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25  
26 **IN THE UNITED STATES DISTRICT COURT**  
27 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

28 ROY and MARY GARRETT;  
29 ESCONDIDO HUMAN RIGHTS COMMITTEE;  
30 JANE DOE 1;  
31 JANE DOE 2,

32 Plaintiffs,

33 v.

34 CITY OF ESCONDIDO,

35 Defendant.

Case No.

COMPLAINT FOR:

- 1) Violation of the Supremacy Clause;
- 2) Violation of the Contracts Clause;
- 3) Violation of the First Amendment and Art. I, §1 of the Calif. Constitution;
- 4) Violation of Equal Protection;
- 5) Violation of Procedural Due Process;
- 6) Violation of 42 U.S.C. §1981;
- 7) Violation of the Federal Fair Housing Act;
- 8) Violation of Fair Employment and Housing Act, Calif. Gov. Code §12955, *et seq.*;
- 9) Violation of Unruh Act, Calif. Civ. Code §§ 51 and 52;
- 10) Violation of Legitimate Police Powers; and
- 11) State Law Preemption

1 Plaintiffs ROY and MARY GARRETT, ESCONDIDO HUMAN RIGHTS  
2 COMMITTEE, and JANE DOES 1 and 2, all to the best of their knowledge, information, and  
3 belief formed after an investigation reasonable under the circumstances, which facts are likely to  
4 have evidentiary support after a reasonable opportunity for further investigation and discovery,  
5 except for information identified herein based on personal knowledge, hereby allege as follows  
6 against the above-named defendant:

7 **I. INTRODUCTION AND NATURE OF THE ACTION**

8 1. On October 18, 2006, the City of Escondido (“Escondido” or “City”) passed  
9 Ordinance No. 2006-38 R “Establishing Penalties For The Harboring of Illegal Aliens In The City  
10 of Escondido” (the “Ordinance”). The Ordinance was patterned largely after portions of an  
11 ordinance adopted in Hazelton, Pennsylvania on July 13, 2006 and subsequently amended, the  
12 enforcement of which has been suspended by court order pending a federal lawsuit challenging  
13 that ordinance on several constitutional grounds.

14 2. Purporting to blame ills such as crime and overcrowded neighborhoods on the  
15 presence of what it calls “illegal aliens,” Escondido passed the Ordinance with the express goal of  
16 preventing landlords from allowing “illegal aliens” to occupy dwelling units. However, the data  
17 on which Escondido purports to rely provide no support for the conclusion that immigrants, either  
18 documented or undocumented, cause those ills.

19 3. The Ordinance sets forth a new municipal code violation described as “harboring  
20 illegal aliens”, and subjects landlords to significant penalties if they engage in “harboring” by  
21 renting to an “illegal alien” or allowing an “illegal alien” to occupy a dwelling unit. The  
22 Ordinance will have, and has already had, the effect of inducing landlords to deny housing to  
23 persons on the basis of race or national origin. Under the Ordinance, anyone who looks or sounds  
24 “foreign” – regardless of citizenship or immigration status – stands to be excluded from living in  
25 Escondido.

26 4. The Ordinance is riddled with constitutional flaws and ignores the subtleties,  
27 complexities and primacy of federal immigration law. The Ordinance infringes on the federal  
28 government’s authority over immigration in violation of the Supremacy Clause, not least because

1 it invades a field that is exclusively occupied by the federal government through Congress'  
2 express regulation of, *inter alia*, "harboring" persons unlawfully present in the United States  
3 pursuant to 8 U.S.C. §1324(a).

4 5. The Ordinance violates the constitutional rights of landlords by placing them in the  
5 impossible position of either violating the Ordinance and facing Draconian penalties or risking  
6 violation of federal and state laws if they comply with the Ordinance. It also violates due process  
7 by failing to require adequate proof before the City designates a tenant as an "illegal alien,"  
8 failing to provide adequate procedures for landlords or tenants to contest such designation before  
9 the City imposes severe sanctions for alleged "harboring," and by imposing sanctions on  
10 landlords for alleged "harboring" before it is possible to correct any such violation in compliance  
11 with state law.

12 6. The Ordinance contemplates state action based on race and national origin, in  
13 violation of the Constitutional guarantee of equal protection.

14 7. Because the people most likely to lose their housing as a result of the Ordinance  
15 are Latinos – who as of 2004 comprise approximately 42% percent of the City's population – the  
16 Ordinance will have a disproportionate adverse impact on Latinos and other minority  
17 communities and will tend to have a segregative effect on the City of Escondido, in violation of  
18 multiple state and federal laws, including but not limited to, federal and state fair housing and  
19 anti-discrimination laws.

20 8. The Ordinance is also preempted by the California Constitution and other state  
21 law, which mandate that non-citizens shall have the same property rights as citizens. By giving  
22 landlords only 10 business days to evict an alleged "illegal alien" tenant, the Ordinance directly  
23 conflicts with state law controlling eviction proceedings and for cancelling an existing tenancy.  
24 By imposing a new basis for commencing eviction proceedings – being an "illegal alien" – not  
25 contained in state law, the Ordinance invades the state law function of determining what  
26 constitutes grounds for eviction or refusal to continue a tenancy relationship, and the timing  
27 thereof.

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1 criminal and civil sanctions if they do not comply with the Ordinance. They rent their dwelling  
2 units pursuant to written lease agreements that expressly state the terms and conditions under  
3 which they can evict a tenant or terminate a tenancy. Their lease agreements do not provide that  
4 they can evict any tenant on the ground they are an "illegal alien" within 10 business days.

5 15. The Landlord Plaintiffs know their tenants are visited by guests and family  
6 members. They have no reasonable mechanism available to determine whether through such  
7 visitations they are "suffering" or "permitting" their rented premises to be "occupied" by persons  
8 who are defined to be "illegal aliens" under the Ordinance, and whether they could be punished or  
9 sanctioned by the City under the Ordinance as a result.

10 16. The Landlord Plaintiffs have a well-founded fear that the Ordinance will be  
11 enforced against them and that they will suffer substantial adverse consequences as a result if the  
12 Ordinance is not declared invalid and enjoined. Unless the Ordinance is permanently enjoined  
13 and declared invalid, the Landlord Plaintiffs are subject to irreparable harm by, *inter alia*, being  
14 subject to significant monetary fines for violating the Ordinance, losing and/or being refused  
15 business permits or licenses, being unable to collect rent on any of their rental units, and facing  
16 criminal misdemeanor liability for multiple violations since a separate violation occurs under the  
17 Ordinance for every day that an "illegal alien" tenant or occupant remains in a dwelling unit after  
18 notice from Escondido that the specified time has passed to "correct the violation."

19 17. Unless the Ordinance is permanently enjoined and declared invalid, the Landlord  
20 Plaintiffs may also be exposed to the imminent threat of irreparable harm for which there is no  
21 adequate remedy at law in terms of personal liability if, in attempting to comply with the  
22 Ordinance, they take adverse action against an individual whom the City claims may be an  
23 "illegal alien" under the Ordinance, where such action is prohibited by state or federal law.

24 18. The following plaintiffs ("Tenant Plaintiffs") rent dwelling units in Escondido  
25 under otherwise valid and binding leases and have a well-founded fear that they would be  
26 classified as "illegal aliens" under the Ordinance:

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1 a. On personal knowledge, plaintiff Jane Doe 1 came to the United States from  
2 Mexico in or about 1994. She has minor children who are United States citizens.  
3 She rents an apartment in Escondido, which she has occupied continuously since  
4 2001. Her children, who are U.S. citizens, live with her and attend school in  
5 Escondido. She is gainfully employed.

6 b. On personal knowledge, plaintiff Jane Doe 2 came to the United States from  
7 Mexico in or about January 1987. She has three minor children who are United  
8 States citizens. She rents an apartment in Escondido, which she has occupied  
9 continuously since February 1996. Her minor children, who are U.S. citizens, live  
10 with her and attend school in Escondido. She is gainfully employed.

11 If the Ordinance is not declared invalid and permanently enjoined, enforcement of the Ordinance  
12 will pose an imminent threat of irreparable harm to the Tenant Plaintiffs and/or members of their  
13 families for which there is no adequate remedy at law by subjecting them to, *inter alia*, the threat  
14 of eviction from their homes and the inability to locate local substitute housing or for their U.S.  
15 citizen children to attend school in Escondido.

16 19. The Landlord Plaintiffs seek to provide housing, or continue to provide housing, to  
17 persons without regard to the Ordinance. The Tenant Plaintiffs seek to remain in occupancy and  
18 quiet enjoyment of their dwelling units in Escondido that they have leased and occupied for years.  
19 Both Landlord Plaintiffs and Tenant Plaintiffs seek to continue receiving the benefits of pre-  
20 existing contract and property rights. If not declared invalid and permanently enjoined, the  
21 Ordinance will adversely impact both Landlord Plaintiffs and Tenant Plaintiffs in their ability to  
22 pursue such objectives.

23 20. On personal knowledge, plaintiff Escondido Human Rights Committee ("EHRC")  
24 is a California unincorporated association.

25 21. EHRC's primary purpose is to advocate for the human rights of all persons in  
26 Escondido, educate the Escondido community regarding human rights, and document human  
27 rights violations in Escondido.

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1           22.     EHRC does not require its members to prove their citizenship, residency or  
2 immigration status as a condition to membership. The Ordinance has created great hostility  
3 towards the Latino community in Escondido and therefore adversely affects the work and mission  
4 the organization follows and performs in Escondido and for Escondido residents. EHRC has  
5 received numerous reports from its members and other Escondido residents that they have been  
6 subjected to discrimination due to the adoption of the Ordinance, as some landlords are  
7 demanding proof of citizenship or demanding tenants leave the premises in fear the landlords may  
8 be found to violate the Ordinance.

9           23.     The interests EHRC seeks to protect through this action are germane to its  
10 purpose, and neither the claims asserted nor the relief requested herein require the personal  
11 participation of EHRC's members.

12           24.     As a result of the proposal, debate, and enactment of the Ordinance, EHRC has  
13 diverted and expended, and will continue to divert and expend, its own resources from other  
14 activities to educate the public regarding the Ordinance, advocate against enactment and  
15 enforcement of the Ordinance, provide assistance to community members impacted by the  
16 Ordinance, and respond to concerns and questions from community members regarding the  
17 Ordinance.

18           25.     Defendant City of Escondido ("Escondido" or "City") is a city existing pursuant to  
19 California law, with its principal location at Escondido City Hall, 201 North Broadway,  
20 Escondido, San Diego County, California.

21           26.     At all relevant times described herein, Escondido adopted the Ordinance acting  
22 through its duly authorized agents, Mayor Lori Holt Pfeiler, Ed Gallo, Mayor Pro Tem, and City  
23 Council members Ron Newman, Marie Waldron and Sam Abed.

24           27.     At all times alleged herein, Escondido and its officials, employees and agents were  
25 acting under color of state law.

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1 **IV. STATEMENT OF FACTS**

2 **A. The Ordinance**

3 28. On August 16, 2006, at an Escondido City Council meeting, Councilmember  
4 Waldron introduced the concept of adopting the proposed Ordinance to the Escondido City  
5 Council. After discussing the issue, the City Council directed City staff to prepare an ordinance  
6 and/or policies "to regulate overcrowding, renting to illegal aliens, and on-street parking  
7 restrictions." The only one of these issues addressed by the City Attorney's Office was renting to  
8 illegal aliens or, in the words of the Ordinance, "harboring illegal aliens."

9 29. Council member Waldron proposed the Ordinance amid a passionate national  
10 debate over federal immigration policy at the very time the United States Congress was holding  
11 hearings across the country regarding competing bills to amend federal immigration law and  
12 addressing, *inter alia*, whether and how the federal statute governing the harboring of illegal  
13 aliens should be amended.

14 30. On October 4, 2006, after receiving a several page analysis prepared by the City  
15 Attorney, the Escondido City Council by a 3-2 vote approved the Ordinance at first reading, with  
16 minor amendments. On October 18, 2006, an amended version of the Ordinance received one  
17 more reading before the City Council. At the second reading, the City Council adopted the  
18 Ordinance, also by a 3-2 vote. A true and correct copy of the Ordinance is attached hereto as  
19 Exhibit "A" and incorporated herein by this reference.

20 31. Unless enjoined, the Ordinance will go into effect on November 17, 2006, 30 days  
21 after its second reading.

22 32. Any of the following activities would result in a violation of the Ordinance, if done  
23 with "knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in  
24 the United States in violation of law, unless such harboring is otherwise expressly permitted by  
25 federal law":

26 (a) to "let, lease or rent a dwelling unit to an illegal alien";

27 (b) to "suffer or permit the occupancy of the dwelling unit by an illegal alien";

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1 (c) within five business days after receiving written notice from the City demanding  
2 whatever information it asserts is necessary to comply with this demand, to fail “to  
3 provide the City with identity data needed to obtain a federal verification of  
4 immigration status” of a tenant;

5 (d) within 10 business days after receiving written notice from the City of a violation,  
6 to fail to correct the violation.

7 Further, should a landlord actually remove an “illegal alien” from a rental property, the denial or  
8 suspension of the landlord’s business permit continues until one day after the landlord (or a  
9 representative thereof) submits an affidavit to the City not only confirming that the violation has  
10 ended, but also including the new “address and other adequate identifying information for the  
11 illegal aliens who were the subject of the complaint.” Providing such information will likely  
12 prompt another round of charges until the “illegal alien” moves out of Escondido.

13 33. As written, the Ordinance only applies to landlords subject to §16-17 of the  
14 Escondido Municipal Code, not homeowners. It requires landlords to evict tenants upon written  
15 notice from the City that an “illegal alien” is renting or staying in one of their rental properties.

16 34. The Ordinance would deny or suspend the Escondido business license of a rental  
17 property owner who is alleged to be in violation of the Ordinance, without any hearing prior to  
18 such denial or suspension. This denial or suspension would preclude the owner from collecting  
19 any rent, payment, fee, or any other form of compensation from any dwelling unit owned by the  
20 landlord in Escondido. More than one violation – which as defined in the statute would result  
21 from not taking action more than one day after required to do so under the terms of the Ordinance  
22 (since each day that passes and each alien “harbored” constitutes a separate violation) – would  
23 result in a monetary penalty of up to \$1,000.00 per violation per day, or a jail term of six months,  
24 or both.

25 35. The Ordinance does not provide any pre-determination hearing for a landlord prior  
26 to the suspension of their business license. The Ordinance also does not provide a tenant or  
27 subtenant that the City believes is an “illegal alien” any notice or opportunity to be heard as to  
28 their right to present in the United States.

1           **B.     Intent and Effect of the Ordinance**

2           36.     The intent and effect of the Ordinance is to regulate immigration in Escondido and  
3 the United States in a manner not contemplated or approved by the federal government.

4           37.     The Ordinance defines a group of individuals as “illegal aliens” and sets forth an  
5 unfathomable scheme intended to eliminate this group of individuals from Escondido by  
6 forbidding them from renting or occupying rental property and converting landlords into a posse  
7 compelled to enforce the law, all with the intent and effect of forcing immigrants to leave the city  
8 based on the allegedly “valid complaint” of any person – government officials, a disgruntled  
9 neighbor, persons with their own political agenda who have already expressed an intent to be  
10 vigilante reporters, or even a landlord that wishes to get rid of a tenant subject to a valid lease  
11 agreement.

12           38.     If the Ordinance is allowed to go into effect and be enforced, it may be difficult if  
13 not impossible for anyone who is perceived to possibly be an “illegal alien” as defined by the  
14 Ordinance to rent or occupy a dwelling unit in Escondido, because landlords may elect to avoid  
15 the burden of compliance with the Ordinance and the risk of noncompliance by refusing to enter  
16 into leases with anyone whom they perceive as likely to be an “illegal alien” under the Ordinance.

17           39.     Escondido based the Ordinance on findings that “the harboring of illegal aliens in  
18 dwelling units in the City, and crime committed by illegal aliens, harm the health, safety and  
19 welfare of legal residents in the City.” The City based this conclusion on the findings of a June  
20 2006 study by the National Latino Research Center at California State University San Marcos  
21 addressing housing conditions in the Mission Park area of Escondido (the “San Marcos Study”).

22           40.     The San Marcos Study does not support the City’s finding that increased crime,  
23 overcrowding and harm to health, safety and welfare are linked to “illegal aliens” dwelling in  
24 rental property in Escondido. In fact, the San Marcos Study found that the causes for  
25 overcrowding were due to the high costs of housing and the unavailability of affordable  
26 subsidized housing in Escondido – not the presence of an “illegal alien” population. Escondido  
27 therefore misrepresented the conclusion of this study to justify its own desires, contradicting what  
28 the San Marcos Study actually found.

1           41. Council member Waldron – the driving force behind the Ordinance – likened  
2 undocumented immigrants to terrorists and linked them with her perception of a general  
3 deterioration of American values in trying to garner support for the Ordinance. “To look the  
4 other way is treasonous,” according to member Waldron. In addition, in response to a Council  
5 member’s suggestion that the revenues and costs associated with enforcing the Ordinance be  
6 tracked, several Council members (including Council member Waldron) stated that was only  
7 acceptable if the City also tracked the local costs associated with illegal immigration generally.

8           42. The Ordinance would compel persons who own rental property in Escondido to  
9 disclose unspecified “identity data” on their tenants to the City, solely on the basis of an unsworn  
10 and unverified complaint to the City, even if the owners have no reason to believe that their  
11 tenants may be “illegal aliens” under the Ordinance, and even if the information they possess is  
12 protected from disclosure under state and federal law. The Ordinance thus exposes rental  
13 property owners to a well-founded fear of civil or criminal liability for violation of state and  
14 federal laws prohibiting disclosure of tenants’ private information.

15           43. The Ordinance does not define the term “illegal alien” other than making a general  
16 reference to the federal immigration laws, which includes very complex definitions for  
17 “immigrants” but no definition of “illegal alien.” The Ordinance makes such a determination by  
18 asking the federal government to verify the legal status of a tenant, but the federal government  
19 may not (or cannot) provide that verification to the City. Landlord Plaintiffs and others will have  
20 to guess at the immigration status of persons who might fall into this category, based upon  
21 improper gauges such as color of skin and foreign accents.

22           44. The Ordinance actually invites such speculation: only “a complaint which alleges a  
23 violation *solely or primarily* on the basis of national origin, ethnicity, or race shall be deemed  
24 invalid” (emphasis added), whereas those based partially on such characteristics and stereotypes –  
25 which bear no relevance to a person’s immigration status – will presumably be deemed valid.

26           45. Persons who lack such official documents such as a U.S. birth certificate, passport  
27 or current visa, but who are lawfully permitted to reside and work in the United States, may be  
28 deemed “illegal aliens” due to the inability of City officials and property owners to accurately

1 identify and interpret specialized immigration documents, and due to the Ordinance's lack of any  
2 procedure providing for notice or an opportunity to be heard. There is also no indication what  
3 level of information would be necessary to "verify" such status, particularly if the information to  
4 be provided is protected from disclosure under federal and state privacy laws and cannot be  
5 shared with the City.

6 46. The Ordinance requires the immediate suspension of business permits to anyone  
7 who "harbors illegal aliens." Yet, the Ordinance fails to specify the precise conduct that  
8 constitutes "harboring". For example, is "harboring" just the act of renting a dwelling unit?  
9 Could it be the mere presence and occupancy of a guest? What if one of the tenants is a lawful  
10 immigrant or even a U.S. citizen (such as a minor) and one is not? What happens if the landlord  
11 is informed the tenant or occupant is an illegal immigrant – must he or she immediately  
12 commence eviction proceedings under the Ordinance and, if so, on what ground under California  
13 law, and must he or she independently verify this fact? The Ordinance does not say.

14 47. Moreover, if a demand for information is received from the City, but for whatever  
15 reason such information cannot be provided to the City within five business days, the landlord  
16 would be considered in violation of the Ordinance even if nothing can be done by the landlord to  
17 obtain such information either voluntarily or involuntarily. What is a landlord to do if a tenant or  
18 occupant simply refuses to provide the landlord such information, or is out of town on business or  
19 a vacation? What if the landlord only has a California driver's license from the tenant, or  
20 information protected from disclosure under the Fair Credit Reporting Act? And if the landlord is  
21 presented with some form of documentation indicating the tenant is not an "illegal alien" but the  
22 federal government does not confirm that fact, is the tenant presumptively guilty and the landlord  
23 violating the statute unless he or she evicts the tenant in 10 days, irrespective of the requirements  
24 of California's landlord-tenant laws? And what if the federal government either cannot or will  
25 not provide verifying information to the City? The Ordinance leaves these threshold questions  
26 unanswered.

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1           C.     **Federal Preemption**

2           48.     The power to regulate immigration is undeniably exclusively federal and derives  
3 from the constitutional grant of power to Congress to “establish a uniform Rule of  
4 Naturalization,” U.S. Const. Art. I, § 8, cl. 4., and to “regulate Commerce with foreign Nations.”  
5 *Id.*, cl. 3. In addition, the U.S. Supreme Court has held that the federal government's power to  
6 control immigration is inherent in the nation's sovereignty.

7           49.     Pursuant to its exclusive power over matters of immigration, the federal  
8 government has established a comprehensive system of laws, regulations, procedures, and  
9 administrative agencies that determine, subject to administrative and judicial review, whether and  
10 under what conditions a given individual may enter, stay in, and work in the United States.

11           50.     In addition to provisions that directly regulate immigrants' entry and behavior, the  
12 federal immigration laws also include provisions directed at other classes of individuals,  
13 including those who harbor individuals not lawfully in the United States.

14           51.     The federal government has also chosen to allow certain categories of non-  
15 citizens, and certain individual non-citizens, to remain in the United States, even though such  
16 non-citizens may not have valid immigrant (permanent) or non-immigrant (temporary) status  
17 and/or may be removable under the federal Immigration and Nationality Act (“INA”).

18           52.     These laws, procedures, and policies created by the federal government regulate  
19 immigration and confer rights in a careful balance reflecting the national interest, and have been  
20 found to preempt any contrary state laws.

21           53.     In addition, a final determination that a tenant is or is not an “illegal alien” is to be  
22 made by the City under the Ordinance solely by attempting to ascertain from the United States  
23 Citizen and Immigration Service (“USCIS”), pursuant to 8 U.S.C. §1373(c), whether the reported  
24 tenant is an alien who is not lawfully present in the United States. However, that is not how a  
25 determination of legal status is finally made by the federal government, and the federal  
26 immigration system does not produce a final determination of immigrant status at the request of a  
27 local government.

28     ///



1 This Constitution, and the Laws of the United States which shall be  
2 made in Pursuance thereof; and all Treaties made, or which shall be  
3 made, under the Authority of the United States, shall be the  
4 supreme Law of the Land; and the Judges in every State shall be  
5 bound thereby, any Thing in the Constitution of Laws of any State  
6 to the Contrary notwithstanding.

7 61. The Supremacy Clause mandates that federal law preempts any state regulation of  
8 any matter over which Congress has expressly or impliedly exercised exclusive authority or  
9 which is constitutionally reserved to the federal government.

10 62. The power to regulate immigration is a matter over which the federal government  
11 has exclusive authority.

12 63. The Ordinance, in its entirety, is a law purporting to regulate immigration and the  
13 incidents thereof by focusing exclusively on preventing the “harboring” of “illegal aliens.” This  
14 issue is specifically regulated by the federal government pursuant to, *inter alia*, 8 U.S.C. §  
15 1324(a), which is part of the federal government’s comprehensive statutory and regulatory  
16 scheme governing immigration.

17 64. The Ordinance attempts to usurp the federal government’s exclusive power over  
18 immigration and naturalization and its power to regulate foreign affairs.

19 65. The Ordinance is preempted because its regulatory scheme attempts to legislate  
20 in fields occupied by the federal government.

21 66. The Ordinance threatens the uniformity and primacy of the federal immigration  
22 system and conflicts with federal immigration law.

23 67. The Ordinance thus violates the Supremacy Clause, on its face or as applied.

24 68. Therefore, plaintiffs are entitled to declaratory and injunctive relief.

## 25 **SECOND CAUSE OF ACTION**

### 26 **(VIOLATION OF THE CONTRACTS CLAUSE)**

27 69. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 68 above as  
28 though set forth herein.

70. The Contracts Clause of the United States Constitution provides that no state shall  
pass a “law impairing the obligation of contracts.” (U.S. Const. art. I, § 10, cl. 1). This article

1 prohibits States from enacting laws that retroactively impair contractual obligations. The  
2 California Constitution has a similar provision in the California Constitution, Art. I, §9.

3 71. Sections 16E-1 and 16E-2 of the Ordinance make it unlawful for any landlord to  
4 knowingly, or in reckless disregard of the fact, harbor an "illegal alien," and mandates landlords  
5 evict any "illegal alien" within 10 business days after receipt of a notice of violation from the City  
6 to avoid the denial or suspension of their business licenses and the imposition of additional  
7 penalties.

8 72. Further, if a landlord is unsuccessful in evicting the tenant or occupant within 10  
9 business days, under §16E-2 of the Ordinance, the landlord's business license is denied or  
10 suspended and the landlord is not permitted to collect any rent, payment, fee, or another form of  
11 compensation from, or on behalf of, any tenant or occupant in the dwelling (or any other dwelling  
12 covered by the landlord's business license) until the landlord is no longer in violation of the  
13 Ordinance, i.e., has evicted the tenant.

14 73. For the reasons set forth herein, the Ordinance fails to have a significant and  
15 legitimate public purpose.

16 74. For the reasons set forth herein, the Ordinance is not based upon reasonable  
17 conditions and is not of a character appropriate to the stated public purpose.

18 75. The Landlord and Tenant Plaintiffs have valid lease and rental agreements for  
19 residential rental property in the City of Escondido. Each lease or rental agreement has specific  
20 provisions that specify the grounds upon which a landlord may evict or prematurely terminate the  
21 agreement. None of these leases or agreements allow a landlord to evict tenants based upon  
22 "harboring of illegal aliens" or the fact the tenant is an "illegal alien".

23 76. The eviction of a tenant or occupant within ten business days, under conditions not  
24 specified in lease agreements, would cause Landlord Plaintiffs and others to breach those  
25 agreements, and also deprives the Tenant Plaintiffs of their contractual rights to occupancy and  
26 quiet enjoyment of their leased dwelling units. Therefore, the Ordinance violates the Contracts  
27 Clause of the United States and California Constitutions.

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1           93.    The Due Process Clause of the Fourteenth Amendment to the United States  
2 Constitution prohibits Escondido from depriving any person of life, liberty, or process without  
3 due process of law.

4           94.    Landlord Plaintiffs have a liberty and/or property interest in leasing their rental  
5 dwelling units and receiving income from such leases.

6           95.    The Ordinance deprives Landlord Plaintiffs of such interests without due process  
7 of law because it is impossible for them to comply with the Ordinance without violating state and  
8 federal law, including, but not necessarily limited to, state and federal laws prohibiting disclosure  
9 of tenants' private information and state laws concerning terminating tenancies, eviction and  
10 unlawful detainer proceedings.

11           96.    The Ordinance also requires that upon written notice by the City that a violation  
12 has occurred, Landlord Plaintiffs must within 10 business days: (1) provide notice to vacate the  
13 premises; (2) institute an unlawful detainer action; (3) prevail in that action; (4) evict the "illegal  
14 alien"; and (5) provide a sworn affidavit not only that the violation has ended, but also the new  
15 "address and other adequate identifying information for the illegal alien" so that such information  
16 can be forwarded to federal authorities.

17           97.    The Ordinance does not require the City to sustain any burden to prove by  
18 sufficiently probative evidence that a property owner is in fact renting a dwelling unit to an  
19 alleged "illegal alien" before the City deprives the owner of liberty and/or property interests.

20           98.    The Ordinance permits the City to suspend a property owner's business license,  
21 and thus deprive the owner of the liberty and/or property interest in retaining such license,  
22 conducting a rental property business, and/or receiving income from rental property, without any  
23 hearing or proceedings before such suspension and deprivation occurs.

24           99.    The Ordinance also provides no due process within its statutory scheme for any  
25 person alleged to be an "illegal alien" to challenge such a designation.

26           100.   The Ordinance has no relation to any legitimate local government purpose.  
27 Escondido does not have any compelling state interest or rational basis for its enactment.

28    ///



1 SEVENTH CAUSE OF ACTION

2 (VIOLATION OF THE FEDERAL FAIR HOUSING ACT)

3 112. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 111 above as  
4 though set forth herein.

5 113. The Fair Housing Act ("FHA"), 42 U.S.C. §3601 *et seq.*, prohibits housing  
6 practices that discriminate on the basis of race, color, religion, sex, familial status, national origin,  
7 or handicap.

8 114. Sections 16E-1 and 16E-2 of the Ordinance impose fines on the Landlord  
9 Plaintiffs and other property owners who rent to "illegal aliens" at up to \$1,000 per day per  
10 violation, with no stated maximum cap on the amount of the monetary penalty, possible jail time,  
11 and automatic deprivation of the right to collect any monies from any tenants due to the automatic  
12 suspension of the property owner's license, even from tenants who are lawfully in the United  
13 States. Some landlords are also discriminatorily demanding some tenants vacate their units for  
14 fear of violating the Ordinance.

15 115. Defendant injured plaintiffs and threatened them with injury in violation of the  
16 FHA by committing the following discriminatory housing practices:

- 17 a. To otherwise make unavailable or deny a dwelling because of race, color, or  
18 national origin, in violation of 42 U.S.C. §3604(a);
- 19 b. To discriminate against any person in the terms, conditions, or privileges of rental  
20 of a dwelling, or in the provision of services or facilities therewith, because of  
21 race, color, or national origin, in violation of 42 U.S.C. §3604(b);
- 22 c. To make, print or publish, or cause to be made, printed or published, any notice,  
23 statement or advertisement, with respect to rental of a dwelling, that indicates any  
24 preference, limitation, or discrimination, based on race, color, or national origin, or  
25 an intention to make any such preference, limitation, or discrimination, in violation  
26 of 42 U.S.C. §3604(c); and

27 ///

28 ///

1 d. To coerce, intimidate, threaten or interfere with any person in the exercise or  
2 enjoyment of, or on account of his having exercised or enjoyed, any of the rights  
3 granted by the FHA, in violation of 42 U.S.C. §3617.

4 116. In addition, 42 U.S.C. §3615 provides:

5 "Nothing in this subchapter shall be construed to invalidate or limit any  
6 law of a State or political subdivision of a State, or of any other  
7 jurisdiction in which this subchapter shall be effective, that grants,  
8 guarantees, or protects the same rights as are granted by this subchapter;  
9 *but any law of a State, a political subdivision, or other such jurisdiction  
10 that purports to require or permit any action that would be a  
11 discriminatory housing practice under this subchapter shall to that extent  
12 be invalid.*" (Emphasis added.)

13 117. Therefore, plaintiffs are entitled to declaratory and injunctive relief.

14 **EIGHTH CAUSE OF ACTION**

15 **(VIOLATION OF FAIR EMPLOYMENT AND HOUSING ACT, CALIFORNIA  
16 GOVERNMENT CODE § 12955 ET SEQ.)**

17 118. Plaintiffs incorporate by reference the allegations contained in paragraphs 1  
18 through 117 above as though set forth herein.

19 119. Defendants injured Plaintiffs in violation of the California Fair Employment and  
20 Housing Act, Cal. Gov. Code §12955, *et seq.* by committing the following discriminatory  
21 housing practices:

22 a. To make, print or publish, or cause to be made, printed or published any notice,  
23 statement or advertisement, with respect to rental of a dwelling, that indicates any  
24 preference, limitation, or discrimination, based on race, color, ancestry, or national  
25 origin, or an intention to make any such preference, limitation, or discrimination,  
26 in violation of Civil Code §12955(c);

27 b. To discriminate against any person in the provision of housing accommodations,  
28 in violation of the Unruh Civil Rights Act, Civil Code §51, *et seq.*, on the basis of  
race, color, ancestry, or national origin, or other prohibited basis, in violation of  
Civil Code §12955(d);

///

- 1 c. To aid, abet, incite, compel, or coerce the doing of any of the acts or practices  
2 declared unlawful under Civil Code §12955, in violation of Civil Code §12955(g);  
3 d. To otherwise make unavailable or deny a dwelling based on discrimination  
4 because of race, color, ancestry, or national origin, in violation of Civil Code  
5 §12955(k);  
6 e. To discriminate through public or private land use practices, decisions, and  
7 authorizations because of race, color, ancestry, or national origin, in violation of  
8 Civil Code §12955(i); and  
9 f. To coerce, intimidate, threaten or interfere with any person in the exercise or  
10 enjoyment of, or on account of his having exercised or enjoyed, any of the rights  
11 granted by the Fair Employment and Housing Act, in violation of Civil Code  
12 §12955.7.

13 120. Therefore, plaintiffs are entitled to declaratory and injunctive relief.

14 **NINTH CAUSE OF ACTION**

15 **(VIOLATION OF UNRUH ACT, CALIFORNIA CIVIL CODE §§ 51 AND 52, *ET SEQ.*)**

16 121. Plaintiffs incorporate by reference the allegations contained in paragraphs 1  
17 through 120 above as though set forth herein.

18 122. Defendants violated the Unruh Civil Rights Act, California Civil Code §51 *et seq.*,  
19 by adopting an Ordinance that has the effect of discriminating against persons as a result of their  
20 race, color, ancestry or national origin.

21 123. The conduct of defendant alleged herein constitutes a denial of full and equal  
22 access to housing accommodations to persons within the meaning of California Civil Code §51.

23 124. In addition, by virtue of the adoption of the Ordinance, defendant under color of  
24 law has interfered by threats, intimidation or coercion with the exercise or enjoyment by plaintiffs  
25 of rights secured by the Constitution of the United States and of California, as well as the laws of  
26 the United States and the State of California, including rights to free speech, privacy, contract,  
27 due process and the processes set forth in the California Civil Code and California Code of Civil  
28 Procedure as set forth herein.



1 §1161 specifies the circumstances under which a tenant is guilty of unlawful detainer. None of  
2 these circumstances include or refer to a lack of United States citizenship or lawful or unlawful  
3 presence in the United States. Escondido's attempt to add an additional circumstance by which a  
4 landlord may evict a tenant for unlawful detainer conflicts with §1161 and therefore is a violation  
5 of the authority granted by Article XI, §7 of the California Constitution.

6 133. To constitute a valid exercise of Escondido's police power, the Ordinance must  
7 relate to and be in furtherance of the public health, safety and welfare that are matters of local  
8 concern, and the means that the City employs to further such health, safety and welfare must not  
9 be highly unreasonable or arbitrary.

10 134. Escondido's failure to properly assess the existence of a threat to public safety or  
11 welfare before enacting the Ordinance is an additional abuse of the City's police powers.

12 135. Before enacting the Ordinance, Escondido failed to conduct any analysis of the  
13 criminal, fiscal, cultural, or other challenges facing Escondido in order to determine if: (a) any  
14 actual problem existed; or (b) what measures were necessary to abate such problems, if any. In  
15 fact, the supporting analysis referenced in the Ordinance's record does not support the  
16 conclusions reached by the City, and misquoted the San Marcos Study.

17 136. Escondido claims that "illegal aliens" contribute to a higher crime rate, do not  
18 report substandard housing conditions, and occupy units in numbers beyond occupancy limits.  
19 Nowhere in the Ordinance record, however, are there any statistics or evidence to support the  
20 claim that "illegal aliens" have contributed significantly, if at all, to any real or perceived  
21 problems in Escondido.

22 137. With no evidence presented in the Ordinance's record that "illegal aliens"  
23 contribute to the stated problems facing Escondido's housing community, Escondido cannot  
24 claim that an ordinance restricting "illegal aliens" from renting in the City is related to and in  
25 furtherance of the public safety and welfare of the City.

26 138. The decision to ban all "illegal aliens" from renting in Escondido is a decision  
27 influenced by prejudice, misstatements from the San Marcos Study, and comments with no

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1 evidentiary support whatsoever. It is palpably unreasonable, unduly oppressive, and wholly  
2 arbitrary that Escondido selected "illegal aliens" as the scapegoat for the ills facing the city.

3 139. Because the Ordinance will do nothing to remedy the burdens alleged by  
4 Escondido, but rather will merely prevent a number of people, primarily minorities, from renting  
5 in the City, the Ordinance is an abuse of Escondido's police powers.

6 140. Therefore, plaintiffs are entitled to declaratory and injunctive relief.

7 **ELEVENTH CAUSE OF ACTION**

8 **(STATE LAW PREEMPTION)**

9 141. Plaintiffs incorporate by reference the allegations contained in paragraphs 1  
10 through 140 above as though set forth herein.

11 142. Escondido may not adopt a municipal ordinance that is preempted by federal or  
12 California law, pursuant to Art. XI, §7 of the California Constitution.

13 143. Article I, §20 of the California Constitution provides: "Non-citizens have the same  
14 property rights as citizens." California law treats leasehold interests as property rights.

15 144. California Civil Code §671 provides that "any person, whether citizen or alien,  
16 may take, hold, and dispose of property, real or personal, within the State."

17 145. On its face or as applied, the Ordinance directly conflicts with Cal. Const. Art. I,  
18 §20 and Civil Code §671 and is thus preempted by California law.

19 146. On its face or as applied, the Ordinance attempts to legislate or regulate in a field  
20 extensively occupied by the federal government through the INA, 8 U.S.C. §11 *et seq.* and thus  
21 exceeds the authority granted Escondido by Art. XI, §7 of the California Constitution.

22 147. California Code of Civil Procedure §1161 specifies the circumstances under which  
23 a tenant "is guilty of unlawful detainer" and may therefore be evicted. None of those  
24 circumstances include or refer to lack of United States citizenship or lawful or unlawful presence  
25 in the United States.

26 148. By permitting City officials to impose sanctions on landlords who fail to evict  
27 tenants who are alleged to be "illegal aliens" under the Ordinance, when eviction on that ground  
28 is not authorized by state law, the Ordinance conflicts with and is preempted by California law.



1           4.       An order awarding plaintiffs costs and attorneys' fees, pursuant to statutes cited  
2 herein, 42 U.S.C. §1988, California Code of Civil Procedure §1021.5, Fed. R. Civ. Proc. 54, and  
3 any other applicable law.

4           5.       Such other relief the Court deems just and proper.

5                               Respectfully submitted,

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