order declaring that the City must grant EUSD's zoning amendment application and change the land use designation for the Site from Public/Semi-Public (P/SP) to Residential 15 (R15), and change the zoning classification for the Site from Downtown Encinitas – Public/Semi-Public (D-P/SP) to Downtown Encinitas – Residential 15 (D-R15);
- C. That the Court enter an order declaring that said rezoning does not require a citywide vote;
- D. That the Court award damages sustained by EUSD under Code of Civil Procedure section 1095;
- E. That the Court award EUSD its attorney's fees and costs; and
- F. That the Court award such further and other relief as the Court deems proper.

Dated: October 7, 2011

BEST BEST & KRIEGER LLP

By:   
\_\_\_\_\_  
JAMES B. GILPIN  
TYREE K. DORWARD  
MATTHEW L. GREEN  
Attorneys for Plaintiff and Petitioner  
ENCINITAS UNION SCHOOL  
DISTRICT

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
655 WEST BROADWAY, 15TH FLOOR  
SAN DIEGO, CALIFORNIA 92101

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VERIFICATION

I, Timothy B. Baird, declare:

I am the Superintendent for Plaintiff and Petitioner Encinitas Union School District. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF and know its contents. I am informed and believe that the matters stated therein are true.

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

Executed at Encinitas, California on the 6 day of October, 2011.

  
Timothy B. Baird, Ed.D.

Enc. to Union School  
v. City of Enc.

[See fee exemption, Gov. Code § 6103]

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CITY OF ENCINITAS, OFFICE OF THE CITY ATTORNEY  
GLENN SABINE, City Attorney, State Bar No. 154163  
505 S. Vulcan Avenue  
Encinitas, California 92024  
Telephone: (760) 943-2227  
Facsimile: (760) 633-1228

THE SOHAGI LAW GROUP, PLC  
MARGARET M. SOHAGI, State Bar No. 126336  
PHILIP A. SEYMOUR, State Bar No. 116606  
NICOLE H. GORDON, State Bar No. 240056  
11999 San Vicente Boulevard, Suite 150  
Los Angeles, California 90049-5136  
Telephone: (310) 475-5700  
Facsimile: (310) 475-5707

Attorneys for Respondents and Defendants  
CITY OF ENCINITAS;



SUPERIOR COURT OF THE STATE CALIFORNIA

FOR THE COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

ENCINITAS UNION SCHOOL DISTRICT,  
a school district

Plaintiff and Petitioner,

v.

THE CITY OF ENCINITAS, a municipal  
corporation; and DOES 1-10, inclusive

Defendants.

CASE NO.: 37-2011-00058665-CU-WM-NC

Action Filed: October 7, 2011

**CITY OF ENCINITAS' ANSWER TO  
VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY RELIEF**

Dept: 30  
Judge: Hon. Thomas P. Nugent

1 Defendant and Respondent CITY OF ENCINITAS ("City") responds to and answers  
2 the allegations of Plaintiff and Petitioner ENCINITAS UNION SCHOOL DISTRICT'S  
3 ("EUSD'S") Verified Petition for Writ of Mandate and Complaint for Declaratory Relief  
4 ("Petition") as follows:

#### 5 INTRODUCTION

6 1. In response to paragraph 1, the City alleges that this paragraph paraphrases  
7 Government Code section 65852.9(a) and that this Code section speaks for itself. Except as  
8 so alleged, the City denies the allegation contained in this paragraph.

9 2. In response to paragraph 2, the City alleges that Government Code section  
10 65852.9 speaks for itself. Except as so alleged, the City denies the allegations contained in  
11 this paragraph.

12 3. In response to paragraph 3, the City alleges that Government Code section  
13 65852.9(b) speaks for itself. Except as so alleged, the City denies the allegations contained  
14 in this paragraph.

15 4. In response to paragraph 4, the City alleges that this paragraph characterizes  
16 EUSD's position in this action and that the Petition speaks for itself. Except as so alleged,  
17 the City denies the allegations contained in this paragraph.

#### 18 PARTIES

19 5. The City admits the allegations of paragraph 5.

20 6. The City admits the allegations of paragraph 6.

21 7. In response to paragraph 7, the City alleges that it lacks information sufficient  
22 to admit or deny the allegations contained therein and, on such basis, denies said allegations.

23 8. The City denies the allegations of paragraph 8.

#### 24 GENERAL ALLEGATIONS

25 9. In response to the first sentence in paragraph 9, the City admits the allegations  
26 contained therein. In response to the second sentence in paragraph 9, the City admits that the  
27 Pacific View Elementary School was closed in 2003. Except as specifically admitted, the  
28

1 City alleges that it lacks information sufficient to admit or deny the allegations contained in  
2 paragraph 9 and, on such basis, denies said allegations.

3 10. In response to paragraph 10, the City admits the allegations contained in the  
4 first three sentences therein. With respect to the fourth and fifth sentences in paragraph 10,  
5 the City alleges that the Pacific View Advisory Committee ("PVAC") submitted an initial  
6 specific plan amendment application to the Planning Commission on July 24, 2008, and the  
7 Planning Commission voted 3-0-2 to not recommend approval of the application as proposed  
8 to the City Council. Except as specifically admitted and alleged, the City denies the  
9 allegations contained in this paragraph.

10 11. The City admits the allegations of paragraph 11.

11 12. In response to paragraph 12, the City alleges that it lacks information sufficient  
12 to admit or deny the allegations contained therein and, on such basis, denies said allegations.

13 13. In response to paragraph 13, the City alleges that it lacks information  
14 sufficient to admit or deny the allegations contained therein and, on such basis, denies said  
15 allegations.

16 14. In response to paragraph 14, the City admits that on or about January 14, 2010,  
17 EUSD submitted an application proposing a General Plan Amendment ("GPA"), Local  
18 Coastal Program Land Use Plan Amendment ("LCPA"), and Downtown Encinitas Specific  
19 Plan Amendment ("SPA") to modify the land use designation and zoning classification of the  
20 Pacific View Elementary School Site ("Site") under California Government Code section  
21 65852.9 and Chapter 30.72 of the City's Municipal Code. Except as specifically admitted,  
22 the City alleges that it lacks information sufficient to admit or deny the allegations contained  
23 in paragraph 14 and, on such basis, denies said allegations.

24 15. In response to paragraph 15, the City admits that EUSD's application for  
25 zoning amendment requested that the City change the land use designation from Public/Semi-  
26 Public (P/SP) to Residential 15 (R15), and change the zoning classification from Downtown  
27 Encinitas - Public/Semi-Public (D-P/SP) to Downtown Encinitas - Residential 15 (D-R15).  
28 Except as specifically admitted, the City denies the allegations contained in this paragraph.

1           16.    In response to paragraph 16, the City admits the allegations contained in the  
2 first sentence of this paragraph. Except as specifically admitted, the City denies the  
3 allegations contained in this paragraph.

4           17.    In response to paragraph 17, the City admits the allegations contained in the  
5 first and second sentences of this paragraph. The City alleges that it lacks information  
6 sufficient to admit or deny the allegations contained in the third sentence of paragraph 17  
7 and, on such basis, denies the allegations contained in this sentence.

8           18.    The City admits the allegations of paragraph 18.

9           19.    The City admits the allegations of paragraph 19.

10          20.    In response to paragraph 20, the City admits that it received only one comment  
11 letter during the 30-day public review of the draft Negative Declaration, and alleges that this  
12 letter speaks for itself. Except as specifically admitted and alleged, the City denies the  
13 allegations contained in this paragraph.

14          21.    The City admits the allegations of paragraph 21.

15          22.    The City admits the allegations of paragraph 22.

16          23.    The City admits the allegations of paragraph 23.

17          24.    The City admits the allegations of paragraph 24.

18          25.    In response to paragraph 25, the City admits that at the November 10, 2010  
19 hearing, the City Council denied EUSD's amendment application and directed City staff  
20 return with a Resolution of Denial. Except as specifically admitted, the City denies the  
21 allegations contained in this paragraph.

22          26.    In response to paragraph 26, the City admits that EUSD transmitted letters to  
23 the City dated November 10, 2010 and January 11, 2011, and alleges that these letters speak  
24 for themselves. Except as specifically admitted and alleged, the City denies the allegations  
25 contained in this paragraph.

26          27.    The City admits the allegations of paragraph 27.

27          28.    The City admits the allegations of paragraph 28.

28





1 Plan; and (2) the City lacks authority to amend its existing Local Coastal Program, including  
2 its coastal land use plan and zoning, absent certification of the amendments by the California  
3 Coastal Commission pursuant to Public Resources Code section 30514.

4 *FOURTH AFFIRMATIVE DEFENSE*

5 *(Failure to Join Indispensable Party – All Claims)*

6 4. Each and every cause of action is barred, in whole or in part, on the ground  
7 that Petitioner has failed to join the California Coastal Commission as a party to the action.  
8 The California Coastal Commission has final authority to approve, reject or approve with  
9 conditions any proposed amendment to the City's certified Local Coastal Program, including  
10 amendments affecting the land use plan designation and zoning for the subject property.

11 *FIFTH AFFIRMATIVE DEFENSE*

12 *(Ripeness– All Claims)*

13 5. Each and every cause of action is barred, in whole or in part, on the ground  
14 that the controversies presented by Petitioner for resolution are not presently ripe for  
15 adjudication.

16 WHEREFORE, the City prays for judgment in favor of the City and against EUSD as  
17 follows:

- 18 1. That EUSD take nothing in this action;  
19 2. That the Court deny the Petition for Writ of Mandate and Complaint for  
20 Declaratory Relief and dismiss all causes of action with prejudice;  
21 3. That the City be awarded costs of suit incurred herein; and  
22 4. For such other and further relief as the Court may deem just and proper.

23  
24 DATE: December 6, 2011

By: 

Nicole H. Gordon  
THE SOHAGI LAW GROUP, PLC  
Attorneys for Defendants and Respondents  
THE CITY OF ENCINITAS

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