


ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Norman B. Blumenthal (SBN 068687) Blumenthal, Nordrehaug & Bhowmik 2255 Calle Clara, La Jolla, CA 92037 TELEPHONE NO.: 858-551-1223 FAX NO. (Optional): 858-551-1232 E-MAIL ADDRESS (Optional): norm@bamlawca.com ATTORNEY FOR (Name): Plaintiff CITIZENS FOR ODOR NUISANCE ABATEMENT	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input type="checkbox"/> CENTRAL DIVISION, COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101 <input checked="" type="checkbox"/> CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, FAMILY COURT, 1501 6TH AVE., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, MADGE BRADLEY, 1409 4TH AVE., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123 <input type="checkbox"/> CENTRAL DIVISION, JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910	
PLAINTIFF(S) Citizens for Odor Nuisance Abatement	
DEFENDANT(S) City of San Diego; Todd Gloria; State of California	JUDGE Hon. Randa Trapp
IN THE MATTER OF <div style="text-align: right;">A MINOR</div>	DEPT C-70
PEREMPTORY CHALLENGE	CASE NUMBER 37-2013-00080906-CU-MC-CTL

Norman B. Blumenthal _____, is a party an attorney for a party in the above-entitled case and declares that Hon. Randa Trapp _____, the judge to whom this case is assigned, is prejudiced against the party or the party's attorney or the interests of the party or the party's attorney such that the said party or parties believe(s) that a fair and impartial trial or hearing cannot be had before such judge.

WHEREFORE, pursuant to the provisions of Code Civ. Proc. §170.6, I respectfully request that this court issue its order reassigning said case to another, and different, judge for further proceedings.

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

Date: 12/27/13 _____
 Signature

ORDER OF THE COURT

GRANTED - This case is referred to Presiding/Supervising Department for reassignment and a notice will be mailed to counsel.

DENIED

Date: _____

 Judge/Commissioner/Referee of the Superior Court

FOR OFFICE USE ONLY

This case has been reassigned to Judge _____ per Presiding/Supervising Judge _____ on _____.

1 BLUMENTHAL, NORDREHAUG & BHOWMIK

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9 Attorneys for Plaintiff

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF SAN DIEGO**

13
14
15 CITIZENS FOR ODOR NUISANCE
16 ABATEMENT, a California nonprofit
organization,

17 Plaintiff,

18 vs.

19 CITY OF SAN DIEGO; TODD GLORIA, an
individual named herein, only in his capacity
20 as Interim Mayor of the City of San Diego;
STATE OF CALIFORNIA; and DOES 1
21 through 10, Inclusive,

22 Defendants.

Case No. _____

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VERIFIED COMPLAINT FOR AN ORDER
TO SHOW CAUSE WHY THE FOUL
ODOR EMANATING FROM PUBLIC
LANDS CONTROLLED BY THE
DEFENDANTS CONSISTING OF THE
ROCKS ADJACENT TO THE LA JOLLA
COVE SHOULD NOT BE ORDERED
ABATED FORTHWITH AS A PUBLIC
NUISANCE; FOR AN ABATEMENT
ORDER OF A PUBLIC NUISANCE;
TEMPORARY RESTRAINING ORDER;
PRELIMINARY AND PERMANENT
INJUNCTION; DECLARATORY RELIEF;
WRIT OF MANDATE; and, FOR AN
ORDER ALLOWING PUBLIC ACCESS

1 patrons and revenues. As a direct result, the CITY OF SAN DIEGO has caused a public
2 nuisance in violation of California Code of Civil Procedure section 3479 which will continue
3 unless and until the City of San Diego is ordered to abate this public nuisance forthwith. Any
4 feigned concern for the safety of the pedestrians walking on the rocks should be given short shrift
5 as the installation of caution signs should be more than sufficient to protect the safety of the
6 pedestrians that assume the risk of walking on the rocks.
7

8 5. Allowing coastal access to the rocks does not eliminate the requirement of
9 members of the public to obey the Marine Mammal Protection Act and avoid harassing the sea
10 lions and other wildlife pursuant to San Diego Municipal Code section 63.0102(b)(10), which the
11 City should enforce. However, if the public were able to merely be allowed to make use of the
12 area as they did prior to the illegal fence being installed, the sea lions and cormorant birds would
13 be more likely to stay away from the upper part of the rocks where they are leaving excrement
14 causing foul odors as a result of the excrement not being washed away by high tides and wave
15 action in this area.
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17

18 6. The situation with the sea lions at the Cove is the opposite of the La Jolla
19 Children's Pool issue involving the harbor seals. Sea lions are much more agile on land than the
20 harbor seals. The sea lions, unlike the harbor seals, can climb high up on rocks and other
21 surfaces above the area the high tides reach. This is in contrast to the harbor seals at Children's
22 Pool, which are smaller, have tiny flippers, and are much less agile on land and require a sandy
23 beach to haul out which beach is subject to natural cleansing by the high tides. Due to their lack
24 of agility on land, the areas where the harbor seals defecate are within the mean high tide line, so
25 their waste is flushed into the ocean, feeding the fish and lobsters as part of the ocean ecosystem.
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1 For this reason, the Children's Pool seals are not the cause of the foul odor that is the subject of
2 this lawsuit.

3 7. The subject matter of this lawsuit is the foul, noxious and sickening odors
4 emanating from the excrement of cormorants and sea lions deposited on the rocks adjacent to the
5 La Jolla Cove caused by the City denying any human access to the rocks adjacent to the Cove by
6 means of the illegal construction without a permit by the City of a fence adjacent to the road to
7 keep out pedestrians. As a result, the sea lions and cormorants are utilizing this restricted area
8 mainly for defecating, which is causing noxious and foul odors. This area is not an area that is
9 necessary or biologically useful to them as sea lions and cormorants have the entire ocean to use
10 to defecate along with coastal areas that are subject to tidal action.

13 8. Attorneys for Plaintiff are the same attorneys who protected the La Jolla
14 Children's Pool harbor seal rookery by obtaining injunctive relief in federal court under the
15 Marine Mammal Protection Act to prevent state court ordered dispersal of the seals and
16 maintenance of a rope guideline to encourage people to keep a safe distance from the resting
17 seals in *La Jolla Friends of the Seals v. National Oceanic and Atmospheric Association*, U.S.
18 District Court for the Southern District of California case number 2008-CV-01847, and then
19 obtaining a judgment in state court overturning the original seal dispersal ruling in *Animal*
20 *Protection and Rescue League v. City of San Diego*, San Diego Superior Court case number 37-
21 2009-00093309 which resulted in La Jolla now enjoying world recognition and tourist dollars as
22 the home to the only mainland harbor seal rookery south of Carpinteria. There can therefore be
23 no doubt that Plaintiff and its attorneys are in favor of protection of marine mammals and seek
24 here only to balance this goal with coastal access and control of noxious odors. The harbor seals
25 as being much less agile and able to fend for themselves on land, and thus vulnerable to human
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1 encroachment need protection in their rookery at the Children's Pool, where they are born, rest,
2 and nurse; are not causing foul odors to the surrounding area. The sea lions at the Cove, on the
3 other hand, are much more agile and able to fend for themselves on land, do not use the rocks
4 overlooking the cove as a rookery, are not endangered, and are instead simply using the area as a
5 toilet due to the lack of presence of other land animals including humans in this area because of
6 the illegal fence erected by the City making this area one attractive for sea lions and cormorants
7 as a toilet.
8

9
10 **PARTIES**

11 9. Plaintiff Citizens for Odor Nuisance Abatement is a nonprofit corporation
12 organized and existing under the laws of California with its main offices in San Diego,
13 California. The individuals who comprise CITIZENS are persons who have been adversely
14 affected in their person and/or property as a result of the nuisance odors. CITIZENS was
15 established in 2013 to advocate for the abatement of odor nuisances. CITIZENS is funded by
16 donations of citizens who seek to protect the public from exposure to noxious odors that
17 adversely effect the public health and well being.
18

19 10. Defendant CITY OF SAN DIEGO is a municipal corporation and a charter city.
20 The CITY OF SAN DIEGO is responsible for maintaining the cliffs in and around the La Jolla
21 Cove free from noxious odors detrimental to the public health and well being.
22

23 11. Defendant TODD GLORIA is an individual who is the Mayor and chief
24 executive officer of the City of San Diego. TODD GLORIA is named herein only in his official
25 capacity of Interim Mayor and executive of the City of San Diego. In his role as Interim Mayor
26 and executive officer, TODD GLORIA is the person responsible for approving the course of
27 conduct and plan of action by the City with respect to the public nuisance in and around the cliffs
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1 at the Cove in La Jolla, as alleged herein. The implementation of the course of conduct and plan
2 of action by the City with respect to the noxious odors emanating from the Cove, as alleged
3 herein, is to be performed by City employees under the direction, supervision and control of
4
5 TODD GLORIA.

6 12. Defendant STATE OF CALIFORNIA is named as a defendant in accordance with
7 California Public Resources Code § 6308 which requires the State of California to be joined as a
8 “necessary party defendant” in any action involving the character or boundaries of tidelines.

9 13. PLAINTIFF is ignorant of the true names and capacities of the Defendants sued
10 herein as DOES 1 through 10, inclusive, and therefore sued these DOE Defendants by fictitious
11 names. PLAINTIFF will amend further this Complaint to allege the true names and capacities of
12 these DOE Defendants if and when they are ascertained. Each of these DOE Defendants, sued by
13 the fictitious DOE designation, was in some manner responsible for the acts, omissions, violation
14 of law, and/or other wrongdoing as alleged herein, all of which directly and proximately caused
15 or will cause damage and/or injury alleged herein. PLAINTIFF is further informed and believes
16 that said DOE Defendants, some of them, each of them and/or all or them were the participants
17 in the decision to commit this public nuisance.
18
19

20 **JURISDICTION AND VENUE**

21 14. This Court has jurisdiction over this action, and venue is proper in this Court
22 under California Code of Civil Procedure § 1060. CCP § 1060 expressly authorizes “Any
23 person... who desires a declaration of his or her rights with respect to another... may... bring an
24 original action or cross-complaint in the superior court.” Section 1060 further provides that “the
25 declaration [from the Court] may be had even before there has been any breach of the obligation
26 with respect to which said declaration is sought.” Further, this Court has jurisdiction over this
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1 action, and venue is proper in the Court under California Code of Civil Procedure §525, et seq.,
2 and California Code of Civil Procedure § 393 and § 394.

3
4 **FACTUAL ALLEGATIONS**

5 15. Sea lions and cormorants have congregated at the La Jolla Cove in increasing
6 numbers since the City fenced off the bluffs at the Cove in La Jolla. The marine mammals'
7 waste, fueled by a fish-based diet, smells even worse than the smell emanating from the waste of
8 their feathered counterparts. The picturesque cove grabbed national headlines last year when
9 guano from cormorants, pelicans and gulls transformed a coastal gem into a civic nuisance.
10 Many local businesses in La Jolla have complained that the smell of the excrement deposited by
11 the sea lions and birds wafted, drive away diners and shoppers, costing local businesses losses of
12 tens of thousands of dollars. After examining - and ruling out - potential remedies ranging from
13 falconry to fire hoses, the city hired the company Blue Eagle to apply a nontoxic bacterial
14 solution to the bird droppings. The solution apparently dissolved the bird poop without polluting
15 the nearby ocean or harming wildlife. The company finished its final phase of treatment around
16 the end of September of 2013 and noticeably reduced the bird poop odor.

17
18
19 16. Curiously, the stench returned. Even after a second application of a microbial
20 agent that digests the bird guano was applied in September of 2013. The City admits the source
21 of the smell is now excrements from sea lions at La Jolla Cove.

22
23 17. Keith Markel, a consulting biologist hired by the City this year to oversee cleanup
24 of the Cove, said the odor is different today than it was at the beginning of the year, though it is
25 still very bad. The strong, burning ammonia smell from the bird poop is more or less gone. The
26 sea lion excrement is the dominant smell coming from the Cove at this point, and the cause is the
27 adult sea lions that were off during the spring and summer months on the island rookeries are
28

1 now back. There is a wide variability in the smell of sea lion excrement, based on conditions
2 such as their diet.

3 18. Some observers had suspected for a while that the sea lions caused this latest
4 stink, and their theory was recently affirmed by city officials. The sea lions' fondness for certain
5 fish compounds the problem. A staple in their diet are anchovies, which makes the smell much
6 worse than it might otherwise be. If the sea lions feed on a large school of very greasy fish like
7 anchovies or sardines, they bring all that back and dump it on the rocks in La Jolla Cove.
8 However, if the sea lions feed mostly on local rock fish and low-oil fish, the smell is not nearly
9 as bad. The adult sea lions climb up higher on the rocks than the tides reach, thereby defecating
10 in areas that are not cleansed by tides. The smell from the sea lions' urine is also a factor
11 contributing to the noxious odors at the Cove.
12

13 19. The smell is driving away customers from local businesses and many La Jolla area
14 restaurants causing lost revenues of tens of thousands of dollars. The professional boxer Floyd
15 Mayweather, for example, recently booked two villas and six rooms for his entourage at the
16 historic waterfront hotel La Valencia, but checked out 15 minutes after arriving because of the
17 noxious odors emanating from the La Jolla Cove. That is over \$5,000 in one day's rooms
18 revenue that walked in and out of the La Valencia Hotel as a result of the noxious smell
19 emanating from the cliffs.
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22 20. In an e-mailed statement, Interim Mayor Todd Gloria told the *La Jolla Light* the
23 City is well aware of the ongoing concerns about the odor near La Jolla Cove and that he was
24 investigating mitigation options with various city departments and Councilmember Lightner's
25 office, but no action has been taken. Lightner's office has looked at best practices from other
26 cities and municipalities up and down the California Coast who deal with the same issues such as
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1 Pacific Grove, San Francisco, and Santa Barbara, but has offered no solution.

2 21. Sea lions, like the cormorant birds, congregate at La Jolla Cove near a bluff that
3 has been illegally ruled off-limits to pedestrians by the City. One owner of a local La Jolla Cove
4 restaurant made waves recently when he hopped the fence blocking off the bluffs and the sea
5 lions retreated in his presence.
6

7 22. The Plaintiff brings this action against the City to show cause why the City should
8 not be ordered to remove the illegally constructed fence forthwith or otherwise act to abate the
9 nuisance so the sea lions and cormorant birds will move to less-populated areas as the city has
10 admitted that the public is entitled to access to this public area. If people are allowed on the
11 bluffs, the animals will stop using it as an area to defecate, and as a result the smell will, over
12 time, go away, patrons will return and this sad chapter of the La Jolla Cove smelling like a sewer
13 will mercifully end.
14
15

16 **FIRST CAUSE OF ACTION**

17 **FOR AN ORDER TO SHOW CAUSE WHY THE FOUL ODOR EMANATING FROM**
18 **THE PUBLIC LANDS CONTROLLED BY THE CITY SHOULD NOT BE ORDERED**
19 **ABATED FORTHWITH AS A PUBLIC NUISANCE AND FOR AN ABATEMENT**
20 **ORDER OF A PUBLIC NUISANCE**

21 **[Violation of California Civil Code §§ 3479 & 3480]**

22 23. PLAINTIFF alleges and incorporates by reference each and every allegation
23 contained in the paragraphs above, as if set forth fully in this cause of action.
24

25 24. California Civil Code section 3479 defines any acts constituting a nuisance as
26 “[a]nything which is injurious to health, including, but not limited to, illegal sales of controlled
27 substances, or is indecent or offensive to the senses, or an obstruction to the free use of property,
28 so as to interfere with the comfortable enjoyment of life or property” A public nuisance is

1 defined under California Civil Code section 3480, in relevant part, as “one which affects at the
2 same time an entire community or neighborhood, or any considerable number of persons . . .”

3 25. California Civil Code section 3493 states “[a] private person may maintain an
4 action for a public nuisance, if it is specially injurious to himself, but not otherwise.”

5 26. DEFENDANTS’ activities, conduct and/or actions in and around the cliffs at the
6 La Jolla Cove is a continuing public nuisance as defined in California Civil Code sections 3479
7 and 3480. It is injurious to the health, offensive to the senses, and obstructs the free use of public
8 and private property to San Diego City citizens, so as to interfere with the comfortable enjoyment
9 of life or property. DEFENDANTS’ activities, conduct, and/or actions affect the entire
10 community or neighborhood, including the businesses located in the surrounding area and the
11 nearby residential neighborhood.
12

13 27. DEFENDANTS are creating, maintaining, and assisting in the creation and
14 maintenance of this public nuisance in the City of San Diego, and more specifically in and
15 around the cliffs at the Cove in La Jolla by doing nothing to abate this public nuisance. In
16 particular, the failure to abate the nuisance above the Cove and the emanating noxious odors that
17 stem for the excrement deposited thereon is substantially and unreasonably interfering with the
18 public rights of public health and public safety within the City of San Diego as is the fence
19 constructed by the City keeping humans off the cliffs. This public nuisance is affecting
20 PLAINTIFF and a considerable number of San Diego residents and DEFENDANTS have been
21 promoting the creation and/or maintenance of this nuisance by causing, permitting, condoning or
22 deliberately ignoring the excrement in and around the cliffs at the Cove in La Jolla and the
23 resulting noxious stench emanating therefrom and building a fence keeping humans off the rocks.
24
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27 28. PLAINTIFF believes that DEFENDANTS will continue to maintain the properties
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1 in the above-described condition, thereby causing irreparable injury and harm to the public
2 health, safety, and welfare unless ordered to act forthwith.

3 29. PLAINTIFF has no plain, speedy, or adequate remedy at law to prevent
4 DEFENDANTS from continuing to maintain the above-described public nuisance. The public
5 nuisance will be maintained unless abatement is ordered by this Court.
6

7 30. DEFENDANTS have not taken any meaningful measures to permanently correct
8 these violations and continues to maintain the public nuisance conditions. PLAINTIFF believes
9 that DEFENDANTS will not correct these violations or abate the nuisance within a reasonable
10 time unless so ordered by this Court.
11

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13 **SECOND CAUSE OF ACTION**

14 **FOR A TEMPORARY RESTRAINING ORDER, A PRELIMINARY**
15 **INJUNCTION AND A PERMANENT INJUNCTION**
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17 31. PLAINTIFF alleges and incorporates by reference each and every allegation
18 contained in the paragraphs above, as if set forth fully in this cause of action.

19 32. PLAINTIFF brings this claim for a temporary restraining order, for a preliminary
20 injunction and a permanent injunction under California Code of Civil Procedure section 525, et
21 seq., to restrain acts and conduct by the CITY OF SAN DIEGO and its agents, which violate
22 duties and obligations imposed by the public trust doctrine.
23

24 33. Continuing to the present time, DEFENDANTS have failed to remedy the noxious
25 odors stemming from sea lion excrement in and around the cliffs at the Cove in La Jolla as stated
26 herein. DEFENDANTS' wrongful conduct and the threat of harm, unless and until abated by
27 order of this Court, will cause great and irreparable injury to the local businesses, residents of
28

1 San Diego, visiting tourists, and thereby injury to the PLAINTIFF, their members and other
2 members of the general public as alleged herein.

3 34. DEFENDANTS are also improperly blocking coastal access by maintaining a
4 fence that prevents individuals from accessing the bluffs and rocks overlooking La Jolla Cove,
5 which is the primary cause of the odor problem.
6

7 35. PLAINTIFF has no adequate remedy at law for the injuries currently being
8 suffered and for the injuries that are threatened by DEFENDANTS' failure to properly maintain
9 and clean up the excrement in and around the cliffs at La Jolla Cove and the resulting noxious
10 odors emanating therefrom, in that the injury cannot be remedied by damages and that the
11 quantification of such damages will be impossible to determine. Further, unless and until abated
12 by order of this Court, the PLAINTIFF will be forced to institute a multiplicity of suits, because
13 the wrongful conduct by DEFENDANTS is of a repeating and continuing nature. Injunctive and
14 declaratory relief is expressly authorized by California Code of Civil Procedure sections 525 and
15 526a.
16
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18 36. PLAINTIFF has no adequate remedy at law for the injuries currently being
19 suffered and for the injuries that are threatened by DEFENDANTS' failure to properly maintain
20 and clean up the excrement in and around the cliffs at La Jolla Cove and the resulting noxious
21 odors emanating therefrom, in that the injury to the PLAINTIFF and the public cannot be
22 remedied by damages and that the quantification of such damages will be impossible to
23 determine. Further, unless and until abated by order of this Court, the PLAINTIFF will be forced
24 to institute a multiplicity of suits, because the wrongful conduct by DEFENDANTS is of a
25 repeating and continuing nature. A temporary restraining order, preliminary injunction and
26 permanent injunction are expressly authorized by California Code of Civil Procedure sections
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1 525 and 526a.
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4 **THIRD CAUSE OF ACTION**

5 **FOR DECLARATORY RELIEF**

6 37. PLAINTIFF alleges and incorporates by reference each and every allegation
7 contained in the paragraphs above, as if set forth fully in this cause of action.

8 38. PLAINTIFF brings this action for declaratory relief pursuant to California Code of
9 Civil Procedure section 1060. CCP section 1060 expressly authorizes "Any person... who
10 desires a declaration of his or her rights with respect to another... may... bring an original action
11 or cross-complaint in the superior court." Section 1060 further provides that "the declaration
12 [from the Court] may be had even before there has been any breach of the obligation with respect
13 to which said declaration is sought." DEFENDANTS have failed to remedy the noxious odors
14 stemming from sea lion and cormorant excrement in and around the cliffs at the Cove in La Jolla
15 as stated herein. PLAINTIFF contends that under the facts as herein alleged, DEFENDANTS'
16 failure to remedy the public nuisance in and around the cliffs at the Cove in La Jolla is illegal and
17 prohibited by California state law.

18 39. PLAINTIFF is therefore entitled to the relief requested in the Prayer to this
19 Complaint.

20 **FOURTH CAUSE OF ACTION**

21 **PETITION FOR WRIT OF MANDATE**

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23 40. PLAINTIFF alleges and incorporates by reference each and every allegation
24 contained in the paragraphs above, as if set forth at this point.

25 41. PLAINTIFF petitions for a writ of mandate under California Code of Civil
26 Procedure section 1084, et seq. to compel the CITY OF SAN DIEGO and its agents to perform
27 acts and follow duties required by California law with respect to allowing coastal access and
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1 remedying the noxious odors stemming from sea lion excrement in and around the cliffs at the
2 Cove in La Jolla.

3 42. The CITY OF SAN DIEGO has a clear, present and ministerial duty to protect and
4 enforce the law. The law in this case protects the citizens of San Diego, local businesses, and
5 visiting tourists from the noxious odors that have crated a public nuisance at the Cove in La
6 Jolla. California law requires the CITY OF SAN DIEGO to remedy this public nuisance and
7 consider the health and well being of the city's residents, local businesses, and visiting tourists.
8

9 43. The CITY OF SAN DIEGO violated and continues to violate these duties to
10 protect the PLAINTIFF and the general public by intentionally neglecting the public nuisance
11 that has resulted from the sea lion and cormorant excrement in and around the cliffs at the Cove
12 in La Jolla.
13

14 44. PLAINTIFF is an organization consisting of individuals located in San Diego,
15 who have a beneficial interest in the issuance of a writ, in that PLAINTIFF are persons who have
16 been injured in their person or property as a result of the nuisance odors in and around the cliffs
17 at the La Jolla Cove. The issuance of a writ would enforce and protect the public. Finally, the
18 PLAINTIFF seeks enforcement of a public right, and on that basis, PLAINTIFF has standing to
19 compel compliance with the law.
20

21 45. At all times mentioned herein, the DEFENDANTS have been able to perform and
22 comply with the aforementioned duties. Notwithstanding such ability, the DEFENDANTS
23 continue to fail and refuse to perform such duties.
24

25 46. PLAINTIFF has no plain, speedy, and adequate remedy in the ordinary course of
26 law, other than the relief sought in this petition, in that the issue is one of great general
27 importance, and that a lengthy trial and appeal on the legal issues could result in unnecessary
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1 expenditures, illegal actions and harm to local citizens and merchants. In addition, by the actions
2 alleged herein, the DEFENDANTS have threatened, will cause, and/or have caused injury to the
3 public and local residents and businesses.
4

5
6 **PRAYER**

7 WHEREFORE, PLAINTIFF respectfully requests that the Court enter judgment in their
8 favor and against the DEFENDANT as follows:
9

10 1. Under California Civil Code section 3493, California Code of Civil Procedure
11 section 731 and the equitable powers of this Court, order DEFENDANTS to abate the public
12 nuisance described in this Complaint through the entry of a proper and suitable order to show
13 cause and a permanent injunction;

14 2. Issue a temporary restraining order and order to show cause to order the
15 DEFENDANTS from engaging in acts, conduct, or omissions of acts which violate the duties
16 and obligations imposed on DEFENDANTS by the California law to abate the public nuisance;

17 3. Order declaratory relief finding that DEFENDANTS has engaged in and/or
18 proposes to engage in acts or conduct which violate the duties and obligations imposed on
19 DEFENDANTS by California law;
20

21 4. Order injunctive relief enjoining DEFENDANTS and their officers, directors,
22 agents, distributors, servants, employees, attorneys, and all others in active concert or
23 participation with DEFENDANTS, or any of them, jointly and severally, during the pendency of
24 this action and permanently thereafter from actions which violate California law;
25

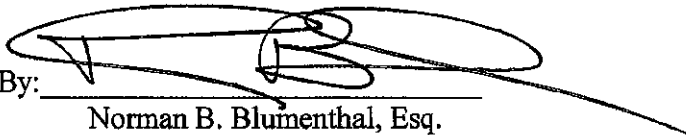
26 5. Issue a writ commanding DEFENDANTS to comply with the duties and
27 obligations imposed on DEFENDANTS by California law, or, in the alternative, show cause why
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1 it should not do so, and thereafter issue a peremptory writ commanding DEFENDANTS to
2 comply with the duties and obligations imposed on DEFENDANTS; and,

3 6. For costs of this proceeding and for such other and further relief as the court
4 deems just and proper.
5

6 Dated: December 19, 2013

BLUMENTHAL, NORDREHAUG & BHOWMIK

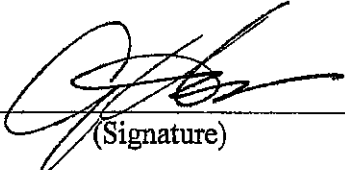
7
8 
9 By: _____
10 Norman B. Blumenthal, Esq.
11 Attorneys for Plaintiff
12
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1 VERIFICATION

2 I, George Hauer, am president of CITIZENS FOR ODOR NUISANCE ABATEMENT,
3 the Plaintiff in this action. I have read the foregoing Complaint and know the contents thereof.
4
5 The same is true of my own knowledge, except as to those matters which are alleged on
6 information and belief, and as to those matters, I believe it to be true.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct.

9
10 Dated: December 19, 2013

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13 By:  _____
14 (Signature)

15 printed name: George Hauer

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17
18
19 K:\D\Dropbox\Pending Litigation\Citizens-Odor Abatement\p-Complaint-draft.wpd

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

CITY OF SAN DIEGO; TODD GLORIA, an individual named herein, only in his capacity as Interim Mayor of the City of San Diego; STATE OF CALIFORNIA; and DOES 1 through 10, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

CITIZENS FOR ODOR NUISANCE ABATEMENT, a California nonprofit organization,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información e continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
Central**

330 W. Broadway, San Diego, CA 92101

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Norman Blumenthal (Bar # 68687)

Fax No.:(858) 551-1232

Blumenthal, Nordrehaug & Bhowmik, 2255 Calle Clara, La Jolla, CA 92037

Phone No.:(858) 551-1223

DATE:

Clerk, by

Deputy

(Fecha)

(Secretario)

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
 - under: CCP 416.10 (corporation) CCP 416.60 (minor)
 - CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 - CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 - other (specify):
4. by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Norman Blumenthal (Bar # 68687)
Kyle Nordrehaug (Bar # 205975)
 Blumenthal, Nordrehaug & Bhowmik
 2255 Calle Clara, La Jolla, CA 92037
 TELEPHONE NO.: (858) 551-1223 FAX NO.: (858) 551-1232
 ATTORNEY FOR (Name): **Plaintiff Citizens for Odor Nuisance Abatement**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF **SAN DIEGO**
 STREET ADDRESS: **330 W. Broadway**
 MAILING ADDRESS: **330 W. Broadway**
 CITY AND ZIP CODE: **San Diego 92101**
 BRANCH NAME: **Central**

CASE NAME:
CITIZENS FOR ODOR NUISANCE ABATEMENT v. CITY OF SAN DIEGO

FOR COURT USE ONLY

CASE NUMBER:

JUDGE:

DEPT:

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation

Counter **Joinder**

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|---|---|--|
| <p>Auto Tort</p> <p><input type="checkbox"/> Auto (22)
 <input type="checkbox"/> Uninsured motorist (46)</p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <p><input type="checkbox"/> Asbestos (04)
 <input type="checkbox"/> Product liability (24)
 <input type="checkbox"/> Medical malpractice (45)
 <input type="checkbox"/> Other PI/PD/WD (23)</p> <p>Non-PI/PD/WD (Other) Tort</p> <p><input type="checkbox"/> Business tort/unfair business practice (07)
 <input type="checkbox"/> Civil rights (08)
 <input type="checkbox"/> Defamation (13)
 <input type="checkbox"/> Fraud (16)
 <input type="checkbox"/> Intellectual property (19)
 <input type="checkbox"/> Professional negligence (25)
 <input type="checkbox"/> Other non-PI/PD/WD tort (35)</p> <p>Employment</p> <p><input type="checkbox"/> Wrongful termination (36)
 <input type="checkbox"/> Other employment (15)</p> | <p>Contract</p> <p><input type="checkbox"/> Breach of contract/warranty (06)
 <input type="checkbox"/> Rule 3.740 collections (09)
 <input type="checkbox"/> Other collections (09)
 <input type="checkbox"/> Insurance coverage (18)
 <input type="checkbox"/> Other contract (37)</p> <p>Real Property</p> <p><input type="checkbox"/> Eminent domain/Inverse condemnation (14)
 <input type="checkbox"/> Wrongful eviction (33)
 <input type="checkbox"/> Other real property (26)</p> <p>Unlawful Detainer</p> <p><input type="checkbox"/> Commercial (31)
 <input type="checkbox"/> Residential (32)
 <input type="checkbox"/> Drugs (38)</p> <p>Judicial Review</p> <p><input type="checkbox"/> Asset forfeiture (05)
 <input type="checkbox"/> Petition re: arbitration award (11)
 <input type="checkbox"/> Writ of mandate (02)
 <input type="checkbox"/> Other judicial review (39)</p> | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <p><input type="checkbox"/> Antitrust/Trade regulation (03)
 <input type="checkbox"/> Construction defect (10)
 <input type="checkbox"/> Mass tort (40)
 <input type="checkbox"/> Securities litigation (28)
 <input type="checkbox"/> Environmental/Toxic tort (30)
 <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p>Enforcement of Judgment</p> <p><input type="checkbox"/> Enforcement of judgment (20)</p> <p>Miscellaneous Civil Complaint</p> <p><input type="checkbox"/> RICO (27)
 <input checked="" type="checkbox"/> Other complaint (not specified above) (42)</p> <p>Miscellaneous Civil Petition</p> <p><input type="checkbox"/> Partnership and corporate governance (21)
 <input type="checkbox"/> Other petition (not specified above) (43)</p> |
|---|---|--|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. Large number of separately represented parties
 b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
 c. Substantial amount of documentary evidence
 d. Large number of witnesses
 e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 f. Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **FOUR (4)**
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **December 19, 2013**
Norman Blumenthal
 (TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.