

1 LAWRENCE G. SALZMAN, No. 224727  
 E-mail: lsalzman@pacificallegal.org  
 2 J. DAVID BREEMER, No. 215039  
 E-mail: jdb@pacificallegal.org  
 3 Pacific Legal Foundation  
 930 G Street  
 4 Sacramento, California 95814  
 Telephone: (916) 419-7111  
 5 Facsimile: (916) 419-7747

6 Attorneys for Plaintiffs Toufic and Eva Jisser  
 and the Toufic and Eva Jisser Revocable Trust  
 7  
 8

9 UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN JOSE DIVISION

PACIFIC LEGAL FOUNDATION  
 930 G Street  
 Sacramento, CA 95814  
 (916) 419-7111 FAX (916) 419-7747

13 TOUFIC AND EVA JISSER, AND THE TOUFIC )  
 AND EVA JISSER REVOCABLE TRUST, )

14 Plaintiffs, )

15 v. )

16 CITY OF PALO ALTO, )

17 Defendant. )  
 18

No. \_\_\_\_\_

**COMPLAINT FOR  
 VIOLATION OF FEDERAL  
 CIVIL RIGHTS UNDER 42  
 U.S.C. § 1983 AND  
 CALIFORNIA STATE LAW  
 (Cal. Gov't Code § 65863)**

**DECLARATORY AND  
 INJUNCTIVE RELIEF**

19  
 20 **INTRODUCTION**

21 1. This is a civil-rights lawsuit seeking declaratory and injunctive relief to vindicate the  
 22 rights of Toufic (“Tim”) and Eva Jisser to make responsible and productive use of their property  
 23 free of unconstitutional conditions imposed by the City of Palo Alto (“City”). The Jisser Family<sup>1</sup>  
 24 has owned and operated the Buena Vista Mobilehome Park (“Buena Vista”) in Palo Alto since  
 25 1986; the park is presently managed by the Jisser’s son, Joe Jisser.

26 \_\_\_\_\_  
 27 <sup>1</sup> The Buena Vista Mobilehome Park’s title is held by Plaintiff the Toufic and Eva Jisser Revocable  
 28 Trust, whose beneficiaries are Plaintiffs Toufic and Eva Jisser. Plaintiffs are collectively referred  
 to throughout the Complaint as the “Jisser Family.”

1           2.     Tim Jisser, age 71, is retiring and the Jisser Family would like to close their  
2 mobilehome park in the hope of someday putting their land to other uses to secure their family’s  
3 financial future. California state law specifically protects the right of mobilehome park owners to  
4 withdraw their property from the rental market subject only to reasonable relocation costs for their  
5 tenants; the Jisser Family’s property rights are also protected by common law and the U.S.  
6 Constitution.

7           3.     In 2012 the Jisser Family began a process under the City’s 2001 Mobilehome Park  
8 Conversion Ordinance to seek permission to close their park. On May 26, 2015, the City issued  
9 a final decision granting the Jisser Family’s request. That permission was conditioned, however,  
10 on the Jisser’s payment of a staggering sum—approximately \$8,000,000—to their tenants. Those  
11 costs represent not reasonable relocation costs for tenants, such as direct moving costs, but also  
12 rent subsidies to allow tenants to find alternative housing at notoriously high Palo Alto market  
13 rates, and costs to purchase each and every mobilehome in the park from tenants at artificially  
14 inflated prices reflecting the City’s acute housing shortage.

15           4.     The millions of dollars demanded of the Jisser Family constitute an unconstitutional  
16 condition on their right to close their mobilehome park and use and enjoy their property. Put  
17 simply, the City demands that the Jisser Family pay massive sums of money to their tenants or be  
18 forced to continue operating a business they want to close, including the unwanted permanent  
19 occupation of their land by tenants. In effect, the Jisser Family has been told that they must choose  
20 between an unconstitutional taking of their money and an unconstitutional taking of their land.

21           5.     The City’s monetary demand has nothing to do with any public costs caused by the  
22 Jisser Family’s desired closure of the park, but is an attempt to make the Jisser Family alone pay  
23 to mitigate the City’s lack of affordable housing—costs that, in fairness, should be borne by the  
24 whole public of Palo Alto. This is an unconstitutional exaction unrelated to the impact of the Jisser  
25 Family’s withdrawal of their property from the rental market, in violation of the Takings Clause  
26 of the Fifth Amendment and the Fourteenth Amendment to the U.S. Constitution.

27           6.     Further, the money taken from the Jisser Family will not go to the City for any alleged  
28 public use but directly to tenants without restriction on how, where, or for what purpose they may

1 use the money. This is a naked transfer of money from one private party to another, politically-  
2 favored private party, which is prohibited by the Public Use Clause of the Fifth Amendment and  
3 the Fourteenth Amendment.

4 7. Finally, as applied to the Jisser Family, the City’s Mobilehome Park Conversion  
5 Ordinance violates California’s Mobilehome Residency Law, which states unequivocally that  
6 conditions imposed on mobilehome park owners seeking to withdraw their property from the rental  
7 market “shall not exceed the reasonable costs of relocation” of a park’s tenants. Cal. Gov’t Code  
8 § 65863.7.

9 8. The Jisser Family seeks: a) declaratory judgment allowing them to close their park  
10 free of the unconstitutional application of the City’s Mobilehome Conversion Ordinance; b) a  
11 permanent injunction forbidding enforcement of the City’s ordinance in violation of the Fifth and  
12 Fourteenth Amendments to the U.S. Constitution and California law; and c) an award of attorneys’  
13 fees, costs, and other reasonable expenses in this action. Plaintiffs do not seek money damages  
14 against the City.

15 **PARTIES**

16 9. Plaintiffs Tim and Eva Jisser are citizens of the United States and residents of  
17 San Jose, California. They have owned the Buena Vista Mobilehome Park in Palo Alto since 1986.  
18 Plaintiff the Toufic and Eva Jisser Family Revocable Trust, formed under the laws of California,  
19 holds title to the land containing the park; Tim and Eva Jisser are beneficiaries of the trust.  
20 Plaintiffs are collectively referred to throughout this Complaint as the Jisser Family.

21 10. Defendant City of Palo Alto is a political subdivision of the State of California. The  
22 City enacted the 2001 Mobilehome Park Conversion Ordinance at issue in this case and the City  
23 Council applied that ordinance giving rise to the claims in the present Complaint. The City is  
24 entitled to sue and be sued and is subject to the laws of the United States and the State of  
25 California.

26 ///

27 ///

28 ///

**JURISDICTION AND VENUE**

11. Plaintiffs bring this civil-rights lawsuit pursuant to the Fifth Amendment to the U.S. Constitution, as incorporated against the states by the Fourteenth Amendment; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory Judgment Act, 28 U.S.C. § 2201, for injunctive and declaratory relief. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1367, and 42 U.S.C. § 1983. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b).

**FACTUAL ALLEGATIONS**

**The Jisser Family and Buena Vista Mobilehome Park**

12. Tim and Eva Jisser moved to the United States from Israel in pursuit of a better life for their family in 1973. Tim worked for a police department in Israel but went into the restaurant and grocery business on arrival in America, ultimately settling in Santa Clara County where they opened and operated a small grocery store.

13. In 1977, the Jissers opened a second grocery store in a leased building on El Camino Real in Palo Alto adjacent to Buena Vista: the All American Market. Tim, Eva, and their children ran the store for the next approximately 20 years.

14. In 1986, the Jisser Family purchased their store's building and the land surrounding it containing Buena Vista. They have owned and operated the mobilehome park ever since.

15. Buena Vista is located at 3980 El Camino Real, Palo Alto. It is approximately 5 acres and presently includes approximately 96 occupied mobilehome spaces and other structures, including a single-family home and 12 studio apartments with garages.

16. The Jisser Family's parcel contains a strip mall of retail businesses, a gas station, and Buena Vista.

17. The strip mall on the parcel stands in the location previously occupied by the Jisser Family's All American Market, which was closed in 1998 after Tim Jisser suffered health problems that prevented him from running the grocery store.

18. Since 2000, Tim and Eva Jisser's son, Joe Jisser, has managed the property, handling day-to-day operations while Tim Jisser continues to do accounting and other administrative work at the business. Over the years, Joe has improved the property, including leading the

1 redevelopment of the retail portion of the property into the strip mall whose tenants now include  
2 Jamba Juice and Baja Fresh.

3 19. Tim Jisser, age 71, would like to fully retire, and to allow his son Joe to put the land  
4 now occupied by Buena Vista to another use that may provide for their family's long-term  
5 financial future.

6 20. Buena Vista is the only mobilehome park located in Palo Alto and, on information  
7 and belief, is the only mobilehome park that has existed in the city for several decades.

8 21. Buena Vista was established as a "tourist camp" in 1926, but began operating as a  
9 "trailer park" in the 1950s. Although the Jisser Family has made substantial investments in the  
10 infrastructure of Buena Vista over the years, its age is showing and substantial new investments  
11 in its sewer, electric, and other systems are anticipated to be needed within the next few years.

12 22. The average age of the mobilehomes leasing space at Buena Vista is approximately  
13 42 years; the average square footage is approximately 456 feet.

14 23. The mobilehomes in Buena Vista are personal property of tenants who lease spaces  
15 in the park from the Jisser Family.

16 24. Buena Vista has few of the amenities typically found in more modern mobilehome  
17 parks. There are, for instance, no common areas, playgrounds, sidewalks, or landscaping apart  
18 from some trees; none of the mobilehomes have yards or uniform spaces with generous setbacks  
19 that are typical in most newer mobilehome parks.

20 25. The Jisser Family does not want to continue operating Buena Vista. They desire to  
21 use the property for another purpose, more compatible with the Jisser Family's retirement and the  
22 economic opportunities available by redeveloping the property for a more modern use.

23 26. The Jisser Family does not believe the City can or should require them to pay tenants  
24 substantial payments to ameliorate the City's affordable housing problem (or other perceived  
25 general social ills) as a condition of exercising their right to withdraw their property from the rental  
26 market.

27 27. The Jisser Family has been put to a choice by the City: pay an estimated \$8,000,000  
28 to their tenants for the right to take possession of and exclude others from their land, or be forever

1 | forced to remain landlords running a business they want to close. This choice amounts to a demand  
2 | to submit either to a taking of their money or to the permanent occupation of their land by tenants.

3 | **California’s Mobilehome Residency Law**

4 | 28. California state law governs the rights and obligations of mobilehome park owners  
5 | and tenants pursuant to its Mobilehome Residency Law, Cal. Civ. Code § 798, *et seq.*

6 | 29. The Mobilehome Residency Law, codified in 1978, protects the right of landlords to  
7 | terminate the tenancy of residents of a mobilehome park for the purpose of “chang[ing the] use of  
8 | the park, or any portion thereof.” *Id.* § 798.56(g).

9 | 30. California law further provides a process for mobilehome park owners to close or  
10 | convert the use of their park, which includes notice to tenants, the preparation of a report  
11 | addressing the availability of replacement housing in other mobilehome parks, a discussion of  
12 | relocation costs, and to provide that report to the local legislative body for further proceedings.

13 | 31. Pursuant to Cal. Gov’t Code § 65863.7, a local legislative body, such as Palo Alto’s  
14 | City Council, shall “review the report, prior to any change of use, and may require, as a condition  
15 | of the change” that the property owner “take steps to mitigate any adverse impact of the [closure]  
16 | on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome  
17 | park.”

18 | 32. Notably, Section 65863.7(e) limits the type and extent of conditions that may be  
19 | imposed by local authorities by establishing that “[t]he steps required to be taken to mitigate shall  
20 | not exceed the reasonable costs of relocation.”

21 | 33. California’s mobilehome conversion statutes bind all local governments, including  
22 | California charter cities, pursuant to 65863.7(h).

23 | **Palo Alto’s Mobilehome Conversion Ordinance**

24 | 34. Palo Alto is a California charter city that enacted a Mobilehome Park Conversion  
25 | Ordinance (“Ordinance”) in 2001. The Ordinance is codified in Chapter 9.76 of the Palo Alto  
26 | Municipal Code (“PAMC”).

27 | ///

28 | ///

1           35. The Ordinance purports to implement California’s state law concerning the closure  
2 of mobilehome parks and also establishes rent control for mobilehomes in the City. The Ordinance  
3 states that it shall be interpreted as consistent with California’s Mobilehome Residency Law and  
4 Government Code Section 65863.7. *See* PAMC 9.76.130.

5           36. The Ordinance establishes a procedure for mobilehome park owners to exercise their  
6 right to withdraw their property from the rental market.

7           37. The Ordinance requires that a mobilehome park owner file an application with the  
8 City for approval to close a park, which must include a resident questionnaire and a “Relocation  
9 Impact Report” that proposes measures to be taken by the park owner to mitigate the closure’s  
10 adverse impacts on displaced tenants. PAMC 9.76.030.

11           38. A hearing on a mobilehome park owner’s application must be held, at which a hearing  
12 officer determines whether the proposed measures are adequate to mitigate adverse impacts on the  
13 displaced tenants and may impose conditions on the park’s closure.

14           39. Permissible conditions to be considered under the Ordinance are different depending  
15 on whether a tenant’s mobilehome can be relocated to a space in a comparable mobilehome park  
16 or whether a resident’s mobilehome cannot be relocated to a space in a comparable park.

17           40. When the City deems that a mobilehome *can* be relocated to a comparable  
18 mobilehome park, the hearing officer may impose monetary or other conditions relating to:

19           a. the cost of physically relocating a mobilehome to a space in a comparable  
20 mobilehome park;

21           b. the cost of moving the personal property in the mobilehome;

22           c. the costs of staying in a motel during the period while a mobilehome is being  
23 moved;

24           d. costs incurred by a tenant to move into a new park, such as first and last months’  
25 rent and security deposits;

26 ///

27 ///

28 ///

1 e. a lump sum for “low or very low income persons or families” based on a  
2 consideration of the difference between the rent at the property which is closing and the potentially  
3 higher rent at an alternative mobilehome park; and

4 f. special lump sum payments for tenants who are handicapped or disabled, based  
5 on the costs of obtaining assistance necessary to move, pack, and perform other physical tasks  
6 associated with the move, and for any special equipment that cannot be moved and is needed  
7 because of the tenant’s disability.

8 *See* PAMC 9.76.040(g)(1).

9 41. When the City deems that a mobilehome *cannot* be relocated to a comparable mobile  
10 park, the hearing officer may impose other conditions, including:

11 a. A lump sum based on consideration of the cost of moving to and purchasing or  
12 renting comparable housing, including, but not limited to, *the cost of purchasing*  
13 *a comparable mobilehome in a comparable mobilehome park*, the cost of moving  
14 personal property from the mobilehome in the closing park to comparable housing,  
15 payment of first and last month’s rent and any security deposit at the comparable  
16 housing, the loss of investment in the mobilehome that cannot be relocated and any  
17 remaining loan payments that must be made even though the resident cannot  
18 continue to live in the mobilehome.

16 PAMC 9.76.040(g)(2)(a) (emphasis added).

17 42. Further costs that may be considered or imposed as a condition of a mobilehome park  
18 closure when a mobilehome cannot be relocated to a comparable mobilehome park include “an  
19 additional sum toward the cost of obtaining any assistance needed to enable” a disabled or  
20 handicapped resident to move, PAMC 9.76.040(g)(2)(b), and more money for “low income persons  
21 or a low income family . . . to partially offset any higher rent at the comparable housing during the  
22 first year at the new location.” PAMC 9.76.040(g)(2)(c).

23 43. If the City approves a mobilehome park conversion application, the property owner  
24 must provide six months’ notice of the closure to tenants pursuant to Cal. Civ. Code § 798.56 and  
25 provide “the relocation assistance required by the city as a condition of conversion.” PAMC  
26 9.76.070.

27 ///

28 ///



1 44. A mobilehome park may not be closed in Palo Alto without approval of the City and  
2 any person violating the Ordinance “is guilty of a misdemeanor and, upon conviction thereof, shall  
3 be punishable as provided by law.” PAMC 9.76.100.

4 **Proceedings to Close the Buena Vista Mobilehome Park and City’s Final Decision**

5 45. On November 9, 2012, the Jisser Family submitted to the City an application for  
6 permission to close Buena Vista.

7 46. On May 2, 2013, the Jisser Family submitted its first version of the Relocation Impact  
8 Report required by the Ordinance. That report was subsequently revised multiple times at  
9 substantial expense for attorney fees, appraisals, and other expert fees, due to rejections and  
10 comments from City staff.

11 47. A final, fifth-amended version of the Jisser Family’s Relocation Impact Report was  
12 submitted to the City on or about February 10, 2014, and accepted as complete in accordance with  
13 the requirements of the Ordinance on February 20, 2014.

14 48. On May 12-14, 2014, public hearings were held concerning the Jisser Family’s permit  
15 application to close the park, which included briefing of the issues by an association of Buena  
16 Vista’s tenants and the Jisser Family, as well as testimony by interested parties. Post-hearing  
17 briefing on matters raised at the hearing was completed on July 23, 2014.

18 49. On September 30, 2014, the City’s hearing officer filed a decision approving the  
19 closure of Buena Vista pursuant to the mitigation measures proposed by the Relocation Impact  
20 Report and required by the Ordinance, plus supplemental conditions.

21 50. By the City’s decision of September 30, 2014, as a condition of Buena Vista’s  
22 closure, “the park owner shall pay to each park resident the following enhanced relocation  
23 assistance benefits:”

24 a. Purchase of Each Mobile Home: An amount equal to 100% of the on-site fair  
25 market value of each mobile home, with an appraisal of that value updated to reflect market  
26 conditions within six months of the tenant’s actual relocation from Buena Vista. Where appraisals  
27 are lower than appraisals previously performed (at the property owner’s expense) in 2013, the  
28 higher value of the two shall be used.

1           b. Rent Subsidies and Start-up Costs: A lump sum equal to 100% of the difference  
2 between average rents for apartments in Palo Alto and surrounding cities and average rents for  
3 spaces in Buena Vista for a period of 12 months. Additionally, the Jisser Family shall pay start-up  
4 costs (first and last months' rent plus security deposit) in an amount equal to three times the  
5 average apartment rent. Such rents shall be calculated within six months of the relocation from  
6 Buena Vista and, further, the comparable apartment for purposes of the differential shall be  
7 determined according to the number of legally permitted bedrooms for each mobilehome.

8           c. Moving Costs: Actual, reasonable moving costs for relocating personal property  
9 from each mobilehome as determined by a City-approved relocation specialist, plus reasonable  
10 expenses for overnight stays at motels/hotels during the period of the relocation, shall be paid to  
11 tenants by the Jisser Family.

12           51. The City's hearing officer's decision was appealed by an association of Buena Vista's  
13 tenants to the City Council arguing, among other things, that the conditions provided inadequate  
14 payments to them to mitigate the park closure. Hearings on that appeal were held in April 2015,  
15 at which Buena Vista tenants and their counsel and the Jisser Family's counsel testified.

16           52. Throughout the 2014 and 2015 hearings, the Jisser Family objected that they were  
17 being required to pay not merely reasonable relocation costs as required by state law but payments  
18 far in excess of reasonable relocation costs, including payments aimed at ameliorating Palo Alto's  
19 severe lack of affordable housing and to mitigate costs not caused by their decision to withdraw  
20 their property from the rental market.

21           53. On May 26, 2015, the City Council issued a final decision affirming the  
22 September 30, 2014, hearing officer's decision, approving the closure of Buena Vista with the  
23 conditions imposed by the Relocation Impact Report and the September 30, 2014, decision. All  
24 conditions must be paid and satisfied prior to the closure of the park.

25           54. Based on recent appraisals and other information, the Jisser Family estimates that the  
26 City's final decision requires payments of approximately \$8,000,000 to their tenants as a  
27 condition of closing Buena Vista. That amount is likely to rise between now and Buena Vista's  
28 actual closure as Palo Alto's housing market continues to grow more expensive.

**Palo Alto's Housing Problem**

1  
2 55. Palo Alto is one of the nation's most expensive markets for housing, with median  
3 home prices for modest homes now topping \$2,000,000.

4 56. Buena Vista is the only mobilehome park in Palo Alto and there is inadequate  
5 alternative low-cost housing in Palo Alto to meet the demand for such housing.

6 57. On information and belief, the basic cause of Palo Alto's tragic lack of affordable  
7 housing is the City's decades-long refusal to permit enough homes to be built to meet the  
8 skyrocketing demand.

9 58. In March 2015, California's Legislative Analyst's Office, in a study entitled  
10 *California's High Housing Costs, Causes and Consequences*, concluded that "far less housing has  
11 been built in California's coastal areas than people demand," and cited local governments' use of  
12 land use authority to stop or slow housing from being built as a major cause. The report  
13 particularly discussed the Santa Clara County region as an example of this problem.

14 59. Since 1986, the Jisser Family has provided some of the lowest-cost housing available  
15 in Palo Alto. In fact, the Jisser Family has kept rents at Buena Vista significantly below those  
16 permitted by the City's rent-control Ordinance.

17 60. The Jisser Family's closure of Buena Vista is not the cause of Palo Alto's lack of  
18 affordable housing.

19 61. The Jisser Family's closure of Buena Vista is not the cause of high rents in the region.

20 62. The Jisser Family is not responsible either for the lack of comparable mobilehome  
21 parks in Palo Alto or nearby cities, nor for the age or condition of their tenants' mobilehomes,  
22 which may preclude a particular mobilehome's relocation to a comparable mobilehome park.

23 63. The City has all the authority it needs to permit substantially more homes to be built  
24 in its community, and to provide affordable housing or rent subsidies to its residents if it chooses  
25 to do so by some means other than an unconstitutional exaction of the Jisser Family's property.

26 ///

27 ///

28 ///

**INJURY**

64. The Jisser Family has a right, protected by common law, state law, and the U.S. Constitution, to withdraw their property from the rental market. But for the City’s unconstitutional demands for oppressive and unreasonable payments to tenants, the Jissers would close Buena Vista now.

65. As applied to the closure of Buena Vista, the City’s Ordinance forces the Jisser Family either to bear the unconstitutional conditions imposed on them, including the payment of approximately \$8,000,000 to their tenants, or to suffer the permanent physical occupation of their property by tenants that they now want to exclude from the land.

66. The Jisser family has refrained from taking any actions to close their mobilehome park as permitted under the City’s approval because they do not want to make payments to tenants that are unconstitutionally and unreasonably demanded in violation of California law and the U.S. Constitution.

67. The Jisser Family is suffering serious and irreparable harm as a consequence of the City’s enforcement of its ordinance in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution and California law.

68. Absent a declaratory judgment holding that, as applied to the closure of Buena Vista, the City’s Ordinance violates the Fifth and Fourteenth Amendments to the U.S. Constitution and California law, and an injunction forbidding the unconstitutional or unlawful enforcement of the City’s Ordinance, the Jisser Family will continue to suffer serious and irreparable harm.

69. The Jisser Family has no other adequate remedy at law to resist the City’s unconstitutional and unreasonable conditions on the exercise of their property rights or the taking of their property.

**LEGAL CLAIMS**

**Count I: Unconstitutional Condition and Taking of Private Property**

70. Plaintiffs incorporate and reallege the allegations of Paragraphs 1 through 69 as if fully set forth herein.

///

1 71. Count One is brought pursuant to the Takings Clause of the Fifth Amendment to the  
2 U.S. Constitution, as incorporated against the states by the Fourteenth Amendment, and 42 U.S.C.  
3 § 1983.

4 72. As applied, the City's Ordinance conditions the Jisser Family's exercise of their  
5 rights to withdraw their property from the rental market, to take possession of their property, and  
6 to exclude others from their property, on the payment of substantial sums of money to tenants.

7 73. Money as well as land is constitutionally protected property.

8 74. The City may not constitutionally compel the Jisser Family to rent their property or  
9 to refrain in perpetuity from terminating a tenancy.

10 75. If the City had demanded that the Jisser Family simply pay money to tenants  
11 displaced by the closure of Buena Vista, the City would be liable for a *per se* physical taking of  
12 property.

13 76. Pursuant to the law of unconstitutional conditions established by *Nollan v. California*  
14 *Coastal Commission* ("Nollan"), 483 U.S. 825 (1987), *Dolan v. City of Tigard* ("Dolan"), 512 U.S.  
15 374 (1994), and *Koontz v. St. Johns River Water Management District* ("Koontz"), 133 S. Ct. 2586  
16 (2013), governments may constitutionally exact money from property owners as a condition of the  
17 exercise of their property rights only if:

18 a. The exaction directly mitigates a public impact arising from the property owners'  
19 exercise of their property rights.

20 b. The exaction is roughly proportionate in both nature and extent to the public  
21 impact arising from the property owners' exercise of their property rights.

22 77. The Jisser Family's withdrawal of Buena Vista from the rental market does not cause  
23 the rent differential between the tenants' present rents and potential future rents and does not affect  
24 the inherent value of their mobilehomes or the feasibility of relocating those mobilehomes.

25 78. The tenant payments for rent subsidies and compensation for the on-site value of their  
26 mobilehomes is not directly related to an impact arising from the Jisser Family's exercise of their  
27 right to close their mobilehome park.

28 ///

1 79. The monetary exaction imposed on the Jisser Family by the City is not proportionate  
2 in either nature or extent to any impact arising from the property owners' exercise of their right  
3 to withdraw their property from the rental market.

4 80. The payments demanded by the City have nothing to do with the mitigation of public  
5 costs caused by the Jisser Family's closure of the park, but are an attempt by the City to make the  
6 Jisser Family bear the costs of providing tenant public assistance and mitigating the City's acute  
7 lack of affordable housing—costs that, in justice, should be borne by the whole public of Palo Alto.

8 81. By requiring the Jisser Family to choose between paying oppressive sums of money  
9 to their tenants before closing their mobilehome park or suffering the unwanted occupation of their  
10 property by tenants, the City has unconstitutionally conditioned the exercise of the Jisser Family's  
11 property rights, thereby exacting and taking private property in violation of the Fifth and  
12 Fourteenth Amendments.

13 82. As applied, the Ordinance requires the Jisser Family to either submit to an  
14 uncompensated taking of their money or suffer a permanent physical occupation of their property.

15 83. The monetary exaction imposed by the City on the Jisser Family violates the  
16 constitutional principles articulated in *Nollan*, *Dolan*, and *Koontz*.

17 84. The unconstitutional exaction at issue was imposed under color of state law and  
18 violates 42 U.S.C. § 1983.

19 85. This claim does not seek monetary damages or “just compensation,” but declaratory  
20 and injunctive relief sufficient to restrain the enforcement of the unconstitutional exaction of the  
21 Jisser Family's property arising from the City's application of its Ordinance.

22 86. The appropriate remedy in this case is declaratory and injunctive relief, halting the  
23 imposition of the unconstitutional condition.

24 87. The Jisser Family has no state compensation remedy available for this claim and need  
25 not pursue such a remedy before bringing this claim in federal court.

26 88. Unless the City is enjoined from committing the above-described violations of the  
27 Fifth and Fourteenth Amendments, the Jisser Family will continue to suffer great and irreparable  
28 harm.

**Count II: Taking of Private Property for a Private Use**

89. Plaintiffs incorporate and reallege the allegations of Paragraphs 1 through 88 as if fully set forth herein.

90. Count Two is brought pursuant to the Public Use Clause of the Fifth Amendment to the U.S. Constitution, as incorporated against the states by the Fourteenth Amendment, and 42 U.S.C. § 1983.

91. The Public Use Clause prohibits the taking of private property for a private use.

92. As applied, the City's Ordinance requires the transfer of money from the Jisser Family to other private persons—their tenants—as a condition of the Jisser Family's exercise of their right to withdraw their property from the rental market.

93. The tenant payments mandated by the City come with no restrictions on how the funds are spent by tenants, for what purpose, or where. There money may be used for any private purpose whatsoever and is not limited to the payment of future rents or relocation costs.

94. The Ordinance, as applied by the City, benefits private persons and not the general public. The private benefit accruing to tenants from the mandated payments far outweigh any conceivable public benefit.

95. The Ordinance and the City's application of it in this case was intended to benefit private parties.

96. The Ordinance and the City's application of it constitutes a taking of private property, namely the Jisser Family's funds, for a private purpose in violation of the Public Use Clause.

97. The Public Use Clause violation at issue arose under color of state law and violates 42 U.S.C. § 1983.

98. This claim does not seek monetary damages or "just compensation," but declaratory and injunctive relief sufficient to restrain the enforcement of the City's Ordinance in violation of the Public Use Clause.

99. The appropriate remedy in this case is declaratory and injunctive relief.

100. Unless the City is enjoined from committing the above-described violations of the Public Use Clause, the Jisser Family will continue to suffer great and irreparable harm.





PACIFIC LEGAL FOUNDATION  
930 G Street  
Sacramento, CA 95814  
(916) 419-7111 FAX (916) 419-7747

- 1 e. an entry of judgment declaring the Jisser Family’s right to close the Buena Vista  
2 Mobilehome Park free of the unconstitutional application of the Ordinance;  
3 f. a permanent injunction prohibiting the City from enforcing or taking further action to  
4 enforce the unconstitutional application of the Ordinance in this case;  
5 g. an award of attorneys’ fees, expert fees, costs, and expenses in this action pursuant to  
6 42 U.S.C. § 1988 and/or Cal. Code of Civ. Proc. § 1021.5; and  
7 h. all further legal and equitable relief as the Court may deem just and proper.

8 DATED: November 19, 2015.

9 Respectfully submitted,

10 LAWRENCE G. SALZMAN  
11 J. DAVID BREEMER

12 By /s/ Lawrence G. Salzman  
13 LAWRENCE G. SALZMAN

14 Attorneys for Plaintiffs Toufic and Eva Jisser  
15 and the Toufic and Eva Jisser Revocable Trust  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28