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8 Attorneys for Plaintiffs

9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**
 11 **SAN FRANCISCO DIVISION**

12 JOSE RAMON R. VALENCIANO, an
 13 individual, and JOHANNA D.
 14 VALENCIANO, an individual,

15 Plaintiffs,

16 vs.

17 THE CITY AND COUNTY OF SAN
 18 FRANCISCO and DOES 1 THROUGH 25

19 Defendants.

20 CASE NO: C 07 0845

21 **COMPLAINT FOR DAMAGES:**

- 22 1. **VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION (42 U.S.C. §1983);**
- 23 2. **CALIFORNIA CONSTITUION (Article 1, Section 19);**
- 24 3. **INVERSE CONDEMNATION;**
- 25 4. **NUISANCE;**
- 26 5. **NEGLIGENCE; AND**
- 27 6. **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.**

28 (DEMAND FOR JURY TRIAL)

29 **I. INTRODUCTION**

30 1. In this action, plaintiffs JOSE RAMON R. VALENCIANO and JOHANNA D.
 31 VALENCIANO (hereinafter referred to as "Plaintiffs") seek monetary damages against
 32 defendants THE CITY AND COUNTY OF SAN FRANCISCO and DOES 1 through 25,
 33 inclusive, (hereinafter referred to collectively as "Defendants") for their wrongful and tortuous

34 **VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION (42 U.S.C. §1983);**
 35 **CALIFORNIA CONSTITUION (Article 1, Section 19); INVERSE CONDEMNATION; NUISANCE; NEGLIGENCE; AND**
 36 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

1 conduct and actions in violation of federal and state laws. A jury trial is requested as an
2 action under Section 1983 is an “action at law” within the meaning of the Seventh
3 Amendment right to jury trial.
4

5 **II. JURISDICTION AND VENUE**

6 2. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. Section 1331 in that
7 the claims alleged herein arise under the laws of the United States. Jurisdiction is also
8 conferred upon this Court pursuant to 42 U.S.C. Section 1983. This Court has supplemental
9 jurisdiction pursuant to 28 U.S.C. Section 1367 to hear and determine Plaintiffs’ state law
10 claims because the state law claims are related to Plaintiffs’ federal law claims and arise out of
11 a common nucleus of related facts. Plaintiffs’ state law claims are related to Plaintiffs’ federal
12 law claims such that those claims form part of the same case or controversy under Article V of
13 the United States Constitution.
14

15 3. Venue is proper under 28 U.S.C. Section 1391 in that the claims alleged herein
16 arose within this District.
17

18 **III. INTRADISTRICT ASSIGNMENT**

19 4. This action is properly assigned to the San Francisco Division of the United States
20 District Court for the Northern District of California because the claims as alleged herein
21 arose within the City and County of San Francisco, California.
22

23 **IV. THE PARTIES**

24 5. Plaintiffs are informed and believe that defendant City and County of San
25 Francisco (“CCSF”) is a municipal corporation and a political subdivision of the State of
26 California with the capacity to sue and be sued. Defendant CCSF includes the San Francisco
27
28

1 Department of Parking & Traffic, San Francisco Municipal Railway and MUNI Street
2 Supervision Department, all of which are divisions of the Municipal Transportation Agency.

3 6. The true names and capacities, whether individual, corporate, associate, or
4 otherwise, of Defendants DOES 1 through 25, inclusive, are unknown to Plaintiffs, whom
5 therefore sues said defendants by such fictitious names. Plaintiffs are informed and believe,
6 and on that basis allege, that each of the defendants designated herein as a DOE defendant is
7 legally responsible in some manner for the acts, conduct, occurrences, events, happenings, and
8 damages herein referred to, and directly and proximately caused or contributed to the injuries
9 and damages of Plaintiffs as alleged herein.
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11

12 7. Plaintiffs are informed and believe, and on the basis of that information and belief
13 allege, that at all times herein mentioned, each of the defendants in doing the things alleged
14 herein, was acting within the course and scope of his or her agency, employment and
15 representation and with the knowledge, ratification and consent of each of the other
16 defendants and that each and every defendant is jointly and severally responsible and liable to
17 Plaintiffs for Plaintiffs' damages herein alleged.
18

19 8. Plaintiffs are informed and believe, and on the basis of such information and belief
20 allege, that the Defendants are public agencies with the power of eminent domain to acquire
21 real property or real property rights for public use or by their acts and conduct have so
22 interfered with Plaintiffs' property rights so as entitled Plaintiffs to compensation.
23

24 **V. FACTS**

25 9. Plaintiffs are now, and at all times mentioned in this complaint were, the owners of
26 the property in San Francisco County, California, which is commonly known as 935 Ulloa
27 Street, San Francisco, California 94127, hereinafter referred to as the "Subject Property."
28

1 Plaintiffs have at all times mentioned in this complaint, and do now, reside on the Subject
2 Property.

3 10. Plaintiffs purchased the Subject Property in late 2004. Based upon a view of the
4 public establishments around the Subject Property, the Subject Property is located next to a
5 Walgreens store and a public bus stop. Cross the street lies West Portal Public Library
6 Building and another public bus stop. The West Portal MUNI Train and Bus Station are on
7 the other side of the street facing the Subject Property and is just one block away from the
8 northeast aide of the Subject Property.
9

10 11. Plaintiffs' house is fenced. There are two driveways for the Subject Property and a
11 10-foot curb lies in between. Driveway A is close to the front door of the Subject Property.
12 Driveway B is located to the right side of the Subject Property. The bus stop curb is just next
13 to Driveway B and is outside of the Walgreens store. There is a "Tow-Away No Parking" sign
14 in the middle of the 10-foot curb between the two driveways.
15
16

17 12. The street in front of the Subject Property of Plaintiffs is the only means by which
18 Plaintiffs have ingress and egress to and from Plaintiffs' Subject Property through the said
19 two driveways.
20

21 13. The entire curb along the Subject Property including the 10-foot curb between the
22 two driveways was painted red, visible but nevertheless faded, since Plaintiffs took possession
23 of the Subject Property. The red paint on the edge of the driveways was also faded. The
24 Department of Parking and Traffic "Color Curb Program" provides, in pertinent part, that a
25 "RED ZONE ... is a 'No Parking' zone. Red Zones may be installed near intersection corners,
26 at certain bus stops, fire hydrants, curb ramps, and most commonly, at the edges of driveways.
27 Driveway red zones are intended to provide additional turning and clearance for vehicles
28

1 entering and exiting driveways. When driveway red zones are requested, consideration is also
2 given to the preservation of adjacent parking spaces, in addition to driveway ingress and
3 egress”

4
5 14. Shortly after Plaintiffs took possession of the Subject Property, Plaintiffs
6 experienced continuous and complete blocking of one and/or two of the two driveways and
7 the Tow-Away area of Subject Property by public and private vehicles such as buses, police
8 cars, especially MUNI trains building-up and the dropping-off of passengers causing
9 unreasonable, unnecessary and complete blocking of the ingress and egress to Plaintiffs’
10 Subject Property. The drivers of MUNI trains, police cars and other drivers have illegally
11 parked their vehicles blocking the said driveways interfering with Plaintiffs’ rights to ingress
12 and egress.
13

14
15 15. In an effort to alleviate and solve the parking violations Plaintiffs encountered
16 which are continuous in nature, Plaintiffs wrote numerous letters since early 2005 informing
17 the Department of Parking & Traffic of the need for enforcement of the color curb program to
18 avoid constant and complete interference of the right to ingress and egress of Plaintiffs.

19
20 16. Plaintiffs have dutifully sought relief from the City and County of San Francisco
21 of the violations of their rights but without success.

22
23 17. The Department of Parking & Traffic has created blockage of Plaintiffs’ two
24 driveways, which also caused Plaintiffs persistent, severe hardships and difficulties resulting
25 in not just the time spent, but emotional distress suffered, as well as denial of their property
26 rights.

27
28 18. As a direct and proximate result of the acts, omissions, policies, patterns, practices,
and customs of Defendants as alleged herein, Plaintiffs suffered substantial economic

1 damages, emotional pain and suffering, acute anxiety, severe physical, mental and emotional
2 distress all to their damage and detriment.

3
4 19. Plaintiff filed a claim against CCSF based on interference with property, denial of
5 property rights and inverse condemnation on July 19, 2006. A subsequent revised claim was
6 filed on August 8, 2006. Plaintiffs' claim was denied by CCSF and written notice of such
7 rejection was given to Plaintiffs on or about August 17, 2006. The statutory period of six (6)
8 months for the filing of a complaint on the claim and cause of action has not expired.

9
10 **VI. CLAIMS FOR RELIEF**

11 **A. FIRST CLAIM FOR RELIEF**
12 **(Violations of Fourteenth Amendment to**
13 **the U.S. Constitution, 42 U.S.C. §1983)**

14 As a first claim for relief, standing alone and pled in the alternative, Plaintiffs reallege
15 and incorporate paragraphs 1 through 19, above as though set out in full and allege the
16 following against all Defendants, including DOES 1 through 25, and for a claim for relief
17 state:

18 20. Defendants' conduct violated Plaintiffs' rights and interests to property without
19 due process of law under the Fifth Amendment to the United States Constitution applicable to
20 the states and their subdivisions through the Fourteenth Amendment of the United States
21 Constitution. Defendants' conduct toward Plaintiffs also violated Plaintiffs' Fourteenth
22 Amendment's ownership rights to private property.

23
24 21. These violations by Defendants are compensable pursuant to 42 U.S.C. §1983.

25 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
26 set forth below.

27
28 //

1 **B. SECOND CLAIM FOR RELIEF**
2 **(California Constitution,**
3 **Article 1, Section 19)**

4 As a second claim for relief, standing alone and pled in the alternative, Plaintiffs
5 reallege and incorporate paragraphs 1 through 21, above as though set out in full and allege
6 the following against all Defendants, including DOES 1 through 25, and for a claim for relief
7 state:

8 22. Defendants' conduct violated Plaintiffs' private property rights not to be taken or
9 damaged without just compensation pursuant to Article 1, Section 19 of the California
10 Constitution.
11

12 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
13 set forth below.

14 **C: THIRD CLAIM FOR RELIEF**
15 **(INVERSE CONDEMNATION)**

16 As a third claim for relief, standing alone and pled in the alternative, Plaintiffs reallege
17 and incorporate paragraphs 1 through 22 as though set out in full and allege the following
18 against all Defendants, including DOES 1 through 25, and for a claim for relief state:

19 23. Within the last two years, there has been continuous and complete blocking of
20 entirely one and/or two of the two driveways of the Plaintiffs and the Tow-Away area of
21 Subject Property by public and private vehicles such as buses, police cars, especially MUNI
22 trains building-up and the dropping-off of passengers causing unreasonable and complete
23 blocking, for the purpose of public use, of the ingress and egress to Plaintiffs' Subject
24 Property. The drivers of MUNI trains, police cars and other drivers have parked their vehicles
25 blocking the said driveways thereby denying, interfering with and injuring Plaintiffs' private
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1 real property rights. As a result of the illegal interferences caused by Defendants, Plaintiffs no
2 longer have free access from all parts of the premises to the only street in front of Plaintiffs'
3 Subject Property in the way of ingress and egress.
4

5 24. At all times mentioned in this complaint, Defendants have been informed by
6 Plaintiffs since early 2005 and have been aware of the continuous violations resulting in
7 deprivation of Plaintiffs' private property rights. In addition, Defendants have been
8 knowledgeable of the extent and severity of such on-going violations, but wholly failed,
9 refused and/or neglected to act effectively to diminish or avoid the said violations or to
10 enforce affirmatively, as Defendants' duty to act, the color curb program and the Tow-Away
11 No Parking code.
12

13 25. Defendants declared their intention to continue to interfere with Plaintiffs' private
14 real property rights and easements by their non-enforcement and/or neglect of Plaintiffs'
15 numerous requests directly resulting in the persistent, severe and continuous blockage of
16 Plaintiffs' two driveways and contributing to the blatant violations and disregard of the red
17 zone, no parking or Tow-Away ordinance.
18

19 26. As a direct and proximate result of the acts, omissions, policies, patterns, practices,
20 and customs of Defendants as alleged herein, Plaintiffs suffered persistent, severe hardships
21 and difficulties arising from interference with their property rights, enormous time spent,
22 substantial economic damages, emotional pain and suffering, acute anxiety, severe physical,
23 mental and emotional distress all to their damage and detriment. Plaintiffs are informed and
24 believe, and on the basis of such information and belief allege, that Defendants' actions or
25 non-actions as described above have damaged Plaintiffs' property rights and easements in the
26 amount of not less than \$350,000.00 and have, as of the date of Plaintiffs' taking possession
27
28

1 of the Subject Property, constituted a taking and damaging of Plaintiffs' real property rights
2 entitling Plaintiffs to just compensation.

3
4 27. Plaintiffs have sought relief from the City and County of San Francisco of the
5 violations of their rights but without success. On July 19, 2006, Plaintiffs duly filed a claim
6 against Defendants based on interference with property, denial of property rights and inverse
7 condemnation for the damage and taking described above. Plaintiffs' claim was denied by the
8 City and County of San Francisco on August 16, 2006.

9
10 WHEREFORE, Plaintiffs pray for relief as set forth below.

11 **D. FOURTH CLAIM FOR RELIEF**
12 **(NUISANCE)**

13 As a fourth claim for relief, standing alone and pled in the alternative, Plaintiffs
14 reallege and incorporate paragraphs 1 through 27 as though set out in full and alleges the
15 following against all Defendants, including DOES 1 through 25, and for a claim for relief
16 state:

17
18 28. Defendants and their agents acted and/or wholly failed, refused and/or neglected to
19 act effectively to diminish or avoid the said violations or to enforce affirmatively, as
20 Defendants' duty to act, the color curb program and the Tow-Away No Parking code caused
21 and contributed to the continuous and complete blocking of entirely one and/or two of the two
22 driveways and the Tow-Away area of Subject Property thereby denying and so taking
23 Plaintiffs' property rights.

24
25 29. As a result of Defendants' interferences, intentionally or negligently, they have
26 damaged and deprived Plaintiffs' free access from all parts of the premises to the only street
27 in front of Plaintiffs' Subject Property in the way of ingress and egress. Defendants' wrongful
28

1 actions and failure of actions substantially and unreasonably interfered with and will continue
2 to interfere with Plaintiffs' private use and enjoyment of their Subject Property that they
3 actually possess, specifically the easements, appurtenant and in the nature of rights of way,
4 which Plaintiffs are entitled to use in a reasonable way.
5

6 30. Defendants' wrongful and tortuous conducts constitute a nuisance, causing
7 Plaintiffs' damages, attorneys' fees and costs, and all to their detriment and damage in sum in
8 excess of \$350,000.00 and the jurisdiction limits of this Court.
9

10 WHEREFORE, Plaintiffs pray for judgment as set forth below.

11 **E. FIFTH CLAIM FOR RELIEF**
12 **(Negligence – Breach Of Standard Of Care)**

13 As a fifth claim for relief, standing alone and pled in the alternative, Plaintiffs reallege
14 and incorporate paragraphs 1 through 30 as though set out in full and alleges the following
15 against all Defendants, including DOES 1 through 25, and for a claim for relief state:

16 31. At all times here mentioned, Defendants owed Plaintiff a legal duty to exercise
17 reasonable care in their conduct and in their dealings with Plaintiffs. By performing
18 Defendants' governmental function with regard to Plaintiffs, Defendants were required under
19 the standard of care to prevent harm and not to harm Plaintiffs' rights and interests,
20 specifically Plaintiffs' access to, use and enjoyment of their Subject Property, which Plaintiffs
21 are entitled to use in a reasonable way.
22

23 32. Defendants and their agents, however, breached their duty and standard of care to
24 Plaintiffs by acting and/or failing and neglecting to act effectively to diminish or avoid the
25 said violations or to enforce affirmatively, as Defendants' duty to act, the color curb program
26 and the Tow-Away No Parking code which caused and contributed to the continuous and
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1 complete blocking of entirely one and/or two of the two driveways and the Tow-Away area of
2 Subject Property depriving Plaintiffs of their property rights.

3 33. Defendants' negligence actually caused Plaintiff's damages since Plaintiff, would
4 not have been damaged but for Defendants' negligence and for Defendants to act in
5 accordance with the standard of care. Defendants' negligence proximately caused Plaintiffs'
6 damages since such damages were foreseeable.

7
8 34. As a direct and proximate result of such negligent conduct of Defendants,
9 Plaintiffs have been deprived of their property rights as they no longer have free access from
10 all parts of the premises to the only street in front of Plaintiffs' Subject Property in the way of
11 ingress and egress which caused Plaintiffs to sustain damages, attorneys' fees and cost, and all
12 to their detriment and damage beyond \$350,000.00 and the jurisdiction limits of this Court.

13
14 WHEREFORE, Plaintiffs pray for relief as set forth below.

15
16 **F. SIXTH CLAIM FOR RELIEF**
(Intentional Infliction of Emotional Distress)

17
18 As a sixth claim for relief, standing alone and pled in the alternative, Plaintiffs reallege
19 and incorporate paragraphs 1 through 34 as though set out in full and alleges the following
20 against all Defendants, including DOES 1 through 25, and for a claim for relief state:

21 35. As set forth in this complaint, Defendants' conduct toward Plaintiffs and the
22 manner in which they accomplished and carried out their conduct, was outrageous and beyond
23 the boundary of social decency. Defendants' conduct was willful, deliberate and intended to
24 cause Plaintiffs severe emotional distress or was done extremely recklessly and with
25 conscious disregard of the probability of causing Plaintiffs severe emotional and physical
26 distress.
27
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1 36. Plaintiffs suffered severe emotional and physical distress as a proximate result of
 2 Defendants' outrageous conduct reacting to Defendants' conduct with humiliation,
 3 embarrassment anger, anxiety, loss of sleep, loss of appetite, disappointment, worry and
 4 physical manifestations of distress and discomfort, including pain, all of which are substantial
 5 and enduring, and all to his detriment and damage in amounts in excess of \$350,000.00 and in
 6 excess of the jurisdiction limits of this court.
 7

8 WHEREFORE, Plaintiffs pray for relief as set forth below.

9
 10 **G. PRAYER FOR JUDGMENT**

11 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
 12 follows:

- 13 1. For an award of just compensation for the taking of and damages, general,
 14 actual consequential and incidental, to Plaintiffs property in an amount of at
 15 least \$350,000.00, and according to proof;
- 16 2. For an award of any special damages in an amount to be shown according to
 17 proof;
- 18 3. For damages for the nuisance alleged in Plaintiffs' Fourth Cause of Action
 19 according to proof;
- 20 4. For prejudgment interest to the extent provided and according to applicable
 21 provisions of California law;
- 22 5. For costs of this action;
- 23 6. For attorney's fees incurred in Plaintiffs' Third Cause of Action in inverse
 24 condemnation to the extent provided by law; and
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7. For such other and further relief as may, to the Court, seem just, proper and appropriate to this action.

Dated: February 7, 2007

Hanlin, Wang, Kostmayer & Associates

By: _____
John G. Hanlin, Esq.
Attorneys For Plaintiffs

1 **DEMAND FOR JURY TRIAL**

2 Under Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule 3-6 of the
3 United States District Court for the Northern District of California, Plaintiff hereby demands a
4 trial by jury of all issues properly triable by jury.
5

6
7 Dated: February 7, 2007

Hanlin, Wang, Kostmayer & Associates

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9 By: _____
10 John G. Hanlin, Esq.
11 Attorneys For Plaintiffs
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