

Pacaso Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

PACASO INC. and PAC 6 CA 2021 LLC,

Plaintiff(s)

v.

THE CITY OF ST. HELENA; PLANNING AND BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY ETHAN WALSH; DOE DEFENDANTS # 1 – 5,

Defendant(s)

Civil Action No. 4:21-cv-02493 KAW

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) The City of St. Helena; Planning and Building Director Maya DeRosa; Mayor Geoff Ellsworth; City Attorney Ethan Walsh

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Lance A. Etcheverry
Caroline Van Ness
Ashley Phillips
Osama Alkhawaja
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Avenue, Suite 1400
Palo Alto, California 94301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 4/8/2021



CLERK OF COURT
Susan Y. Soong

Signature of Susan Y. Soong

Signature of Clerk or Deputy Clerk

Pacaso Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

PACASO INC. and PAC 6 CA 2021 LLC,

Plaintiff(s)

v.

THE CITY OF ST. HELENA; PLANNING AND BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY ETHAN WALSH; DOE DEFENDANTS # 1 - 5,

Defendant(s)

Civil Action No. 3:21-cv-02493

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) The City of St. Helena; Planning and Building Director Maya DeRosa; Mayor Geoff Ellsworth; City Attorney Ethan Walsh

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Lance A. Etcheverry
Caroline Van Ness
Ashley Phillips
Osama Alkhawaja
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Avenue, Suite 1400
Palo Alto, California 94301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 3:21-cv-02493

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

From: ECF-CAND@cand.uscourts.gov
To: efilings@cand.uscourts.gov
Subject: [Ext] Activity in Case 3:21-cv-02493-KAW Pacaso Inc. et al v. City of St. Helena et al
Electronic Filing Error
Date: 4/7/2021 8:59:00 AM
CC:
BCC:

Message:

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

California Northern District

Notice of Electronic Filing

The following transaction was entered on 4/7/2021 at 8:59 AM and filed on 4/7/2021

Case Name: Pacaso Inc. et al v. City of St. Helena et al

Case Number: 3:21-cv-02493-KAW

Filer:

Document Number: No document attached

Docket Text:

Electronic filing error. Notice to Counsel: Summons cannot be issued to Doe Defendants. Counsel is directed to remove Doe Defendants #1-5 from the summons and re-file. [err102] This filing will not be processed by the clerks office. Re:[2] Proposed Summons filed by PAC 6 CA 2021 LLC, Pacaso Inc. (bnsS, COURT STAFF) (Filed on 4/7/2021)

3:21-cv-02493-KAW Notice has been electronically mailed to:

Caroline W Van Ness caroline.vanness@skadden.com

Lance Allan Etcheverry lance.etccheverry@skadden.com, ashley.phillips@skadden.com,
candice.spoon@skadden.com, caroline.vanness@skadden.com, dlmlclac@skadden.com,

nberglun@skadden.com, osama.alkhawaja@skadden.com

3:21-cv-02493-KAW Please see Local Rule 5-5; Notice has NOT been electronically mailed to:

Pacaso Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
Northern District of California

PACASO INC. and PAC 6 CA 2021 LLC,

Plaintiff(s)

v.

THE CITY OF ST. HELENA; PLANNING AND BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY ETHAN WALSH; DOE DEFENDANTS # 1 - 5,

Defendant(s)

Civil Action No. 3:21-cv-02493

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) The City of St. Helena; Planning and Building Director Maya DeRosa; Mayor Geoff Ellsworth; City Attorney Ethan Walsh; Doe Defendants # 1 - 5

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Lance A. Etcheverry
Caroline Van Ness
Ashley Phillips
Osama Alkhawaja
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Avenue, Suite 1400
Palo Alto, California 94301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT OF CASE
TO A UNITED STATES MAGISTRATE JUDGE FOR TRIAL

Pursuant to General Order 44, the Assignment Plan of the United States District Court for the Northern District of California, this case has been randomly assigned to a Magistrate Judge.

Pursuant to 28 U.S.C. § 636(c), with written consent of all parties, a magistrate judge may conduct all proceedings in a case, including all pretrial and trial proceedings, entry of judgment and post-trial motions. Appeal will be directly to the United States Court of Appeals for the Ninth Circuit.

Attached is a form to complete to indicate whether you consent to proceed before the assigned magistrate judge or decline to proceed before the assigned magistrate judge. This form is also available from the Court's website: cand.uscourts.gov/civilforms. You are free to withhold consent without adverse consequences. If any party declines, the case will be reassigned to a district judge.

If you are the plaintiff or removing party in this case, you must file your consent/declination form within 14 days of receipt of this notice. Each other party must file its consent/declination form within 14 days of appearing in the case.

The plaintiff or removing party must serve a copy of this notice upon all other parties to this action.

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. C

CONSENT OR DECLINATION
TO MAGISTRATE JUDGE
JURISDICTION

v. Plaintiff(s)

Defendant(s).

INSTRUCTIONS: Please indicate below by checking **one** of the two boxes whether you (if you are the party) or the party you represent (if you are an attorney in the case) choose(s) to consent or decline magistrate judge jurisdiction in this matter. Sign this form below your selection.

Consent to Magistrate Judge Jurisdiction

In accordance with the provisions of 28 U.S.C. § 636(c), I voluntarily **consent** to have a United States magistrate judge conduct all further proceedings in this case, including trial and entry of final judgment. I understand that appeal from the judgment shall be taken directly to the United States Court of Appeals for the Ninth Circuit.

OR

Decline Magistrate Judge Jurisdiction

In accordance with the provisions of 28 U.S.C. § 636(c), I **decline** to have a United States magistrate judge conduct all further proceedings in this case and I hereby request that this case be reassigned to a United States district judge.

DATE: _____

NAME: _____

COUNSEL FOR
(OR "PRO SE"): _____

Signature

**STANDING ORDER FOR ALL JUDGES
OF THE NORTHERN DISTRICT OF CALIFORNIA**

CONTENTS OF JOINT CASE MANAGEMENT STATEMENT

All judges of the Northern District of California require identical information in Joint Case Management Statements filed pursuant to Civil Local Rule 16-9. The parties must include the following information in their statement which, except in unusually complex cases, should not exceed ten pages:

1. **Jurisdiction and Service**: The basis for the court's subject matter jurisdiction over plaintiff's claims and defendant's counterclaims, whether any issues exist regarding personal jurisdiction or venue, whether any parties remain to be served, and, if any parties remain to be served, a proposed deadline for service.
2. **Facts**: A brief chronology of the facts and a statement of the principal factual issues in dispute.
3. **Legal Issues**: A brief statement, without extended legal argument, of the disputed points of law, including reference to specific statutes and decisions.
4. **Motions**: All prior and pending motions, their current status, and any anticipated motions.
5. **Amendment of Pleadings**: The extent to which parties, claims, or defenses are expected to be added or dismissed and a proposed deadline for amending the pleadings.
6. **Evidence Preservation**: A brief report certifying that the parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information ("ESI Guidelines"), and confirming that the parties have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action. *See ESI Guidelines 2.01 and 2.02, and Checklist for ESI Meet and Confer.*
7. **Disclosures**: Whether there has been full and timely compliance with the initial disclosure requirements of Fed. R. Civ. P. 26, and a description of the disclosures made.
8. **Discovery**: Discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or modifications of the discovery rules, a brief report on whether the parties have considered entering into a stipulated e-discovery order, a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f), and any identified discovery disputes.
9. **Class Actions**: If a class action, a proposal for how and when the class will be certified, and whether all attorneys of record for the parties have reviewed the Procedural Guidance for Class Action Settlements.
10. **Related Cases**: Any related cases or proceedings pending before another judge of this court, or before another court or administrative body.
11. **Relief**: All relief sought through complaint or counterclaim, including the amount of any damages sought and a description of the bases on which damages are calculated. In addition, any party from whom damages are sought must describe the bases on which it contends damages should be calculated if liability is established.

12. Settlement and ADR: Prospects for settlement, ADR efforts to date, and a specific ADR plan for the case, including compliance with ADR L.R. 3-5 and a description of key discovery or motions necessary to position the parties to negotiate a resolution.
13. Consent to Magistrate Judge For All Purposes: Whether all parties will consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment. ___ Yes ___ No
14. Other References: Whether the case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.
15. Narrowing of Issues: Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses.
16. Expedited Trial Procedure: Whether this is the type of case that can be handled under the Expedited Trial Procedure of General Order No. 64 Attachment A. If all parties agree, they shall instead of this Statement, file an executed Agreement for Expedited Trial and a Joint Expedited Case Management Statement, in accordance with General Order No. 64 Attachments B and D.
17. Scheduling: Proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and trial.
18. Trial: Whether the case will be tried to a jury or to the court and the expected length of the trial.
19. Disclosure of Non-party Interested Entities or Persons: Whether each party has filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-15. In addition, each party must restate in the case management statement the contents of its certification by identifying any persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding. In any proposed class, collective, or representative action, the required disclosure includes any person or entity that is funding the prosecution of any claim or counterclaim.
20. Professional Conduct: Whether all attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.
21. Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.

From: ECF-CAND@cand.uscourts.gov
Sent: Thursday, April 8, 2021 12:37 PM
To: efilings@cand.uscourts.gov
Subject: [Ext] Activity in Case 4:21-cv-02493-KAW Pacaso Inc. et al v. City of St. Helena et al
Clerk's Notice of Impending Reassignment - Text Only

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

California Northern District

Notice of Electronic Filing

The following transaction was entered on 4/8/2021 at 12:36 PM and filed on 4/8/2021

Case Name: Pacaso Inc. et al v. City of St. Helena et al

Case Number: 4:21-cv-02493-KAW

Filer:

Document Number: 9(No document attached)

Docket Text:

CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured. You will be informed by separate notice of the district judge to whom this case is reassigned.

ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED.

This is a text only docket entry; there is no document associated with this notice. (dtmS, COURT STAFF) (Filed on 4/8/2021)

4:21-cv-02493-KAW Notice has been electronically mailed to:

Caroline W Van Ness caroline.vanness@skadden.com

Lance Allan Etcheverry lance.etccheverry@skadden.com, ashley.phillips@skadden.com, candice.spoon@skadden.com,

caroline.vanness@skadden.com, dlmlclac@skadden.com, nberglun@skadden.com, osama.alkhawaja@skadden.com

4:21-cv-02493-KAW Please see Local Rule 5-5; Notice has NOT been electronically mailed to:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Pacaso Inc., et al.,

Plaintiff(s),

v.

City of St. Helena, et al.,

Defendant(s).

Case No. 3:21-cv-02493-KAW

**CONSENT OR DECLINATION
TO MAGISTRATE JUDGE
JURISDICTION**

INSTRUCTIONS: Please indicate below by checking **one** of the two boxes whether you (if you are the party) or the party you represent (if you are an attorney in the case) choose(s) to consent or decline to magistrate judge jurisdiction in this matter. Sign this form below your selection.

CONSENT to Magistrate Judge Jurisdiction

In accordance with the provisions of 28 U.S.C. § 636(c), I voluntarily **consent** to have a United States magistrate judge conduct all further proceedings in this case, including trial and entry of final judgment. I understand that appeal from the judgment shall be taken directly to the United States Court of Appeals for the Ninth Circuit.

OR

DECLINE Magistrate Judge Jurisdiction

In accordance with the provisions of 28 U.S.C. § 636(c), I **decline** to have a United States magistrate judge conduct all further proceedings in this case and I hereby request that this case be reassigned to a United States district judge.

DATE: April 8, 2021

NAME: Lance A. Etcheverry

/s/ Lance A. Etcheverry

Signature

COUNSEL FOR
(OR "PRO SE"): Pacaso Inc. and PAC 6 CA 2021
LLC.

United States District Court Northern District of California

ECF Registration Information

Electronic Case Filing (ECF or "e-filing") is mandatory for all civil cases in this court. Please refer to Civil Local Rule 5-1 for the Court's rules pertaining to electronic filing. Effective August 19, 2013, e-filing of initiating documents (complaints; notices of removal) is allowed, but is not mandatory; all other documents must be e-filed in civil cases.

Parties who are representing themselves pro se (without attorney representation) are not required to e-file and, in fact, may e-file only with the permission of the assigned judge.

Please review and attend to the following important notes and tasks:

- Serve this ECF Registration Information Handout on all parties in the case along with the complaint or removal notice and the other documents generated by the court upon filing.
- If not already registered, each attorney in the case must register to become an e-filer at cand.uscourts.gov/ECF. Your ECF registration is valid for life in this district; please do not register more than once.

IMPORTANT NOTICE: by signing and submitting to the court a request for an ECF user id and password, you consent to entry of your email address into the court's electronic service registry for electronic service on you of all e-filed papers, pursuant to rules 77 and 5(b)(2)(d) of the Federal Rules of Civil Procedure.

- If you are a party and do not have an attorney and would like to e-file in the case, please visit cand.uscourts.gov/ECF/proseregistration for instructions and information. Unless and until the assigned judge has given you permission to e-file, you are required to file and serve papers in hard copy (paper) form.
- Access dockets and documents using your PACER (Public Access to Court Electronic Records) account. If your firm already has a PACER account, please use that account. It is not necessary to have individual PACER accounts for each user in your office. To set up an account, visit: pacer.gov or call (800) 676-6856.

ECF interactive tutorials, instructions for e-filing and other information are available at cand.uscourts.gov/ECF.

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PACASO INC., et al.,
Plaintiffs,
v.
CITY OF ST. HELENA, et al.,
Defendants.

Case No. 21-cv-02493-KAW

**ORDER SETTING INITIAL CASE
MANAGEMENT CONFERENCE
AND ADR DEADLINES**

IT IS HEREBY ORDERED that this action is assigned to the Honorable Kandis A. Westmore . When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order, the Notice of Assignment of Case to a United States Magistrate Judge for Trial, and all other documents specified in Civil Local Rule 4-2. Plaintiffs or removing parties must file a consent or declination to proceed before a magistrate judge within 14 days of the filing of the complaint or the removal. All other parties must file a consent or declination within 14 days of appearing in the case. All parties who have made an appearance must file a consent or declination within 7 days of the filing of a dispositive motion or the case will be reassigned to a district court judge. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients shall familiarize themselves with that rule and with the material entitled "Dispute Resolution Procedures in the Northern District of California" on the Court ADR Internet site at <http://www.cand.uscourts.gov/adr>. A limited number of printed copies are available from the Clerk's Office for parties in cases not subject to the court's Electronic Case Filing program (ECF).

IT IS FURTHER ORDERED that plaintiff or removing defendant serve upon all parties

1 the brochure entitled "Consenting To A Magistrate Judge's Jurisdiction In The Northern District
 2 Of California", additional copies of which can be downloaded from the court's Internet website:
 3 <http://www.cand.uscourts.gov>.

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 5 **CASE SCHEDULE – ADR MULTI-OPTION PROGRAM**

Date	Event	Governing Rule
4/6/2021	Complaint Filed	
6/15/2021	*Last day to: • meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan	FRCivP 26(f) & ADR L.R.3-5
	• file ADR Certification signed by Parties and Counsel (form available at http://www.cand.uscourts.gov)	Civil L.R. 16-8(b) & ADR L.R. 3-5(b)
6/29/2021	**Last day to file Rule 26(f) Report, complete initial disclosures or state objection in Rule 26(f) Report and file Case Management Statement per Standing Order re Contents of Joint Case Management Statement (also available at http://www.cand.uscourts.gov)	FRCivP 26(a) (1) Civil L.R. 16-9
7/6/2021	INITIAL CASE MANAGEMENT CONFERENCE (CMC) at 1:30 PM in: Courtroom TBD Ronald Dellums Federal Building 1301 Clay Street Oakland, CA 94612	Civil L.R. 16-10

22 * If the Initial Case Management Conference is continued, unless otherwise ordered this deadline is continued to 21
 23 days in advance of the Initial Case Management Conference.

24 ** If the Initial Case Management Conference is continued, unless otherwise ordered this deadline is continued to 7
 25 days in advance of the Initial Case Management Conference.

United States District Court
 Northern District of California

Pacaso Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

PACASO INC. and PAC 6 CA 2021 LLC,

Plaintiff(s)

v.

THE CITY OF ST. HELENA; PLANNING AND BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY ETHAN WALSH; DOE DEFENDANTS # 1 – 5,

Defendant(s)

Civil Action No. 3:21-cv-02493

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) The City of St. Helena; Planning and Building Director Maya DeRosa; Mayor Geoff Ellsworth; City Attorney Ethan Walsh; Doe Defendants # 1 – 5

A lawsuit has been filed against you.

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Lance A. Etcheverry
Caroline Van Ness
Ashley Phillips
Osama Alkhawaja
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Avenue, Suite 1400
Palo Alto, California 94301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

1 LANCE A. ETCHEVERRY (SBN 199916)
 Lance.Etcheverry@skadden.com
 2 CAROLINE VAN NESS (SBN 281675)
 Caroline.VanNess@skadden.com
 3 ASHLEY PHILLIPS (SBN 318397)
 Ashley.Phillips@skadden.com
 4 OSAMA ALKHAWAJA (SBN 334404)
 Osama.Alkhawaja@skadden.com
 5 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
 525 University Avenue, Suite 1400
 6 Palo Alto, California 94301
 Telephone: (650) 470-4500
 7 Facsimile: (650) 470-4570

8 *Attorneys for Plaintiffs*
 PACASO INC. and PAC 6 CA 2021 LLC

9
 10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**

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 14 PACASO INC. and PAC 6 CA 2021 LLC,

15 Plaintiffs,

16 v.

17 THE CITY OF ST. HELENA; PLANNING &
 18 BUILDING DIRECTOR MAYA DEROSA;
 19 MAYOR GEOFF ELLSWORTH; CITY
 20 ATTORNEY ETHAN WALSH; and DOES 1-
 21 5,

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 28 Defendants.

Case No.:3:21-cv-02493

**PLAINTIFFS PACASO INC.'S AND
 PAC 6 CA 2021 LLC'S
 CERTIFICATION OF INTERESTED
 ENTITIES OR PERSONS PURSUANT
 TO F.R.C.P. 7.1 AND CIVIL L.R. 3-15**

From: ECF-CAND@cand.uscourts.gov
To: efilng@cand.uscourts.gov
Subject: [Ext] Activity in Case 3:21-cv-02493-KAW Pacaso Inc. et al v. City of St. Helena et al
Case Assigned by Intake
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California Northern District

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Case Number: 3:21-cv-02493-KAW

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8 *Attorneys for Plaintiffs*
 PACASO INC. and PAC 6 CA 2021 LLC

9
 10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12

13 PACASO INC. and PAC 6 CA 2021 LLC,
 14
 Plaintiffs,

15 v.

16 THE CITY OF ST. HELENA; PLANNING &
 17 BUILDING DIRECTOR MAYA DEROSA;
 18 MAYOR GEOFF ELLSWORTH; CITY
 ATTORNEY ETHAN WALSH; and DOES 1-
 19 5.

20
 21 Defendants

Case No.:

COMPLAINT FOR:

- (1) DECLARATORY JUDGMENT;
- (2) DUE PROCESS VIOLATION;
- (3) SELECTIVE ENFORCEMENT;
- (4) INVALID USE OF MUNICIPAL AUTHORITY; AND
- (5) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

JURY TRIAL DEMANDED

1 Plaintiffs Pacaso Inc., a Delaware corporation, and PAC 6 CA 2021 LLC (collectively,
2 “Pacaso”), for their Complaint against the City of St. Helena (“the City” or “St. Helena”); Maya
3 DeRosa (“DeRosa”), in her capacity as Planning & Building Director of St. Helena; Geoff
4 Ellsworth (“Ellsworth”), in his capacity as Mayor of St. Helena; Ethan Walsh (“City Attorney
5 Walsh”), in his capacity as City Attorney of St. Helena; and Does 1 through 5 (collectively, the
6 “Defendants”), allege based on personal knowledge and on information and belief as follows:

7 **INTRODUCTION**

8 1. This case arises out of Defendants’ calculated and intellectually dishonest campaign
9 against Pacaso and its homeowners to violate their protected rights to share ownership of a single-
10 family home with others. Acting under the false pretense of enforcing the City’s time-share
11 ordinance, codified in Section 17.112.130 of the St. Helena Municipal Code (“Section
12 17.112.130”), Defendants have sought to preclude Pacaso and its homeowners from enjoying the
13 benefits of secondary home ownership in St. Helena—a privilege that they have sought to reserve
14 only for those in the upper echelon of financial status (*i.e.*, those who can afford to purchase and
15 own primary and second homes in St. Helena on their own, despite the astronomical housing prices
16 in the area). Sadly, this is just the latest chapter in a long history of improper attempts by the City
17 to exclude outsiders from the community. With Defendants now entrenched in this unprincipled
18 position, Pacaso has no choice but to seek judicial intervention to guarantee the legally-protected
19 rights of its homeowners to enjoy the benefits of owning property in the beautiful surrounds of
20 St. Helena.

21 2. Defendants’ crusade against Pacaso is based on manufactured, incorrect theories
22 about both the scope of Section 17.112.130 and Pacaso’s business model. One thing about Section
23 17.112.130 is clear: the Ordinance prohibits only “[t]he creation of a time-share project” in St.
24 Helena. But Pacaso homes are not time-shares, and Pacaso does not create “time-share project[s].”

25 3. Instead, Pacaso has introduced a new pathway for second home ownership that
26 provides individuals who have traditionally been excluded from the second home market an
27 opportunity to turn their dreams into reality. Pacaso eliminates several significant barriers to
28 second home ownership, including exorbitant costs, inevitable maintenance hassles, and even the

1 perceived guilt of having the home sit vacant. Pacaso prides itself in serving a diverse clientele,
2 underscoring the power of ownership to unlock new opportunities for traditionally
3 underrepresented communities. Its owner group is organically diverse: around two-thirds of
4 Pacaso homeowners in St. Helena and 25% of Pacaso's total owner group are non-white or identify
5 as LGBTQ+.

6 4. Pacaso's homeowners are not renters or investors. They co-own the home with up
7 to seven other homeowners. Pacaso's co-homeownership structure has no resemblance to
8 commercial or quasi-commercial use. Pacaso homeowners are true homeowners who make a
9 significant financial investment in their home, and are in it for the long-haul. They are directly
10 invested in the home, its surrounding neighborhood and community, and own for their personal use
11 and enjoyment, not for profit. Pacaso homeowners cannot sell their ownership stake during the
12 first year of ownership, and they are strictly prohibited from renting out the property at any point to
13 anyone.

14 5. Unlike absentee second home owners, Pacaso homeowners occupy their home and
15 support local businesses year-round, including those disproportionately impacted by COVID-19,
16 such as wineries, restaurants, and retail shops. What is more, Pacaso itself employs between 8-10
17 local businesses per property, including real estate agents, property managers, landscapers, pool
18 cleaners, home cleaners, laundry services, handymen, local artists, and more. Indeed, today, 60%
19 of all residential properties in St. Helena did not take the owner occupant exemption, which means
20 the owners patronize local businesses only a fraction of the year. In contrast, Pacaso homeowners
21 use and occupy their home year-round, just like a primary residence. In sum, Pacaso's
22 homeowners are part and parcel of the underlying economic ecosystem of St. Helena.

23 6. Pacaso is—and has always been—fully compliant with, and committed to
24 upholding, the laws and values of St. Helena. Despite the obvious opportunities to develop a
25 fruitful partnership, Defendants have rejected any attempt to embrace Pacaso and its homeowners
26 as the equal community members they are. Instead, they have taken aim at Pacaso, seemingly at
27 the behest of a few vocal St. Helena residents with improper outsider bias.

28

1 7. Defendants' recent challenge to Pacaso was launched less than a year after they first
2 attempted to regulate Pacaso, but were forced to accept that co-ownership structures like Pacaso's
3 are lawful and not subject to Section 17.112.130.

4 8. On July 14, 2020, reacting to "concerns" from neighbors about a listing for a Pacaso
5 home, then-acting City Attorney Karen Ueda prepared a Report to City Council (the "July 2020
6 Report" or "Report," attached as Ex. A hereto). Desperate for a way to regulate and control Pacaso
7 and its homeowners, the City Council directed City Attorney Ueda to evaluate the scope of Section
8 17.112.130 and whether it applied to Pacaso.

9 9. The answer was plainly "no." The July 2020 Report concluded that "a timeshare
10 use differs from a fractional or partial ownership of a property." Report at 323. Not only that, any
11 attempted regulation of this type of ownership would run afoul of a basic premise of the limits on
12 zoning authority: "[B]y law zoning regulations must focus on the *use* of the land." (Report at 325
13 (emphasis added).) The July 2020 Report acknowledged that this "fundamental challenge" could
14 not be cured by amendment to Section 17.112.130, because "zoning based solely on ownership, as
15 opposed to the use of the land, is impermissible." Report at 326.

16 10. On July 14, 2020, City Attorney Ueda presented the findings of the July 2020
17 Report to the City Council and reiterated that the zoning code cannot regulate based on the identity
18 of the homeowners: "Whether a residence is owned by a non-permanent city resident, for example,
19 who may use that residence as a second home, isn't an issue that can be regulated by the zoning
20 code. And so, *we can't regulate based on the identity of the owner or of a tenant.*"¹ July 13,
21 2020, Meeting at 3:20-21.

22 11. Extensive discussion ensued at that meeting about the limitations and impropriety of
23 the City attempting to regulate partial ownership of single-family homes as reflected in numerous
24 statements by City Council members including the Vice Mayor, including:

- 25 • Section 17.112.130 "was improperly written or inaccurately written" such that it
26 does not cover partial ownership of a single-family home like a Pacaso home.
27 (July 14, 2010, Meeting at 3:30.)

28 ¹ Recording of July 14, 2020 City Council Meeting ("July 14, 2020, Meeting"), available at
<https://sthelena.civicweb.net/document/42347?splitscreen=true&media=true×tamp=11860>.

- 1 • “My concern is that *we’re overreaching what we can do legally* though by, from
2 what I understand, *we can’t control how people own this*. They’re able to do it, and
3 so I don’t want us to go down the path of spending a lot of money *trying to find our*
4 *own way around what we can legally do*. And I think that *there’s other ways to*
5 *regulate that we have like in our ordinance* such as if there are loud noises, if that’s
6 the issue, if there’s loud partying after a certain amount of hours. That’s the kind of
7 thing that I’d be more interested in looking at than regulating who gets to own the
8 property if *this is something that by law can happen*.” (July 14, 2020, Meeting at
9 3:30-31.)
- 6 • “*What you want and what’s legal are entirely different matters*. I think *this is*
7 *driven by case law and civil rights law* and cases, you know, I could see the other
8 side of this issue that *we’re not in the business of regulating families and how*
9 *people come together to buy properties*.” (July 14, 2020, Meeting at 3:31-32.)
- 9 • “[W]e don’t want to go down a path where we’re going to get sued because that
10 doesn’t make any sense either, and then we need to focus on the issue, the noise and
11 the nuisance and be a little bit more robust on that part of it. . . . *I know the case*
12 *law is sort of against us on this*.” (July 14, 2020, Meeting at 3:32.)

11 12. In the face of these damning admissions—and without any changes in law or fact
12 since July 2020—Defendants decided to change course in early 2021, threatening that unless
13 Pacaso immediately ceased its efforts to market a home in St. Helena to prospective home buyers,
14 it would contact all real estate agents in the area to “educate” them on the “illegality” of Pacaso’s
15 ownership model. Despite admissions on the public record from Defendant Walsh that the City
16 had not yet been able to reconcile its newfound position with the clear guidance from former City
17 Attorney Ueda, Defendants nonetheless followed through on their threat in an effort to chill real
18 estate activity surrounding the Pacaso home—sending a letter to all real estate agents in the area
19 that threatened sanctions if agents were to sell a purported “timeshare” property that was then
20 currently listed on the MLS (*i.e.*, the Pacaso property). Defendants’ plan worked to perfection, as
21 Pacaso has been contacted by numerous real estate agents and potential buyers, concerned about
22 possible retribution from the City if they proceed with attempts to buy or sell the Pacaso property
23 in St. Helena.

24 13. Pursuing enforcement that is at odds with the City Attorney’s own position on
25 Section 17.112.130 is deeply problematic, violative of Pacaso’s rights, and confirms that its latest
26 attempt to interfere with Pacaso’s operations and homeowner activity is motivated by an improper
27 purpose.

28

1 14. Indeed, the City's reliance on Section 17.112.130 is nothing more than a pretext to
2 erect barriers and deny homeownership to new diverse residents, and to control *who* owns and
3 occupies a particular residence. This unlawful and exploitative conduct must be stopped.

4 **THE PARTIES**

5 15. Pacaso is a corporation formed under the laws of Delaware, doing business as
6 "Pacaso," and headquartered in San Francisco, California. Pacaso, which previously operated
7 under the brand name "Niner Homes," first started operations in 2020. It launched as Pacaso in
8 October 2020. Pacaso currently owns and/or manages at least five single-family homes in the City
9 of St. Helena.

10 16. PAC 6 CA 2021 LLC, a California limited liability company, is the property-
11 specific LLC that owns deeded title to 1242 Madrona Ave., a single-family residence located in St.
12 Helena.

13 17. The City of St. Helena is a municipality in Napa County, California and is part of
14 the North Bay Region of the San Francisco Bay Area. St. Helena is a General Law City and
15 operates a Council-City Manager style of government and derives its power from the California
16 Constitution and laws enacted by the State legislature.

17 18. Defendant Maya DeRosa is the Planning & Building Director of St. Helena. In this
18 role, she is responsible for reviewing, revising, and implementing St. Helena's General Plan and
19 zoning ordinances. She provides regular staff support for the City Council and Planning
20 Commission. As the Planning & Building Director, DeRosa has "the authority and powers
21 necessary to gain compliance with the provisions of this code and applicable state codes," and is
22 "considered to be [an] enforcement official[]." Section 1.12.040.

23 19. Defendant Geoff Ellsworth is the Mayor of St. Helena. The City Attorney acts
24 under the Mayor and City Council's direction. Defendant Ellsworth served as City Council
25 member from November 2016 until he was elected Mayor in November 2018. The Mayor presides
26 over City Council meetings, signs official documents, and officiates at ceremonies and events. The
27 Mayor is elected at-large to serve a two-year term as presiding officer at City Council meetings and
28 as the official head of the City for legislative purposes.

GENERAL ALLEGATIONS

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I. **Pacaso Seeks To Democratize Second Home Ownership In St. Helena**

24. Pacaso (formerly known as Niner Homes) launched in October of 2020 introducing a new pathway for second home ownership.

25. Pacaso currently owns and/or manages five single-family homes in the City of St. Helena.

26. Pacaso lowers the barriers to the second home market by simplifying and streamlining the co-ownership process by reducing costs and making ownership possible at a more accessible price point. Pacaso organizes the ownership group, manages the legal process, and provides a management service to streamline the home ownership process for the co-owners.

27. Pacaso further facilitates broader access to the second home market by allowing co-owners to buy partial interests in real property. Pacaso creates a property-specific LLC for each home, which owns deeded title to the real property. Then Pacaso organizes and vets a maximum of eight co-owners, who hold co-ownership interests in the LLC and co-own the home in increments ranging from 12.5% to 50%.

28. The co-owners can purchase their desired ownership interest based on their expected occupancy needs, financial means, and even in certain circumstances their desire to participate in the LLC with co-owners of their choosing. At closing, the co-owners enjoy 100% ownership in the property, and Pacaso's only role remains to serve, at the discretion of the homeowners, as program manager overseeing the LLC and employing local businesses to care for the home.

29. The concept of co-ownership through an LLC is far from new. In St. Helena, property ownership through LLCs or other vehicles that facilitate multiple owner arrangements is very common. But Pacaso simplifies the process in a novel way that makes the experience accessible to people who lack the resources or time to own and manage a whole second home. As a result, Pacaso has made second home ownership available to a broader set of people, including those in traditionally diverse and underrepresented communities.

1 30. In short, Pacaso’s model seeks to enrich the lives of new and diverse second home
2 owners and open the second home market, which has traditionally only been accessible to affluent
3 and predominantly white buyers. Pacaso specializes in top second home destinations and is
4 currently focused on 25 markets across 10 states.

5 31. This is especially true in St. Helena. In St. Helena, second home ownership has
6 typically been possible only for elite and predominantly white buyers, particularly on St. Helena’s
7 affluent west side. In contrast, Pacaso’s owner group is organically diverse; approximately 66% of
8 Pacaso homeowners in St. Helena and 25% of Pacaso’s total owner group are non-white or identify
9 as LGBTQ+.

10 **II. Pacaso Shifts Demand Away From The More Limited Supply Of Affordable Homes**
11 **And Ensures Second Homes Are Fully Utilized**

12 32. The workforce housing challenges in St. Helena are acute, and much of this
13 shortage can be attributed to second home buyers purchasing moderately priced whole homes.

14 33. Since 2018, only 7% of homes sold in St. Helena were sold below \$500,000, and
15 82% of those properties were purchased by second home buyers.

16 34. Pacaso’s approach helps relieve competition for more affordable homes by giving
17 second home buyers a better option. Instead of competing for a whole home valued at \$525,000,
18 for example, Pacaso offers second home buyers an option to be co-owners of a \$4-5 million
19 property for the same price. Just one Pacaso home can remove up to eight buyers from local
20 competition.

21 35. Second homes are notorious for sitting empty much of the year. In contrast, Pacaso-
22 managed homes are fully utilized, which means that Pacaso homeowners engage in their
23 community and support local businesses year-round.

24 36. Just like their neighbors, Pacaso homeowners make large financial investments in
25 their homes and bring an owner mentality, not a vacation mentality, to their use of the property.
26 Short-term rentals are strictly prohibited, and all owners agree to Pacaso’s policies, which prohibit
27 large events or parties. A Pacaso home in St. Helena is subject to all of the same noise and
28 nuisance ordinances that apply to other single-family residences.

1 III. In July 2020, The City Attorney And City Council Members Concluded That The
2 Time-Share Ordinance Does Not Regulate Co-Owned Homes, Conceding That The
3 Ordinance Does Not Apply To Pacaso

4 A. Overview Of Section 17.112.130, The City’s Time-Share Project Ban

5 37. The City of St. Helena has a time-share ordinance, codified in Section 17.112.130,
6 which states:

7 The creation of a *time-share project as a means of ownership* of any
8 single-family, two-family or multiple-family dwelling or any
9 apartment house shall be prohibited within the city.

10 38. Section 17.112.130 sets forth a series of definitions—which are both circular,
11 vague, and incomplete. For example, a “Time-sharing project” is defined as “any real property that
12 is subject to a time-share program.” Section 17.112.130(B).²

13 39. In turn, “time-share program” is defined to mean “any arrangement for time-share
14 intervals [which is later defined as either a time-share estate or a time-share use] in a time-sharing
15 project whereby the use, occupancy or possession of real property has been made subject to either a
16 time-share estate or time-share use whereby such use, occupancy or possession *circulates* among
17 *purchasers of the time-share intervals . . .*” *Id.* (emphasis added).

18 40. Section 17.112.130 defines “time-share estate” as ownership in a “property devoted
19 to a time-share fee” and “time-share use” means “any contractual right of exclusive occupancy,
20 which does not fall within the definition of a time share estate, including, without limitation, a
21 vacation license, prepaid hotel reservation, club membership, limited partnership, or vacation
22 bond.” *Id.*

23 B. Under Defendants’ Own Analysis, Section 17.112.130 Does Not Apply To
24 Pacaso

25 41. Defendants are carrying out an enforcement campaign against Pacaso that is *in*
26 *direct conflict* with a position that City Attorney Ueda took in a written report and oral presentation

27 ² The ordinance also defines “offering” as “any offer to sell, solicitation, inducement or
28 advertisement, whether by radio, television, newspaper, magazine or by mail, whereby a person is
given an opportunity to acquire a time-share interval of a residence within the city,” but “offering”
is not used anywhere in Section 17.112.130 or its definitions.

(cont’d)

1 to the City Council in July 2020.³

2 42. The July 2020 Report was undertaken based on purported “concerns raised by both
3 City residents and Council members after some residents discovered a real estate listing for a
4 fractional or partial ownership interest in a residential home in town.” Report at 323.⁴

5 43. As City Attorney Ueda and Maya DeRosa herself concluded, “timeshare use differs
6 from a fractional or partial ownership of a property.” *Id.*

7 44. Indeed, after laying out the “fairly circuitous definition”—as the City Attorney
8 described it—“to determine if a project is a prohibited timeshare or not,” the City Attorney
9 conceded the differences between a time-share and a fractional ownership:

10 What emerges from these various definitions is that a timeshare, as
11 defined in the City’s Zoning Code, *is not identical to a fractional or*
12 *partial ownership*; but, rather, a timeshare involves an ownership
13 arrangement where the owners have purchased an allotted amount of
14 time to use the property (a timeshare interval). The Code also notes
15 that timesharing projects have the same character as commercial
16 hotels and other transient uses. (Report at 324 (emphasis added).)

17
18
19 ³ DeRosa, in her capacity as Planning & Building Director of St. Helena and acting under the
20 color of law, *approved* the report and participated in the July 14, 2020 meeting at which its
21 findings were presented, which both concluded that the time-share ban does not apply to a co-
22 ownership models like Pacaso’s, and that Pacaso’s operations do not violate the ordinance.
23 Ellsworth, in his capacity as Mayor of St. Helena and acting under the color of law, and the City
24 Council also participated in July 14, 2020 meeting. *See* July 14, 2020, Meeting at 3:29; *see also*
25 <https://sthelena.civicweb.net/document/43063/Regular%20City%20Council%20-%2011%20Aug%202020.pdf?handle=838240E8400F467DA80B707D222A9EA8>. As such, Ellsworth was made
26 aware of the July 2020 report and the issues surrounding application of the time-share ordinance
27 against fractional or partial co-ownership structures.

28 ⁴ In the July 14, 2020 meeting regarding its findings, the discussion referenced “this
particular piece of property”—*i.e.*, the Pacaso home that was the subject of Defendants’ earlier
correspondence. July 14, 2020, Meeting at 3:35. That this “piece of property” is a Pacaso property
is confirmed by the fact that a City Council member stated that this property came to the attention
of the City by way of a complaint from neighbors, as indicated in the City’s May 22, 2020 Letter.
Further, City Attorney Ueda later confirmed during the discussion that the structure of the
“particular piece of property that we’re talking about” was through a corporation (which is the
exact structure of a Pacaso home).

1 45. The City Attorney further admitted that its time-share ordinance cannot regulate
2 “based solely on ownership”—which is exactly what the City’s recent challenge to Pacaso attempts
3 to do:

4 [Z]oning based solely on ownership, as opposed to the use of land, is
5 impermissible. Timeshare regulations should, thus, focus on the type
6 and use of the property and its related impacts, such as specific
7 intervals of exclusive occupancy that render the use more akin to a
8 transient commercial use. (Report at 326.)

9 46. The July 2020 Report identifies that this is indeed the goal of enforcement efforts
10 against Pacaso, stating that the analysis stems from “*a concern that non-permanent City residents*
11 *are purchasing property in St. Helena as a second home(s) either for themselves or their guests.*”
12 Report at 325. Thus, the City Attorney cautioned against the very path that it is now pursuing:
13 “[Z]oning regulations may not target individuals. In other words, the City may not adopt a zoning
14 regulation based on the identity of a tenant or where a particular resident permanently resides.” *Id.*
15 (citing *Friends of Davis v. City of Davis*, 83 Cal. App. 4th 1004, 1013 (2000)).

16 47. In fact, the City Council members were unable to state even *one permissible*
17 *purpose, goal or non-suspect reason* to justify application of the time-share ordinance against
18 partial co-ownership structures like Pacaso’s. Rather, the primary concern identified at the July
19 meeting was “different people coming in and out of the unit or house” (July 14, 2020, Meeting at
20 3:25):

21 I think what concerns me about [Pacaso homes] and what the
22 neighbors raised was, instead of having one family living next door
23 to you, you have maybe six, and you know they’d alternate when
24 they arrived and they felt, I think they alluded to it being like a short-
25 term rental. But it certainly maybe isn’t what the people think when
26 you buy a single-family dwelling in an area that is known for single-
27 family homes. I know over the years the definition of what’s a
28 family has gotten broadened, but I’m just wondering if there’s a way
to address the concerns of the neighbors if you see one because I’m
sympathetic to . . . what they’re saying. *We have multiple people*
next door coming in and out. It’s not really short term rental, but
what can we do about that? Anything? (July 14, 2020, Meeting at
3:24-25.)

48. This purported “reason” clearly targets individuals and “the identity of a tenant or
where a particular resident permanently resides”—which is strictly impermissible (*see infra* at

1 ¶¶ 113-127). In fact, the City Attorney was forced to admit that this was improper grounds for
2 invoking Section 17.112.130 and inconsistent with the purpose behind the ordinance:

3 If the issue is primarily that there are different people coming in and
4 out of the unit or house, then I'm not entirely sure what can be done
5 about that The direction that it's gone in, in terms of potential
6 regulation, is that *if there's a concern about impacts that are caused*
7 *from having too many people basically at a particular residence,*
8 *[then] those impacts can be addressed by current standards in place*
9 *for noise and parking standards and that type of thing.* So I think
10 it's one thing to talk about people versus you know the potential
11 impacts that could result. (July 14, 2020, Meeting at 3:25-26.)

12 49. The discussion of the July 2020 Report further confirmed Defendants' intent to
13 improperly target particular types of homeowners. Notably, City Attorney Ueda confirmed that the
14 City would ideally want to exclude *certain types of owners* based on family or friend relationships,
15 from being barred from partial ownership of a residence in St. Helena:

16 I do think the hardest part is really figuring out how to define the
17 issue and the scope, right, because if we're getting at multiple
18 ownership of one piece of property, it's really challenging to figure
19 out a way to define that that doesn't preclude people who really do
20 need to go buy a piece of property for financial reasons. . . . *They*
21 *may all be friends or family members, and I don't think that's the*
22 *type of activity that the City would want to preclude,* and that's the
23 challenge that we have in trying to figure out how to define this in a
24 way that would work. (July 14, 2020, Meeting at 3:33-34.)

25 50. City Attorney Ueda also stated concerns over the "significant practical challenges to
26 implementing and enforcing the existing timeshare regulations." Report at 325. This is because it
27 lacks visibility into each residence's ownership structure and "[t]he City does not have an easily
28 available means to scrutinize such agreements or monitor the terms of particular ownership
arrangements." *Id.* As a result, and by its own admission, the City's outreach to Pacaso is targeted
and arbitrary, based solely on a "tip" from a real estate agent.

51. Further, City Attorney Ueda conceded that the "City's code appears to try to . . .
regulate timeshare uses as a commercial use." Report at 325. As explained below, Pacaso homes
are strictly residential homes with no commercial purpose (*see infra* at ¶¶ 55-63).

52. In providing an example of a joint ownership scenario that *does not* trigger the
City's time-share prohibition, the City specifically described a scenario where a residence is owned
by multiple people who each do not choose to live in the residence, but the "joint or partial

1 ownership of the residence would not be considered a timeshare” because each “member could
2 have equal access to the residence (as opposed to purchasing a limited amount of time).” Report at
3 326. This is Pacaso’s model and Pacaso’s homeowners do not “purchase a limited amount of time”
4 in the residence.

5 53. In fact, the distinction between a “time-share” and other types of partial or fractional
6 ownership structures is so obvious that even the National Association of Realtors (one of the most
7 trusted sources for matters relating to residential real estate) explicitly acknowledges these distinct
8 concepts:

9 Fractional interest ownership, once used primarily with commercial
10 tenants-in-common, has recently blossomed in the vacation home
11 market. Not to be confused with a time-share or a destination club,
fractional interest properties can be a sensible and profitable
alternative to owning a second home.⁵

12 54. Consistent with its correspondence with Pacaso and public statements regarding the
13 inapplicability of Section 17.112.130 to Pacaso, Defendants did not attempt to further interfere
14 with Pacaso or its homeowners until recently.

15 **A. Pacaso Is Not A “Time Share Project”**

16 55. The City’s July 2020 analysis flows from the simple and indisputable fact that
17 Pacaso’s small co-ownership model is starkly different from any “time-share project” purportedly
18 covered by Section 17.112.130 or that is properly the subject of *any* zoning regulation.

19 56. Pacaso creates a property-specific LLC for each home, which owns deeded title to
20 the property. Then Pacaso organizes and vets a maximum of eight co-owners, who have an
21 ownership interest in the LLC and co-own the home in increments ranging from 12.5% to 50%.
22 The co-owners can purchase their desired ownership interest based on their expected occupancy
23 needs, financial means, and even in certain circumstances their desire to participate in the LLC
24 with co-owners of their choosing. At closing, the co-owners enjoy 100% ownership in the
25 property, and Pacaso’s only role remains as program manager overseeing the LLC.

26
27
28 ⁵ See Def. of Fractional Interest Ownership, *National Association of Realtors*, at
<https://www.nar.realtor/fractional-interest-ownership>.

1 57. Pacaso’s homeowners do not merely own the “right of exclusive occupancy,” (Def.
2 of “Time-share use,” Section 17.112.130(B)) or a “use, occupancy or possession” right that
3 “circulates among purchasers . . . according to a fixed or floating time schedule on a periodic basis
4 for a specific period of time during any given year” (Def. of “Time-share program,” Section
5 17.112.130(B)). Nor do they participate in an “arrangement for time-share intervals.” Def. of
6 “Time-share program,” Section 17.112.130(B).

7 58. Rather, just like any other residential homeowner, Pacaso homeowners own a real
8 property asset in a single-family home that includes real property interests, rights and obligations.
9 An interest in a time-share project is vastly different from the rights inherent to real property co-
10 ownership, including possession, control, exclusion, and disposition. Indeed, a Pacaso homeowner,
11 just like any other homeowner, has rights *well* beyond a situation whereby “somebody literally gets
12 a limited amount of time in a particular piece of property to use,” which is how a “timeshare” was
13 described by City Attorney Ueda. July 14, 2020, Meeting at 3:19.

14 59. Instead, Pacaso homeowners have inherent and inalienable rights inherent to
15 owning property, which include the right to possession, to control, to use and quiet enjoyment, to
16 privacy and to exclude others, to sell the property, to physically be on the property, to leave the
17 property, to choose who else can be on the property, to build or alter the property, to make
18 improvements or refurbish the property, and to sell or dispose of the property, among many other
19 rights.⁶

20 60. Pacaso’s involvement in management of the home, at the election of the home’s co-
21 owners, does not change the nature of the homeowners’ interests and rights. Pacaso supports
22 owners as a program manager, making their ownership experience seamless through LLC and
23 property management services, interior design, scheduling service, and concierge services. In fact,
24
25

26 ⁶ Further, an owner of a “time-share” interest, as opposed to an owner of a single-family
27 home, is typically a member of a large commercial development of density, whereby multiple
28 unrelated occupants are using the overall property at the same time, buying not for the purposes of
real estate ownership, but for purposes of enjoying or benefiting from the time-share program or
amenities.

1 if Pacaso homeowners collectively agree that Pacaso's services are no longer desired, the owners
2 can choose to terminate their relationship with Pacaso and self-manage their property.

3 61. Plainly, Pacaso co-owners are not merely purchasing "time-share intervals." Def. of
4 "Time-share program," Section 17.112.130(B). Pacaso homeowners' ability to stay in the home is
5 not capped. Subject to availability and covering operating and ownership costs, a Pacaso co-owner
6 can spend more time in the house, beyond the default time attributable to each co-owner's
7 ownership stake. Co-owners' ability to spend time in the home is fluid and flexible.

8 62. Further, Pacaso homeowners are true owners with complete control of their home
9 and expansive rights, rather than merely having a right of "use, occupancy or possession" that is
10 limited to a time schedule. Def. of "Time-share program," Section 17.112.130(B). For example,
11 Pacaso homeowners have the right to store their personal possessions on the property year round.
12 Pacaso homeowners are also heavily involved in all levels of management and decision-making
13 regarding the property. They vote on matters such as selecting and replacing the program manager,
14 renovations on the home or other changes to the interior or exterior design, and various other
15 fundamental homeownership matters. Co-owners can even sell the home outright. Pacaso is
16 merely a service. Ultimately, Pacaso homeowners have complete control.

17 63. It is clear that Pacaso's properties do not fall within the purview of the City's time-
18 share ordinance, which on its face does not apply to real property co-ownership structures like
19 Pacaso's.

20 B. **Section 17.112.130's "Findings and Purpose" Confirm that the Ordinance Does**
21 **Not Apply to Pacaso**

22 64. It is abundantly clear from the "Findings and Purpose" of Section 17.112.130 that
23 Pacaso homes are not a covered "time-share project." Section 17.112.130 includes the following
24 express purposes for the time-share ban:

- 25 1. There is a critical shortage of affordable housing in the city for long-term occupancies
26 (more than six months annually), and the availability of additional residential dwelling
27 units is substantially restricted by the growth management system;
- 28 2. The conversion of residential dwelling units within the city to time-sharing projects
 eliminates residential dwelling units otherwise available for long-term occupancies
 (more than six months annually) in the city;

- 1 3. Time-sharing projects have the same character as commercial hotels, motels and other
2 transient occupancy uses due to their transient nature and to the multiple short-term
3 (less than six months annually) occupancies by those participating in time-sharing
4 projects;
- 4 4. Such commercial or quasi-commercial like use is inappropriate in residential areas due
5 to the increased traffic generation and multiple occupancies disturbing the peace and
6 quiet of residential neighborhoods; and
- 5 5. The city council finds and determines that this section is necessary to protect the public
6 health, safety and welfare of the citizens of the city.

7 Section 17.112.130(A).

8 65. The City's attempt to obstruct Pacaso's operations lacks any rational connection to
9 any of the stated purposes behind Section 17.112.130.

10 66. Targeting Pacaso does nothing to ensure homes are available for long-term
11 occupancies. The City lacks all visibility and control into how much time homeowners intend to
12 spend in their homes. Preventing Pacaso from buying properties does nothing to prevent other
13 prospective buyers from buying the home as a second home that will remain unoccupied for the
14 majority of the year, or that will be rented for periods under six months, or who buy anticipating
15 the ability to use it for short-term rentals, among other non "long-term occupancy" uses.

16 67. In fact, Pacaso has the exact opposite effect by redirecting second homeowners who
17 would have otherwise purchased affordable inventory needed by the local workforce to homes at a
18 higher price point.

19 68. Pacaso homeowners are long-term oriented (like most homeowners) and have
20 materially different incentives with respect to their conduct, use and treatment of the home as
21 compared to short-term renters. This is because Pacaso homeowners are directly invested in the
22 home, its surrounding neighborhood and community, and the long-term maintenance and success
23 of the property and community at large. Pacaso homeowners are true homeowners who own for
24 their personal use and enjoyment, not for profit. They can sell their interest at any point after the
25 first year of ownership by listing the property on the Multiple Listing Service ("MLS") with a local
26 real estate agent, and they are strictly prohibited from renting out the property at any point to
27 anyone. In fact, Pacaso homeowners are "long-term" occupants under the City's stated "six-
28 month" standard (Section 17.112.130(A)), as Pacaso homeowners are strictly prohibited from

1 selling their interest at any point before the *first year* of ownership or from renting out the property
2 at any point to anyone.

3 69. In contrast, a time-share typically entails merely the right to use a fixed amount of
4 time in a property. A time-share is highly restrictive in terms of resell ability, pricing and control.
5 Time-share interests are usually held in multi-unit buildings or resort properties and use of the
6 property is typically split across a large number of investors. Owners of a time-share interest are
7 unlikely to have any interactions, let alone form a community. Behaviorally (and due to the nature
8 of the properties, the structure of time-share ownership, and nature of the investment), time-share
9 owners resemble short-term renters or hotel guests.

10 70. Nor is there a rational relation between the City's stated purpose of banning
11 "commercial or quasi-commercial like use" in residential areas, such as that which results from
12 "commercial hotels, motels and other transient occupancy uses," and any enforcement measures
13 taken against Pacaso (Section 17.112.130(A)). Pacaso is a *purely residential* co-homeownership
14 structure that lacks any resemblance to such "commercial or quasi-commercial like use."

15 71. Pacaso's homes are subject to the same residential occupancy rules as other homes,
16 and homeowners respect the same rules that other owners are expected to follow. Unlike
17 commercial properties, which are required to offer parking for each individual guest room, Pacaso
18 homes are single-family homes with two parking spaces per dwelling unit, as required by Section
19 17.124.030.

20 72. Moreover, Pacaso co-owners use their homes in a way that is wholly consistent with
21 other single-family residences. Their use does not cause "traffic generation and multiple
22 occupancies disturbing the peace and quiet." Section 17.112.130(A)(4). Just like all other single-
23 family homes, there is only one co-owner using the property at a time; co-owners agree not to have
24 large events or parties; co-owners adhere to a 9 pm to 7 am quiet hour policy; co-owners agree not
25 to rent the home to third parties; and Pacaso encourages homeowners to avoid parking on the street
26 unless absolutely necessary. There is nothing "transient" or "commercial" about the co-owners
27 who choose to share home ownership of property in St. Helena. In sum, Pacaso homeowners are
28

1 no different from other homeowners in St. Helena; Pacaso and its co-owners are dedicated to
2 ensuring the peace, safety, and welfare of the citizens of St. Helena.

3 73. Indeed, in discussing the July 2020 Report, City Council members confirmed that
4 the primary purpose behind the time-share ordinance is to regulate commercial uses. For example,
5 one City Council member stated: “First of all, I think our whole timeshare thing probably came
6 into being when Rodney Friedrich brought his hotel forward.” July 14, 2020, Meeting at 3:24.
7 This reference was to a hotel development approved by City Council in 2010, for a *60-room hotel*
8 which would sell shares in the hotel rooms.

9 74. Further, the then-acting City Attorney stated: “[I]n a nutshell, the prohibition [is] . . .
10 based, in part, on findings that the city council made, that timeshare uses are commercial for quasi-
11 commercial uses that serve to reduce available residential housing and increase traffic and noise
12 impacts.” July 14, 2020, Meeting at 3:18. Thus, time-share ordinances generally “treat timeshares
13 as commercial uses, often times in buildings that are like *high rise condo-type buildings to other*
14 *fractional ownership hotels.*” July 14, 2020, Meeting at 3:20 (emphasis added).

15 75. On the other hand, as noted by City Attorney Ueda, “fractional or partial ownership
16 interests may not necessarily trigger any concerns as more commercial uses would because, for
17 example, multiple members of one family could decide to purchase a residence together, they may
18 not stay there all at the same time, but they wouldn’t necessarily be having interest like a timeshare
19 either.” July 14, 2020, Meeting at 3:21-22.

20 76. Pacaso and its homes do not implicate these “commercial” uses. As a result, the
21 City Council members were unable to state even *one purpose, goal or non-suspect reason* to
22 justify application of the time-share ordinance against partial co-ownership structures like Pacaso’s
23 (*see supra* at ¶¶ 47-49), and the City Council was forced to admit that the primary concern
24 identified at the July meeting (*i.e.*, “different people coming in and out of the unit or house”) is
25 clearly impermissible (*id*; *see infra* at ¶¶ 125-27).

26 77. Nor do Pacaso homes detract from the City’s goal of ensuring availability of
27 “critical shortage of affordable housing in the city.” Pacaso’s service reduces competition for
28 housing inventory critically-needed by the local workforce. Today, St. Helena’s median home

1 value of \$1.65 million is at odds with its median household income of \$90,031; most of those
2 employed in St. Helena cannot afford to live there. Pacaso offers second home buyers a better
3 option than a whole home, thus redirecting second home buyers away from the low inventory
4 available at that level.

5 78. The major disconnects between the stated goals underpinning Section 17.112.130,
6 Pacaso's model, and the City's latest enforcement efforts against Pacaso suggest that the City's
7 reliance on Section 17.112.130 is nothing more than a pretext to deny homeownership to new,
8 diverse residents.

9 **IV. Defendants Communicated To Pacaso Nearly A Year Ago Its Conclusion That Section**
10 **17.112.130 Does Not Apply To Pacaso**

11 79. The City first raised the issue of the time-share ban with Pacaso (formerly Niner
12 Homes) in May 2020. On May 15, 2020, Maya DeRosa, in her capacity as the Planning &
13 Building Director of the City of St. Helena, sent a letter on behalf of the City to a Pacaso
14 homeowner, giving notice that “if” the home located at 1005 Valley View Street were “used as a
15 timeshare or short term rental,” such use would be impermissible pursuant to the City Municipal
16 Code. May 15, 2020 Letter. Those cc'd on the letter included: Elizabeth Olcott with Keller
17 Williams; City Attorney Ueda, City Attorney; and Mark Prestwich, City Manager. *Id.*

18 80. On May 19, 2020, Pacaso responded on behalf of the Pacaso homeowner,
19 explaining why Pacaso's operations do not violate such ordinances and that the homeowner's use
20 of his property was entirely consistent with such laws. May 19, 2020 Letter.

21 81. On May 22, 2020, Maya DeRosa, cc'ing Mark Prestwich and City Attorney Ueda,
22 replied on behalf of the City thanking Pacaso for providing an explanation of its proposed property
23 ownership structure, its proposed use of the property, and the reasons Pacaso does not fall within a
24 timeshare model.⁷

25

26

27 ⁷ Defendant Maya DeRosa instructed the Pacaso homeowner to “direct any future
28 correspondence through [her] on this matter as [she is] the designated point of contact for the
City.” May 22, 2020 Letter at 2.

1 82. Notably, in the May 22, 2020 letter, DeRosa and the City, tacitly acknowledging
2 that Pacaso is not a “timeshare project,” *dropped any reference* to a violation of the City’s time-
3 share ordinance, giving Pacaso the presumed green-light to move forward with its operations from
4 this standpoint. Instead, the May 22, 2020 letter challenged only the homeowner’s alleged posting
5 of his home on “Luxury Retreats” for short-term rentals without a permit to do so.

6 83. Pacaso responded on May 26, 2020, confirming that the property would not be used
7 as a short-term rental property in the future and that the homeowners would remove any posting on
8 the “Luxury Retreats” website. May 26, 2020 Letter.

9 84. Following this initial exchange with the City, Pacaso moved forward with its
10 operations, investing material resources, time, and efforts, in reliance on the City’s representations
11 that Pacaso’s operations were permitted.

12 **V. Despite Its Legal Conclusions That It Cannot Regulate Pacaso, Defendants Have Now**
13 **Proceeded To Unlawfully And Brazenly Enforce The Ordinance Against Pacaso**

14 85. Against the backdrop of Defendants’ repeated conclusions that the time-share
15 ordinance does not apply to fractional co-ownership structures like Pacaso’s and that the time-share
16 ordinance would need to be amended in order to reach such structures, Defendants, acting under
17 the color of law, have nevertheless sought to enforce the time-share ordinance against Pacaso.

18 86. The change in position and determination to enforce the ordinance against Pacaso,
19 absent any change in facts or law, is untimely, unfounded, and suspect.

20 87. In January 2021, a real estate agent for Pacaso received a letter from DeRosa
21 regarding four Pacaso property listings, inaccurately charging that the properties are subject to the
22 City’s time-share ordinance. Jan. 25, 2021 Letter. With full knowledge and awareness of the
23 chilling effect that her actions—as a enforcement official under St. Helena’s Municipal Code—
24 would have, DeRosa requested that the letter be forwarded to “the buyer and the buyer’s agent” (*id.*
25 at 1), and “any other agents that share these listings” to ensure that no zoning violations occur (*id.*
26 at 2).

27 88. DeRosa’s letter had only one purpose: to knowingly and falsely invoke Section
28 17.112.130 to prevent Pacaso and its homeowners from determining to share ownership of a home

1 together. DeRosa knew that in purporting to enforce the “local regulations in place pertaining to
2 timeshares,” she was unlawfully targeting Pacaso, despite her knowledge that Pacaso is not subject
3 to Section 17.112.130, and that myriad other homes have identical co-ownership structures. Jan.
4 25, 2021 Letter at 1.

5 89. Ellsworth and City Council approved and were cc’d on the January 2021 letter,
6 which they knew was inaccurate and sent with an improper purpose. Nonetheless, they failed to
7 intervene to correct or retract the letter.

8 90. In response, Pacaso contacted DeRosa to confirm, again, that Pacaso is not a time-
9 share, nor does the service allow time sharing use, and that Pacaso prohibits short-term rentals.

10 91. Next, at a City Council meeting on February 9, 2021, City Attorney Walsh again
11 raised the issue of Section 17.112.130. City Attorney Walsh’s update to the City Council and St.
12 Helena residents confirms that he and the City had not reached a different conclusion regarding the
13 time-share ordinance since the conclusion reached in its July 2020 Report.⁸ Instead, City Attorney
14 Walsh conceded that he and the City were still “looking at” and “delving further into that issue”
15 (the applicability of the zoning ordinance), confirming that they had not yet determined what to do
16 regarding co-ownership structures like Pacaso’s and whether such structures could be regulated
17 under the time-share ordinance. City Attorney Walsh further stated that he and the City were
18 “looking into both what we can do under our current regulations and potentially looking at some
19
20
21

22 ⁸ Ellsworth, in his capacity as Mayor, along with Paul Dohring, in his capacity as Vice
23 Mayor, and Anna Chouteau, Eric Hall and Lester Hardy, in their capacities as City Council
24 members, also attended the February 9 City Council meeting. See February 9, 2021 City Council
25 Meeting Agenda, at <https://sthelena.civicweb.net/filepro/documents/48295?preview=48296>.
26 Ellsworth, Dohring and Chouteau were made aware of and participated in discussions regarding the
27 July 2020 Report, including the fact that applying the time-share ordinance against partial co-
28 ownership structures like a Pacaso home was impermissible, unconstitutional, and exceeded the
scope of the City’s zoning authority and police power. Defendant Ellsworth, and Council
Members Dohring and Chouteau were thus on notice that City Attorney Walsh was continuing to
consider such impermissible actions, despite the July 2020 Report. Ellsworth had the power to
prevent the City Attorney Walsh from taking such actions, but failed to intervene, as evidenced by
the enforcement efforts against Pacaso that followed.

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1 changes to the existing regulations,” confirming the need to amend the time-share ordinance in
 2 order for such co-ownership structures to be subject to the ordinance was still being considered.⁹

3 92. Nonetheless, and in the face of these statements, the *very next day* on
 4 February 10, 2021, City Attorney Walsh sent a letter to Pacaso stating that the City “disagrees” that
 5 “Pacaso is not operating a timeshare in St. Helena,” and threatening “to enforce its restrictions on
 6 timeshares” as well as “action to educate brokers and the public about the *illegal nature of*
 7 *Pacaso’s timeshares.*” Feb. 10, 2021 Letter. City Attorney Walsh suggested that the City’s
 8 challenge was purportedly “[b]ased on the evidence that the City has received” about “the nature of
 9 Pacaso’s and its buyers’ intended use” of Pacaso homes, yet did not provide or describe such
 10 “evidence.” *Id.* at 1.

11 93. Despite being unable to point to any alleged “evidence,” and without any law or
 12 authority supporting his conclusion (which directly contradicts the earlier, reasoned analysis), the
 13 City Attorney improperly placed the burden on Pacaso, inviting it to “convince” the City that it was
 14 not subject to the time-share ordinance: “If Pacaso convinces the City that Pacaso’s—and its
 15 buyers’—intended use of residential property in the City does not constitute a timeshare under state
 16 law and regulations or the City’s code, the City will not apply the timeshare-prohibition.” *Id.*

17 94. Meanwhile, to effectively foreclose any ability of Pacaso homeowners to become
 18 part of the City of St. Helena community (and thereby eliminate the need for the City Council to
 19 reconcile its elitist position with the plain language of the time-share ordinance), the City Attorney
 20 sent a threatening letter regarding timeshare regulations to all City listing agents and brokers on
 21 March 16, 2021 (the “March 2021 Letter”) alleging that the City’s timeshare regulations apply to
 22 co-ownership—thereby chilling, under threat of fines and other penalties, any desire on the agents’
 23 part to be involved in a sale of ownership interests in Pacaso properties in St. Helena.¹⁰

24 _____
 25 ⁹ See February 9, 2021 City Council Meeting at 14:11-14:42 at
 26 https://www.youtube.com/watch?v=XUTsUdZ5wA8&t=759s&ab_channel=CityofSt.Helena.

27 ¹⁰ City Attorney Walsh was not acting within the scope of his official discretion when he sent
 28 the March 2021 Letter and performed other acts in furtherance of enforcing the time-share
 ordinance against Pacaso. City Attorney Walsh was merely attempting to implement a policy
 decision reached by the City. Those acts were not taken as part of any policy-making functions. In

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1 95. City Attorney Walsh expressly warned that his letter applied to “several properties
2 that are currently listed for sale”— plainly linking his notice of purported zoning violations to
3 listings for interests in Pacaso homes. March 2021 Letter at 1.

4 96. Thus, City Attorney Walsh’s March 2021 Letter to all real estate agents and brokers
5 in St. Helena is the manifestation of this very threat “to educate brokers and the public about the
6 illegal nature of Pacaso’s timeshare” (Feb. 10, 2021 Letter), and constitutes the City’s
7 determination that it was “not convinced” that Pacaso’s operations are permitted under Section
8 17.112.130.

9 97. City Attorney Walsh was not acting within the scope of his official discretion when
10 he sent the February 2021 Letter or March 2021 Letter and determined to enforce the time-share
11 ordinance against Pacaso; his actions were attempts to implement a policy decision, which he had
12 no basis to reach, given the conclusions reached in the July 2020 Report. In light of the opposite
13 conclusion reached in the June 2020 Report, he acted without due care by sending the February
14 2021 Letter in an effort to enforce the time-share ordinance against Pacaso.

15 98. Defendant Ellsworth had the power to prevent and should have prevented City
16 Attorney Walsh from sending the February 2021 Letter and March 2020 Letter, but failed to
17 intervene in order to stop the impermissible application of the time-share ordinance against Pacaso.
18 Defendant Ellsworth knew that City Attorney Walsh’s conduct would violate Pacaso’s rights, as it
19 constituted unlawful selective enforcement against Pacaso and violated Pacaso’s due process rights
20 by applying Section 17.112.130 in a manner that directly conflicted with the earlier analysis of the
21 scope of the ordinance.¹¹

22 _____
23 light of the conclusions reached in the June 2020 Report, City Attorney Walsh acted with full
24 knowledge of the wrongfulness of his conduct.

24 ¹¹ Moreover, “[s]tate law prohibits [St. Helena City] Council from taking action on any item
25 not listed on the agenda.” See St. Helena City Council Home, at
26 <https://www.cityofsthelena.org/bc-citycouncil>. Following the July 14, 2020 meeting (which
27 included on its agenda both the item for “Discussion Regarding Timeshare Issues” and an
28 attachment to the July 2020 Report (see Agenda Item 11.2 at
<https://sthelena.civicweb.net/document/42347?splitscreen=true&media=true×tamp=11860>)),
City Attorney Walsh, acting at the direction of City Council, nevertheless took an action at odds
with the conclusion reached in the July 2020 Report and the July 14, 2020 City Council discussion
without re-adding this item to any subsequent agenda for further discussion—including the

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1 99. On March 17, 2021, Pacaso responded to City Attorney Walsh, identifying the
2 myriad ways in which the City’s challenge to Pacaso is flawed and unsupported by fact or law.
3 Pacaso requested confirmation by April 1, 2021, confirming that the City would adhere to the
4 analysis and conclusions from the July 2020 Report, and would drop its improper crusade against
5 Pacaso. The City and City Attorney Walsh failed to respond.

6 100. The March 2021 Letter, among other communications with real estate agents,
7 brokers, and potential buyers in St. Helena—which Defendants have failed to retract—have caused
8 Pacaso substantial harm. Among other harm, Defendants’ misinformation campaign undermines
9 Pacaso’s existing relationships with real estate agents working on its behalf, interferes with
10 Pacaso’s business relationships and arrangements, tarnishes Pacaso’s reputation and goodwill in
11 the community, and impairs Pacaso from future development (including future business partners
12 and key stakeholders in the St. Helena community) by calling into question the legality of Pacaso’s
13 operations.

14 101. These threats have scared real estate agents and chilled their efforts to buy and sell
15 ownership interests in Pacaso properties. Likewise, Defendants’ threats have deterred prospective
16 buyers from purchasing Pacaso properties.

17 102. Indeed, as a direct result of the March 2021 Letter, individuals on NextDoor (a
18 social networking service for neighborhoods) posted comments about Pacaso potentially being
19 violative of the time-share ordinance, further reflecting the confusion created by the March 2021
20 Letter regarding Pacaso’s legality. One user wrote:

21 The [March 16, 2021] letter from the City of St. Helena didn’t
22 specify any action but did say violators of the City’s . . . timeshare
23 [ordinance] are subject to code violations and costly fines. The
24 homes in St. Helena currently being offered for sale as fractional
25 ownership purchases (8 separate owners per house) haven’t closed
26 yet. It’s my understanding this Pacaso Fractional Ownership
27 Management Company had a few months to find 8 buyers for each of
28 these homes. If they were unable to do so, the listings would go back
 to the agents that initially listed these properties. I have no idea
 where they stand today. I haven’t seen any reported sales of the
 properties in questions.

February 9, 2021 City Council meeting agenda. Adopting the enforcement policy set out in the
February 2021 Letter, without adding this item to an agenda for further City Council discussion
and public commentary, was impermissible.

1 103. By intentionally disrupting Pacaso’s ability to list its properties on the MLS,
2 discouraging real estate agents and brokers from working with or listing Pacaso properties, and
3 causing confusion among residents, real estate agents, and potential buyers regarding the legality of
4 Pacaso’s operations in St. Helena (especially without first resolving Pacaso’s challenge to such
5 prohibitive actions by the City), Pacaso has directly suffered and continues to suffer damages.

6 104. To date, Ellsworth has failed to take action to terminate the violative effect of his,
7 City Attorney Walsh’s and DeRosa’s actions.

8 VI. As The City Concedes, The Ordinance Is Ambiguous, Confusing, And Void For
9 Vagueness

10 105. If the City’s interpretation of Section 17.112.130 and recent conclusion that it does
11 apply to Pacaso is accepted, then the time-share ordinance fails for being vague, ambiguous and
12 overly broad as applied to Pacaso.

13 106. The City all but admits that its time-share ordinance is vague and difficult to
14 determine whether conduct is prohibited, stating that it “has a fairly circuitous definition to
15 determine if a project is a prohibited timeshare or not”:

16 The Code has a fairly circuitous definition to determine if a project is
17 a prohibited timeshare or not. A “time-share project” means any real
18 property subject to a “time-share program.” A “time-share program”
19 is defined as “any arrangement for time-share intervals in a time-
20 sharing project whereby the use, occupancy or possession of real
21 property has been made subject to either a time-share estate or time-
22 share use whereby such use, occupancy or possession circulates
23 among purchasers of the time-share intervals according to a fixed or
24 floating time schedule on a periodic basis for a specific period of
25 time during any given year, but not necessarily for consecutive
26 years.” (SHMC § 17.112.130(A).) A “time-share estate” is defined in
27 the Code to mean “an ownership or leasehold estate in property
28 devoted to a time-share fee (tenants in common, time span
ownership, interval ownership) or a time-share lease.” (*Id.*) (Report
at 324.)

25 107. In fact, during a City Council meeting discussing the time-share ordinance, City
26 Attorney Ueda repeatedly stated that “the definition and the overall section is a little bit confusing,”
27 July 14, 2020, Meeting at 3:18, and that the ordinance “ has some terms that are not defined.” *Id.*
28 at 3:19.

1 108. Likewise, one City Council member acknowledged that, as written, the time-share
2 ordinance does not apply to fractional co-ownership structures, referring to it as “improperly
3 written or inaccurately written,” and requesting that the City “clean it up so that we extend the
4 fractional and eliminate this activity” of Pacaso. July 14, 2020, Meeting at 3:30. City Attorney
5 Ueda agreed, acknowledging that if the Council wants to regulate partial ownerships, it would be
6 necessary for the City Attorney to “take a look at that and try to clean up the ordinance.” *Id.* at
7 3:22.

8 109. After interpreting these “circuitous” definitions, City Attorney Ueda concluded that
9 “[w]hat emerges from these various definitions” is that a timeshare *is not a* fractional or partial
10 ownership, and that the ordinance only applies to timeshare intervals involving “an ownership
11 arrangement where the owners have purchased an allotted amount of time to use the property”:

12 What emerges from these various definitions is that a timeshare, as
13 defined in the City’s Zoning Code, is not identical to a fractional or
14 partial ownership; but, rather, a timeshare involves an ownership
15 arrangement where the owners have purchased an allotted amount of
time to use the property (a timeshare interval). The Code also notes
that timesharing projects have the same character as commercial
hotels and other transient uses. (Report at 324.)

16 110. The City’s, City Attorney Walsh’s, Ellsworth’s and DeRosa’s interpretation of the
17 time-share ordinance and conclusion that it does not apply to fractional or partial ownerships in
18 July 2020 cannot be squared with their position today that the ordinance applies to Pacaso.

19 111. Setting aside the vague and circuitous definitions in the ordinance, one thing is
20 perfectly clear: the particular “use” that the ordinance intends to cover (and all it is permitted to
21 regulate) are large-scale commercial and quasi-commercial use (like condominiums and hotels (*see*
22 *supra* at ¶¶ 47-49; *infra* at ¶¶ 125-27)), which is completely different from the activity and use of
23 Pacaso homes (among other single-family homes). By interpreting the ordinance to apply to
24 Pacaso, Defendants’ reading would cover *every single-family home with more than one owner*
25 (whether through an LLC or otherwise), rendering the ordinance overbroad, failing to adhere to its
26 stated legislative purpose, and defying common sense. Thus, Defendants’ tortured application of
27 the time-share ordinance against Pacaso is further vague, circular, and confusing, as the ordinance
28 was never intended to apply to the partial ownership of single-family residential dwellings.

1 112. If the terms of Section 17.112.130 are so amorphous as to lead Defendants to
2 conclude first that Pacaso is not covered, and then—with no change in underlying facts—that
3 Pacaso *is* covered, the Ordinance should be deemed void for vagueness, as applied to Pacaso.

4 VII. The Ordinance, As Applied To Pacaso, Exceeds The Scope Of Permissible Zoning
5 Ordinances Under Government Code § 65850 And So Should Be Stricken

6 113. Defendants’ attempt to apply the time-share ordinance against Pacaso exceeds the
7 scope of a municipality’s zoning authority and police power under California Government Code
8 § 65850(a), and is outside the scope of its authority to regulate permissible zoning subject matters.

9 114. A local legislative body may only adopt ordinances that regulate “the use of
10 buildings, structures, and land as between industry, business, residences, open space, including
11 agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes.”
12 Cal. Gov’t Code § 65850(a).

13 115. The City acknowledged the limits on its power in this regard, and conceded that
14 zoning ordinances “must focus on the use of land”:

15 The most fundamental challenge to amending the Zoning Code to
16 regulate fractional or partial ownership in single-family residences is
17 that by *law zoning regulations must focus on the use of land*. (See,
18 e.g., *O’Loane v. O’Rourke*, 231 Cal.App.2d 774, 780 (1965) [zoning
19 is “the regulation of buildings and structures, according to their
20 construction, and the nature and extent of their use, and the nature
21 and extent of the uses of land.”].) State law enumerates the specific
22 types of permissible zoning regulations, *which are likewise focused*
23 *on “the use of buildings, structures, and land” and related physical*
24 *requirements, such as the location and size of signs, buildings and*
25 *structures*. (Gov. Code, § 65850.) (Report at 325 (emphasis added).)

26 116. The City’s time-share ordinance regulates beyond the mere “use” of buildings,
27 structures, or land, as permitted in Gov. Code 65850(a). Defendants’ application of Section
28 17.112.130 against Pacaso regulates the individuals and persons who can reside in a residential
residence, and targets individuals “based on the identity of a tenant or where a particular resident
permanently resides.” Report at 325.

117. The City itself acknowledged this very concern by stating that zoning regulations
may only regulate the *types* of uses, and cannot target individuals or adopt regulations “based on
the identity of a tenant or where a particular resident permanently resides,” and described the

1 “concern that *non-permanent City residents* are purchasing property in St. Helena as a second
2 home(s):”

3 While there may be a concern that non-permanent City residents are
4 purchasing property in St. Helena as a second home(s) either for
5 themselves or their guests, *zoning regulations may not target*
6 *individuals*. In other words, the City *may not adopt a zoning*
7 *regulation based on the identity of a tenant or where a particular*
8 *resident permanently resides*. (See, e.g., *Friends of Davis v. City of*
9 *Davis*, 83 Cal.App.4th 1004, 1013 (2000) [“a city does not have carte
10 blanche to exclude a retail merchant that it, or some of its residents,
11 do not like”].) City ordinances *also may not regulate or define what*
12 *constitutes a “family” for purposes of limiting the number of*
13 *unrelated people who live together in a dwelling*. (*City of Santa*
14 *Barbara v. Adamson*, 27 Cal.3d 123 (1980).) (Report at 325
15 (emphasis added).)

16 118. Indeed, Section 17.112.130 regulates the “means of ownership” in its prohibition of
17 the “creation of a time-share project as a means of ownership.” Instead of focusing on the “use” of
18 land as between residential and other purposes, Section 17.112.130, by its terms, and Defendants,
19 in their application against Pacaso, regulate and target individuals based on *who* the owners are.

20 119. Further highlighting Defendants’ tortured application of the time-share ordinance
21 against Pacaso, City Attorney Ueda stated “that it is difficult to regulate if we’re primarily focused
22 on *taking a piece of property and looking at it in terms of how many people own that property*
23 *because that’s not really a particular use as the zone code regulates uses, but it focuses on*
24 *ownership*.” July 14, 2020, Meeting at 3:22 (emphasis added).

25 120. In fact, the City and City Council even conceded that Defendants are overreaching,
26 and admitted that attempting to apply the time-share ordinance against Pacaso is wrongful, illegal,
27 unconstitutional, and beyond the power of the City. As one City Council member acknowledged:
28 “[*w*]hat you want and what’s legal are entirely different matters,” and suggested that regulating
Pacaso under the time-share ordinance would be against “case law and civil rights,” (July 14, 2020,
Meeting at 3:31 (emphasis added)), stating that the City is “not in the business of regulating
families and how people come together to buy properties.” *Id.* at 3:32.

121. Another City Council member stated her concern “that [Defendants] are
overreaching what [they] can do legally,” stating that the City is not permitted to “control how
people own” property, and that she does not “want [the City] to go down a path spending a lot of

1 money” battling a clearly-losing legal argument (like the one Pacaso brings here). July 14, 2020,
2 Meeting at 3:31.

3 122. A land use ordinance exceeds municipal authority under the police power where it
4 has no substantial relation to the public health, safety, morals or general welfare. Defendants’
5 enforcement of the time-share ordinance against Pacaso is arbitrary and unreasonable, and has no
6 substantial relation to the public health, safety, morals, or general welfare, let alone any of the other
7 stated purposes underlying Section 17.112.130, as propounded against Pacaso. *See supra* at ¶¶ 47-
8 50, 64-78.

9 123. In fact, the City itself stated to Pacaso in its May 22, 2020 letter that its property
10 “came to the City’s attention because neighbors in the surrounding area are concerned about [the]
11 types of impacts” created by “loud parties, amplified sound, and increased traffic.” May 22, 2020
12 Letter. However, the City previously admitted that “[i]f the City Council is concerned about the
13 potential neighborhood impacts timeshare uses may create”—listing “large parties” as an
14 example—“the City *has existing regulations in place to address such impacts.*” Report at 326
15 (emphasis added). Specifically, “if the concern is that part-time owners may infrequently visit the
16 property and have large parties, the City’s noise ordinance addresses noise and authorizes
17 abatement and issuance of an infraction.” *Id.* “The City’s Municipal Code also addresses
18 nuisances generally and has parking standards in place.” *Id.*

19 124. In fact, a City Council member confirmed that the primary “concern” with fractional
20 co-ownership structures like Pacaso’s stemmed from neighbors raising their gripe that “instead of
21 having one family living next door to you, you have maybe six” that are “alternat[ing].” July 14,
22 2020, Meeting at 3:24.

23 125. However, City Attorney Ueda in July 2020 herself conceded that this stated concern
24 was not a rational basis to apply the time-share ordinance against Pacaso:

25 [I]f the issue is primarily that there are different people coming in
26 and out of the unit or house, I’m not entirely sure what can be done
27 about that, right, because different people could be at a house at any
28 given time for whatever reason. They could be guests, or they could
be people who own the house and their siblings or whatever. The
direction that it’s gone in in terms of potential regulation is that if
there’s a concern about impacts that are caused from having too

1 many people basically at a particular residence and those impacts can
2 be addressed by current standards in place for noise and parking
3 standards and that type of thing. So I think it's one thing to talk
4 about people versus the potential impacts that could result, and if
5 there are specific impacts, we can look at what we have in place or if
6 there are additional changes that could be made to perhaps is the
7 nuisance abatement procedures and the nuisance, what we define as a
8 nuisance, for sort of having a more quiet neighborhood. (July 14,
9 2020, Meeting at 3:25-26.)

10 126. Given the many other existing regulations and policies in place to address the
11 supposed "concerns" the City had with Pacaso's properties and that supposedly underly the
12 purpose and intent of Section 17.112.130, Defendants' attempt to apply this time-share ordinance
13 against Pacaso is unreasonable, unwarranted, and an invalid land use ordinance under Cal. Gov't
14 Code § 65850(a).

15 127. Thus, the City's determination that Pacaso's operations are "illegal" under the time-
16 share ordinance—a decision reflected in the City Attorney's March 2021 Letter to all real estate
17 agents and brokers in St. Helena—exceeds the scope of the City's zoning authority and police
18 power under Cal. Gov't Code § 65850(a).

19 **VIII. Defendants' Selective And Arbitrary Enforcement Of The Time-Share Ordinance**
20 **Against Pacaso Is Impermissible**

21 128. Defendants deliberately singled out Pacaso, attempting to enforce the time-share
22 ordinance against Pacaso but not against those entities or individuals who are similarly situated or
23 functionally the same as Pacaso.

24 129. The City's selective enforcement of the time-share ordinance against Pacaso
25 highlights the very concerns that the City itself recognized in July 2020. The City conceded that
26 one of the "significant practical challenges to implementing and enforcing the existing timeshare
27 regulations" is that "[a]bsent a proposed new development to specifically construct a timeshare
28 project, the City does not know when a residence becomes a timeshare, since the ownership change
is a private transaction between private parties." Report at 325. The City conceded that it "does
not have an easily available means to scrutinize such agreements or monitor the terms of particular
ownership arrangements." *Id.*

1 130. City Attorney Ueda further highlighted these concerns during discussions of the
2 July 2020 Report:

3 [W]e also would have practical challenges implementing and
4 enforcing timeshare regulations and that City generally doesn't know
5 when a residence becomes a timeshare. Those are typically private
6 transactions between private parties and the city doesn't monitor real
7 estate sales, and . . . **some types of fractional or partial ownership
8 interests may not necessarily trigger any concerns as more
9 commercial uses would** because, for example, multiple members of
10 one family could decide to purchase a residence together, they may
11 not stay there all at the same time, but they wouldn't necessarily be
12 having interest like a timeshare either. (July 14, 2020, Meeting at
13 3:21-22 (emphasis added).)

14 131. City Attorney Ueda further confirmed the selective and arbitrary approach the City
15 is taking by pursuing enforcement only against Pacaso properties, but not fractional co-ownership
16 structures among multiple friends who wish to purchase and co-own property (which is
17 functionally the same as Pacaso's co-ownership structure):

18 [I]f we're getting at multiple ownership of one piece of property, it's
19 really challenging to figure out a way to define that. That doesn't
20 preclude people who really do need to go buy a piece of property for
21 financial reasons. They all want to have a piece of it. They may all
22 be friends or family members, and I don't think that's the type of
23 activity that the city would want to preclude, and that's the challenge
24 that we have in trying to figure out how to define this in a way that
25 would work. (July 14, 2020, Meeting at 3:33-34.)

26 132. In fact, in St. Helena, 559 second homes¹² are owned by an LLC, trust, or similar
27 mechanism which facilitates multiple owner arrangements.¹³ This represents 36% of all second
28 homes and 21% of the entire housing stock. However, these non-Pacaso LLCs are still in
existence, and do not differ from Pacaso with respect to the use of the residential single-family
home. Nonetheless, Defendants have not pursued a similar enforcement agenda against them as
against Pacaso.

133. Defendants' attempt to enforce Section 17.112.130 against Pacaso, where other co-
owned residences (through LLCs or otherwise) have not faced similar challenges, is selective and

27 ¹² "Second home" refers to homes that did not take the owner occupant exemption.

28 ¹³ Among the 559 second homes, 221 are held as LLCs or other companies.

1 arbitrary, and based on invidious criteria—namely, to deny homeownership to new diverse and/or
2 less affluent residents who hope to purchase property in St. Helena through a co-ownership
3 structure.

4 IX. **Defendants' Enforcement Agenda Against Pacaso Is The Latest Chapter In The City's**
5 **Long History Of Exclusion**

6 134. The City's arbitrary, selective, and pretextual enforcement of its invalid time-share
7 ban against Pacaso—whose mission is to enrich the lives of diverse individuals by democratizing
8 the ownership of second homes—is the latest chapter in a long history of the City of St. Helena
9 erecting barriers to home ownership for people of diverse and less affluent backgrounds.

10 135. Notably, in St. Helena, second home ownership is typically accessible only to elite
11 and predominantly white buyers. This is no “accident.” The City has enshrined anti-growth
12 principles into law, residents have filed lawsuits against affordable housing projects, and unelected
13 neighborhood vigilantes have made it difficult for diverse individuals to move into the City.

14 136. For example, in 1993, the City of St. Helena adopted a long-term policy document
15 that acts as a guide for future land use decisions called “The General Plan.” *See* City of St. Helena,
16 *General Plan Update 4* (Apr. 2, 2018),
17 [https://www.cityofsthenana.org/sites/default/files/fileattachments/planning_resources/page/6501/st_](https://www.cityofsthenana.org/sites/default/files/fileattachments/planning_resources/page/6501/st_helena_general_pan_nop_033018.pdf)
18 [helena_general_pan_nop_033018.pdf](https://www.cityofsthenana.org/sites/default/files/fileattachments/planning_resources/page/6501/st_helena_general_pan_nop_033018.pdf). The “primary goal of this General Plan is to preserve the
19 rural, small town quality and agricultural character of St. Helena.” City of St. Helena, *General*
20 *Plan Introduction* 1-1 (1993),
21 https://www.cityofsthenana.org/sites/default/files/fileattachments/planning/page/881/e_1_intro_1.p
22 [df](https://www.cityofsthenana.org/sites/default/files/fileattachments/planning/page/881/e_1_intro_1.p). The plan explicitly called for “growth management.” *Id.* at 1-3.

23 137. Over the years, as the plan was updated, the City made it more and more difficult
24 for affordable housing to be built on City property under the guise of managing growth. The latest
25 plan, titled “the 2040 General Plan,” was approved in 2019 by the St. Helena Housing Commission
26 after nearly a decade of entanglements over environmental concerns, among other issues. *See* Uzo
27 Ehi, *Legal Settlement Enables St. Helena to Embrace Density in General Plan*, California Planning
28 & Development Report (June 3, 2019), https://www.cp-dr.com/articles/20190603_1.

1 requested confirmation by April 1, 2021, confirming that the City would adhere to the analysis and
2 conclusions from the July 2020 Report, and would drop its battle against Pacaso. The City and
3 City Attorney failed to respond.

4 143. Section 17.112.130 does not apply to co-ownership of real property. Section
5 17.112.130 prohibits “[t]he creation of a time-share project as a means of ownership.” A “time-
6 sharing project” is defined as “any real property that is subject to a time-share program.” Section
7 17.112.130(B). A “time-share program” is defined to mean “any arrangement for time-share
8 intervals [which is later defined as either a time-share estate or a time-share use] in a time-sharing
9 project whereby the use, occupancy or possession of real property has been made subject to either a
10 time-share estate or time-share use whereby such use, occupancy or possession circulates among
11 purchasers of the time-share intervals.” *Id.* A “time-share estate” is defined as ownership in a
12 “property devoted to a time-share fee” and “time-share use” means “any contractual right of
13 exclusive occupancy.” *Id.*

14 144. Pacaso’s small co-ownership model is starkly different from any “time-share”
15 project purportedly covered by Section 17.112.130, and thus does not apply to Pacaso. *See supra*
16 at ¶¶ 56-80. Pacaso homeowners do not merely own the “right of exclusive occupancy,” or a “use,
17 occupancy or possession” right that “circulates among purchasers . . . according to a fixed or
18 floating time schedule on a periodic basis for a specific period of time during any given year.”
19 Section 17.112.130(B), Def. of “Time-Share program.” Rather, Pacaso homeowners own a real
20 property asset in a single-family home that includes real property interests, and rights and
21 obligations shared among co-owners.

22 145. Section 17.112.130 prohibits “[t]he creation of a time-share project as a means of
23 ownership.” Pacaso creates a property-specific LLC for each home, which owns deeded title to the
24 property. The LLC which holds the Pacaso property does not constitute “[t]he creation of a time-
25 share project as a means of ownership.” Rather, it serves as a structure for homeowners to co-own
26 a home and facilitates a collaborative ownership experience with diverse individuals of their
27 choosing.

28

1 151. Instead, Defendants, acting under the color of law, are exploiting definitions in
2 Section 17.112.130 that are unclear circuitous, and incomplete, in order to claim that Pacaso is a
3 “timeshare project” within its meaning. For example, a “[t]ime-sharing project” is defined as “any
4 real property that is subject to a time-share program.” Section 17.112.130(B). In turn, “[t]ime-
5 share program” is defined to mean “any arrangement for time-share intervals in a time-sharing
6 project whereby the use, occupancy or possession of real property has been made subject to either a
7 time-share estate or time-share use whereby such use, occupancy or possession circulates among
8 purchasers of the time-share intervals.” *Id.* The Code then defines “[t]ime-share interval” as “a
9 time-share estate or a time-share use.” *Id.* The Code then circuitously defines “[t]ime-share use”
10 as “any contractual right of exclusive occupancy which does not fall within the definition of a time-
11 share estate, including, without limitation, a vacation license, prepaid hotel reservation, club
12 membership, limited partnership or vacation bond,” and defines “time-share estate” as ownership
13 in a “property devoted to a time-share fee . . . or a time-share lease” (without further defining either
14 of those terms). *Id.*

15 152. Further, the prohibited conduct under Section 17.112.130 is “[t]he creation of a
16 time-share project as a means of ownership.” Neither “creation” nor “means of ownership” are
17 defined in the ordinance. And “means of ownership” does not specify the type of ownership
18 interest held. This in turn conflicts with the definition of “[t]ime-share program,” which focuses on
19 “any *arrangement* for time-share intervals,” and “[t]ime-share use” which focuses on a
20 “contractual right of exclusive occupancy,” both of which differ from “ownership” in the abstract.
21 Section 17.112.130(B).

22 153. The City admits that under its time-share ordinance, it is difficult to determine
23 whether conduct is prohibited, stating that it “has a fairly circuitous definition to determine if a
24 project is a prohibited timeshare or not.” *See Report at 324.*

25 154. Section 17.112.130 is further vague and ambiguous as applied by Defendants
26 against Pacaso. A person of ordinary intelligence would read the time-share ordinance differently
27 than Defendants have applied it, and when reading the time-share ordinance, it cannot reasonably
28 be applied the way Defendants now interpret it. There is no reference in Section 17.112.130 or its

1 definitions to fractional or partial co-ownership structures like Pacaso's. The City, City Council,
2 City Attorney and DeRosa confirmed this interpretation of the time-share ordinance in the July
3 2020 Report, finding that the time-share ordinance only regulates commercial use and that time-
4 shares are distinct from fractional or partial ownership structures. Yet, Defendants, acting under
5 the color of law, now apply a wholly different interpretation of the time-share ordinance against
6 Pacaso, abandoning their previous position in the July 2020 Report, and now interpreting the
7 ordinance to apply to Pacaso, a fractional co-ownership structure. Defendants' inconsistent
8 interpretation and application of the time-share ordinance over the course of time has failed to give
9 Pacaso fair notice that the time-share ordinance regulates partial or fractional ownership structures,
10 and further highlights Defendants' arbitrary, capricious and unjustified standard of interpretation
11 and enforcement of the ordinance.

12 155. The City's application of an unconstitutionally vague ordinance against Pacaso has
13 been carried out through City Attorney Walsh's, DeRosa's, and Ellsworth's conduct, including
14 through sending, and other acts taken in connection with, the January 2021 Letter, the City
15 Attorney's February 2021 Letter to Pacaso, deeming Pacaso "illegal," and the City Attorney's
16 March 2021 Letter to all real estate agents and brokers in St. Helena, acting on his threat to inform
17 others that the City and City Attorney Walsh had determined that Pacaso was illegal, as well as
18 Defendants' other communications to real estate agents, brokers and residents of St. Helena stating
19 or suggesting that Pacaso's operations violate the time-share ordinance. Defendants have
20 undertaken these actions against Pacaso by interpreting the time-share ordinance in such a manner
21 that deprived Pacaso of fair notice that the unconstitutionally vague ordinance regulates partial or
22 fractional ownership structures.

23 156. By enforcing Section 17.112.130 against Pacaso, DeRosa, Ellsworth and City
24 Attorney Walsh, acting under the color of law, deprived Pacaso of its rights under the United States
25 Constitution, by depriving Pacaso of fair notice that the unconstitutionally vague time-share
26 ordinance regulates partial or fractional ownership structures. DeRosa's, Ellsworth's and City
27 Attorney Walsh's actions were a direct cause of Pacaso's injuries, because their conduct directly
28

1 caused a violation of Pacaso’s rights. DeRosa, Ellsworth and City Attorney Walsh are authorized
2 to enforce Section 17.112.130 and they did so in an unlawful manner.

3 157. Ellsworth, acting under the color of law and in a position of superiority to City
4 Attorney Walsh, failed to prevent or take action to correct the enforcement efforts against Pacaso
5 carried out by City Attorney Walsh. Ellsworth was aware that his failure to prevent or take
6 corrective actions would apply an unconstitutionally vague time-share ordinance against Pacaso in
7 such a way that deprived Pacaso of its rights under the United States Constitution. As a result,
8 Pacaso lacked fair notice that the ordinance regulates partial or fractional ownership structures.
9 Nevertheless, Ellsworth knowingly failed to prevent or take actions to correct such enforcement
10 efforts, despite his power and authority to do so.

11 158. DeRosa, in her capacity as the Planning & Building Director of St. Helena, is
12 responsible for reviewing, revising, and implementing the City of St. Helena’s General Plan and
13 zoning ordinances, including the time-share ordinance; is “considered to be [an] enforcement
14 official” with “the authority and powers necessary to gain compliance with the provisions of [the
15 St. Helena Municipal] code and applicable state codes” (Section 1.12.040); and was the
16 “designated point of contact for the City” with regard to time-share enforcement against Pacaso.
17 As such, Defendant DeRosa had final policymaking authority concerning the review, revision,
18 implementation, and enforcement of the time-share ordinance against Pacaso, and, acting under the
19 color of law, ratified, failed to prevent and/or carried out such enforcement efforts against Pacaso,
20 which caused Pacaso to suffer a constitutional violation, on behalf of the City.

21 159. City Attorney Ethan Walsh is responsible for providing legal advice to the City
22 Council in carrying out its duties in the operations of the City government, and for bringing about
23 suits on behalf of the City. Walsh had final policymaking authority concerning the enforcement of
24 the time-share ordinance against Pacaso, and, acting under the color of law, ratified and/or carried
25 out such enforcement efforts against Pacaso, which caused Pacaso to suffer a constitutional
26 violation, on behalf of the City.

27 160. City Council members, including Ellsworth, are responsible for reviewing public
28 policy and adopting policies responsive to the community. Ellsworth had final policymaking

1 authority concerning the review, adoption, and enforcement of the time-share ordinance against
2 Pacaso, and, acting under the color of law, ratified, failed to prevent and/or carried out such
3 enforcement efforts against Pacaso, which caused Pacaso to suffer a constitutional violation, on
4 behalf of the City.

5 161. Defendants' enforcement of the time-share ordinance against Pacaso, which caused
6 Pacaso to suffer a constitutional violation, is carried out pursuant to St. Helena's long history of
7 exclusion, discrimination and anti-growth principles, which include actions designed to stifle
8 diversity and housing opportunities for underrepresented communities. *See supra* at ¶¶ 134-39.
9 The City's long-standing policy and practice of exclusion, outsider bias, and erecting barriers to
10 home ownership for people of diverse and underrepresented backgrounds is so closely related to
11 and coheres with the City's enforcement efforts against Pacaso as to be the moving force that
12 caused it.

13 162. Pursuant to 42 U.S.C. § 1983 and the Court's equitable powers, Pacaso seeks
14 injunctive relief against Defendants, whose enforcement of the vague and ambiguous time-share
15 ordinance against Pacaso conflicts with and violates the Fourteenth Amendment and California
16 Constitution.

17 **CLAIM 3**

18 **SELECTIVE AND DISCRIMINATORY ENFORCEMENT**

19 **(AGAINST ALL DEFENDANTS)**

20 163. Pacaso adopts and reasserts the allegations contained in paragraphs 1-162 as if fully
21 set forth herein.

22 164. Defendants' pattern of selective and arbitrary enforcement violates Pacaso's
23 constitutional rights.

24 165. Pacaso was and is treated differently from entities or persons similarly situated.
25 Defendants, acting under the color of law, deliberately singled out Pacaso, attempting to enforce
26 Section 17.112.130 against Pacaso, but not against those entities or individuals who are similarly
27 situated or functionally the same as Pacaso.

28

1 166. For example, in St. Helena, 559 second homes¹⁴ are owned by an LLC, trust, or
2 similar mechanism which facilitates multiple owner arrangements.¹⁵ This represents 36% of all
3 second homes and 21% of the entire housing stock. These homes include single-family residences
4 that are co-owned by multiple owners, and which do not differ in any respect from how a
5 Pacaso home is used by its co-owners.

6 167. These non-Pacaso LLCs are still in existence, and Defendants have not pursued a
7 similar enforcement agenda against them as against Pacaso.

8 168. Defendants' unequal treatment of Pacaso (*i.e.*, its enforcement of Section
9 17.112.130 against Pacaso, where other co-owned residences, through LLCs, tenancy in common,
10 or otherwise, have not faced similar challenges) was intentional and based on invidious criteria.
11 Defendants have intentionally and deliberately singled out Pacaso on the basis of invidious
12 criteria—namely, that Pacaso serves diverse individuals who, in the eyes of Defendants, are non-
13 resident transients. Defendants' arbitrary and selective enforcement of Section 17.112.130 against
14 Pacaso is the latest chapter in a long history of the City erecting barriers to home ownership for
15 people of diverse backgrounds, and is a pretext to deny homeownership to new diverse residents
16 who hope to purchase property in St. Helena through a co-ownership structure.

17 169. Defendants' unequal treatment of Pacaso is selective, arbitrary, and not rationally
18 related to a legitimate governmental purpose. The City's stated reasons for enforcement against
19 Pacaso cannot pass muster. The City stated to Pacaso in the May 22, 2020 letter that its property
20 "came to the City's attention because neighbors in the surrounding area are concerned about [the]
21 types of impacts" created by "loud parties, amplified sound, and increased traffic."

22 170. However, the City itself conceded that such stated reasons for enforcement were
23 pretextual. For example, the City admitted that "[i]f the City Council is concerned about the
24 potential neighborhood impacts timeshare uses may create"—listing "large parties" as an
25 example—"the City *has existing regulations in place to address such impacts.*" Report at 326
26

27 ¹⁴ "Second home" refers to homes that did not take the owner occupant exemption.

28 ¹⁵ Among the 559 second homes, 221 are held as LLCs or other companies.

1 (emphasis added). The City stated, “[I]f the concern is that part-time owners may infrequently visit
2 the property and have large parties, the City’s noise ordinance addresses noise and authorizes
3 abatement and issuance of an infraction.” Report at 326. “The City’s Municipal Code also
4 addresses nuisances generally and has parking standards in place.” *Id.*

5 171. Given the many other existing regulations in place to address the supposed
6 “concerns” the City has stated with regard to Pacaso, the City’s enforcement agenda against Pacaso
7 is suspect and appears to be nothing but a pretext to deny homeownership to new diverse residents.

8 172. Further, Pacaso co-owners agree to several additional restrictions that ensure their
9 use promotes the City’s stated goals. For example, there is a maximum of eight co-owners for any
10 home, with only one family using the property at a time; co-owners agree not to have large events
11 or parties; co-owners adhere to a 9 p.m. to 7 a.m. quiet hour policy; co-owners are prohibited from
12 renting the home; and Pacaso encourages homeowners to avoid parking on the street. Pacaso
13 homeowners are no different from other homeowners in St. Helena, thus, efforts to preclude their
14 homeownership does nothing to advance the City’s stated goals for enforcement against Pacaso
15 (and not other residential co-ownership structures).

16 173. Discussions regarding the July 2020 Report confirmed that Defendants were unable
17 to state one purpose, goal or non-suspect “basis” to justify application of the time-share ordinance
18 against Pacaso, and that the primary “concern” identified (*i.e.*, “different people coming in and out
19 of the unit or house”) is not a permissible (let alone rational) basis for enforcing the time-share
20 ordinance against Pacaso.

21 174. Defendants’ enforcement efforts against Pacaso are but a pretext for Defendants’
22 improper motive and discriminatory design of exclusion and actions designed to stifle diversity and
23 housing opportunities for underrepresented communities. The City itself concedes that one of the
24 “significant practical challenges to implementing and enforcing the existing timeshare regulations”
25 is that “[a]bsent a proposed new development to specifically construct a timeshare project, the City
26 does not know when a residence becomes a timeshare, since the ownership change is a private
27 transaction between private parties.” Report at 325. The City concedes that it “does not have an
28 easily available means to scrutinize such agreements or monitor the terms of particular ownership

1 arrangements.” *Id.* The City’s selective enforcement of the time-share ordinance against Pacaso
2 highlights the very concerns that the City itself recognized.

3 175. The City’s selective and arbitrary enforcement against Pacaso has been carried out
4 through City Attorney Walsh’s, DeRosa’s, and Ellsworth’s conduct, including through sending,
5 and other acts taken in connection with, the January 2021 Letter, the City Attorney’s February
6 2021 Letter to Pacaso, deeming Pacaso “illegal,” and the City Attorney’s March 2021 Letter to all
7 real estate agents and brokers in St. Helena, acting on his threat to inform others that the City and
8 City Attorney Walsh had determined that Pacaso was illegal, as well as Defendants’ other
9 communications to real estate agents, brokers and residents of St. Helena stating or suggesting that
10 Pacaso’s operations violate the time-share ordinance. Defendants have undertaken these actions
11 against Pacaso, while failing to carry out an enforcement regime against similarly situated or
12 functionally equivalent individuals or entities.

13 176. By enforcing Section 17.112.130 against Pacaso, DeRosa, Ellsworth and City
14 Attorney Walsh, acting under the color of law, deprived Pacaso of its rights under the United States
15 Constitution, by unlawfully targeting Pacaso without any rational basis for enforcing the law
16 against Pacaso, but no other co-owners of homes within St. Helena. DeRosa’s, Ellsworth’s and
17 City Attorney Walsh’s actions were a direct cause of Pacaso’s injuries, because their conduct
18 directly caused a violation of Pacaso’s rights. DeRosa, Ellsworth and City Attorney Walsh are
19 authorized to enforce Section 17.112.130 and they did so in an unlawful manner.

20 177. Ellsworth, acting under the color of law and in a position of superiority to City
21 Attorney Walsh, failed to prevent or take action to correct the enforcement efforts against Pacaso
22 carried out by City Attorney Walsh. Ellsworth was aware that his failure to prevent or take
23 corrective actions would deprive Pacaso of its rights under the United States Constitution by
24 unlawfully targeting Pacaso without any rational basis for enforcing the law against Pacaso, but no
25 other co-owners of homes within St. Helena. Nevertheless, Ellsworth knowingly failed to prevent
26 or take actions to correct such enforcement efforts, despite his power and authority to do so.

27 178. DeRosa, in her capacity as the Planning & Building Director of St. Helena, is
28 responsible for reviewing, revising, and implementing the City of St. Helena’s General Plan and

1 zoning ordinances, including the time-share ordinance, is “considered to be [an] enforcement
2 official” as the “planning director” and has “the authority and powers necessary to gain compliance
3 with the provisions of this code and applicable state codes” (Section 1.12.040), and was the
4 “designated point of contact for the City” with regard to time-share enforcement against Pacaso.
5 DeRosa had final policymaking authority concerning the review, revision, implementation, and
6 enforcement of the time-share ordinance against Pacaso, and, acting under the color of law,
7 ratified, failed to prevent and/or carried out such enforcement efforts against Pacaso, which caused
8 Pacaso to suffer a constitutional violation, on behalf of the City.

9 179. City Attorney Walsh is responsible for providing legal advice to the City Council in
10 carrying out their duties in the operations of the City government, and for bringing about suits on
11 behalf of the City. City Attorney Walsh had final policymaking authority concerning the
12 enforcement of the time-share ordinance against Pacaso, and, acting under the color of law, ratified
13 and/or carried out such enforcement efforts against Pacaso, which caused Pacaso to suffer a
14 constitutional violation, on behalf of the City.

15 180. City Council members, including Ellsworth, are responsible for reviewing public
16 policy and adopting policies responsive to the community. Ellsworth had final policymaking
17 authority concerning the review, adoption, and enforcement of the time-share ordinance against
18 Pacaso, and, acting under the color of law, ratified, failed to prevent and/or carried out such
19 enforcement efforts against Pacaso, which caused Pacaso to suffer a constitutional violation, on
20 behalf of the City.

21 181. Defendants’ enforcement of the time-share ordinance against Pacaso, which caused
22 Pacaso to suffer a constitutional violation, was carried out pursuant to St. Helena’s long history of
23 exclusion, discrimination and anti-growth principles, which include actions designed to stifle
24 diversity and housing opportunities for underrepresented communities. *See supra* at ¶¶ 134-39.
25 The City’s long-standing policy and practice of exclusion, outsider bias, and erecting barriers to
26 home ownership for people of diverse and underrepresented backgrounds is so closely related to
27 and coheres with the City’s enforcement efforts against Pacaso as to be the moving force that
28 caused it.

1 182. Pursuant to 42 U.S.C. § 1983 and the Court’s equitable powers, Pacaso seeks
2 injunctive relief against Defendants, whose selective and discriminatory enforcement of the time-
3 share ordinance against Pacaso conflicts with and violates the Fourteenth Amendment and
4 California Constitution.

5 **CLAIM 4**

6 **DECLARATORY RELIEF: INVALID USE OF MUNICIPAL AUTHORITY**
7 **(AGAINST THE CITY)**

8 183. Pacaso adopts and reasserts the allegations contained in paragraphs 1-182 as if fully
9 set forth herein.

10 184. Section 17.112.130 is inapplicable against Pacaso for the separate and independent
11 reason that it represents an invalid use of legislative authority, and exceeds the scope of a
12 municipality’s zoning authority and police power under Cal. Gov’t Code § 65850(a).

13 185. The City’s application of the time-share ordinance against Pacaso regulates beyond
14 the mere “use” of buildings, structures, or land, as permitted in Cal. Gov’t Code § 65850(a).
15 Instead, the City’s application of Section 17.112.130 against Pacaso targets individuals “based on
16 the identity of a tenant or where a particular resident permanently resides” and tries to regulate the
17 individuals and persons who can reside in a residential residence.

18 186. The plain language of Section 17.112.130 regulates the “means of ownership” in its
19 prohibition of the “creation of a time-share project as a means of ownership.” Instead of focusing
20 on the “use” of land as between residential and other purposes, Section 17.112.130 focuses on *who*
21 the owners are rather than the use of land as between residential and other purposes.

22 187. By applying Section 17.112.130 against Pacaso, the City is targeting individuals and
23 regulating “based on the identity of a tenant or where a particular resident permanently resides.”
24 Report at 325.

25 188. Section 17.112.130 is arbitrary and unreasonable, having no substantial relation to
26 the public health, safety, morals, or general welfare.

27 189. The City’s stated reasons for Section 17.112.130 and its enforcement against Pacaso
28 have no rational basis or substantial relation to its legislative purpose and findings. The City itself

1 stated to Pacaso in its May 22, 2020 letter that its property “came to the City’s attention because
2 neighbors in the surrounding area are concerned about [the] types of impacts” created by “loud
3 parties, amplified sound, and increased traffic.” However, the City previously admitted that “[i]f
4 the City Council is concerned about the potential neighborhood impacts timeshare uses may
5 create”—listing “large parties” as an example—“the City *has existing regulations in place to*
6 *address such impacts.*” Report at 326 (emphasis added). The City stated, “[I]f the concern is that
7 part-time owners may infrequently visit the property and have large parties, the City’s noise
8 ordinance addresses noise and authorizes abatement and issuance of an infraction.” *Id.* “The
9 City’s Municipal Code also addresses nuisances generally and has parking standards in place.” *Id.*

10 190. Further, Pacaso strictly prohibits short-term rentals, and all Pacaso homeowners
11 agree to Pacaso’s policies, which prohibit large events or parties.

12 191. Given the many other existing regulations and policies in place to address the
13 supposed “concerns” the City had with Pacaso’s properties and that supposedly underly the
14 purpose and intent of Section 17.112.130, Section 17.112.130 (and the City’s attempt to apply this
15 section against Pacaso) is unreasonable, unwarranted, and an invalid land use ordinance under Cal.
16 Gov’t Code § 65850(a).

17 **CLAIM 5**

18 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**
19 **(AGAINST THE CITY AND CITY ATTORNEY ETHAN WALSH)**

20 192. Pacaso adopts and reasserts the allegations contained in paragraphs 1-191 as if fully
21 set forth herein.

22 193. The City’s and its employees’ efforts to discourage real estate agents, brokers and
23 potential home buyers from working or transacting with Pacaso constitutes a clear, intentional
24 interference with Pacaso’s business relationships with St. Helena residents, real estate agents and
25 brokers in St. Helena.

26 194. Among other tortious behavior, City Attorney Walsh sent the March 2021 Letter to
27 all real-estate offices in the City regarding time-share regulations in an effort to discourage agents
28 and brokers from working or transacting with Pacaso. The March 2021 Letter intimidated and

1 threatened real estate agents and brokers from engaging and transacting with Pacaso, claiming the
2 “objective” of the letter is “to ensure that no zoning violation occurs as a result of a transaction” in
3 which the real estate agents or brokers and their clients are involved.

4 195. Likewise, Defendants, on behalf of and at the direction of the City, sent letters to
5 Pacaso and its homeowners notifying them that if their home was used as a timeshare, such use
6 would be impermissible pursuant to the City Municipal Code. *See supra* at ¶¶ 56-80.

7 196. The City’s and City Attorney Walsh’s actions and communications undermine
8 Pacaso’s existing contractual relationships with real estate agents working on its behalf, interferes
9 with Pacaso’s business relationships and arrangements, tarnishes Pacaso’s reputation and good will
10 in the community, and impairs Pacaso from future developments (including future business
11 partners and key stakeholders in the St. Helena community) by calling into question the legality of
12 Pacaso’s operations.

13 197. The City and City Attorney Walsh are aware of Pacaso’s business model, its target
14 market, its customer base, and the importance of Pacaso’s business relationships with real estate
15 agents and brokers in St. Helena.

16 198. The actions and communications of the City and City Attorney Walsh were
17 intentional and aimed at halting Pacaso’s current and future business opportunities in St. Helena,
18 and at discouraging real estate agents and brokers from working with Pacaso or listing Pacaso
19 properties.

20 199. The interference with Pacaso’s current and prospective business relationships is
21 wrongful. It is based on an incorrect and erroneous application of a time-share ordinance that does
22 not apply to Pacaso—a position that the City and City Attorney Ueda, conceded in the July 2020
23 Report, which made clear that Section 17.112.130 does not apply to ownership models like Pacaso.
24 The City and City Attorney Walsh invoked Section 17.112.130 with full knowledge that it cannot
25 be applied to Pacaso, and that enforcing it violated Pacaso’s and its homeowners’ constitutional
26 rights.

27 200. Pacaso has directly suffered and continues to suffer damages resulting from the fact
28 that the March 2021 Letter that discouraged transactions or working with Pacaso was sent to *all*

1 *real estate agents and brokers* in St. Helena. This letter has (1) discouraged and continues to chill,
2 under threat of fines and other penalties, agents from marketing Pacaso properties or being
3 involved in a sale of ownership interests in Pacaso properties in St. Helena in any capacity; and (2)
4 intentionally disrupted Pacaso's ability to list its properties on the MLS by discouraging real estate
5 agents and brokers from working with or listing Pacaso properties.

6 201. Further, Pacaso suffered and continues to suffer damages as a result of the confusion
7 caused by Defendants among all agents, brokers, and potential homeowners in St. Helena as to the
8 legality of Pacaso's operations (especially without first resolving Pacaso's challenge to such
9 prohibitive actions by the City), which further hampers Pacaso's operations and ability to sell
10 ownership interests in Pacaso properties in St. Helena. Moreover, the confusion caused by
11 Defendants as to the legality of Pacaso homes among existing Pacaso homeowners in St. Helena
12 (and in other cities) has inappropriately caused such homeowners anxiety, fear, and distrust in
13 Pacaso, causing such homeowners to reach out to Pacaso and the City as to their ability to resale
14 the property.¹⁶

15 202. Absent corrective action, Defendants' prior communications to agents, brokers, and
16 potential Pacaso homeowners will continue to cause irreparable harm to Pacaso.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE, Plaintiffs respectfully pray for relief as follows:**

- 19 a) For judgment in favor of Pacaso against Defendants on all Causes of Action;
- 20 b) For a judgment declaring that Section 17.112.130 does not apply to Pacaso;
- 21 c) For a judgment declaring that Defendants do not have the authority to enforce
22 Section 17.112.130 against Pacaso;
- 23 d) For an injunction enjoining the City and Defendant Walsh from continuing to
24 knowingly interfere with Pacaso's economic interests by communicating false
25 information about the legality of Pacaso's operations and homes;
- 26 e) For a mandatory injunction compelling the City and Defendant Ethan Walsh to send
27 a retraction letter to the real estate agents and brokers in St. Helena clarifying that
28 real estate listings and transactions that sell co-ownership opportunities that are not

¹⁶ Though the City's and Defendant Walsh's conduct has harmed Pacaso, Pacaso does not seek monetary or other damages based on their intentional interference with Pacaso's economic interests. As set forth herein, Pacaso seeks mandatory and prohibitory injunctions to cure Defendants' tortious conduct and to prevent future, recurring harms.

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“time share projects” fall outside of the City’s time-share regulations, and that no “zoning violation” will “occur[]” as a result of transacting with Pacaso and listing a home owned by Pacaso for sale;

- f) For attorneys’ fees pursuant to 42 U.S.C. § 1988 and Cal. Code of Civ. Proc. § 1021.5; and
- g) For such other and further relief as this Court may deem proper.

DATED: April 6, 2021

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: /s/ Lance A. Etcheverry
LANCE A. ETCHEVERRY
Attorneys for Plaintiffs
PACASO INC. and PAC 6 CA 2021 LLC

Exhibit A



Report to the City Council
Regular City Council - 14 Jul 2020

Agenda Section: **NEW BUSINESS**

Subject: **Discussion Regarding Timeshare Issues**

CEQA Determination: **Not a CEQA project**

Prepared By: Kara Ueda, City Attorney

Reviewed By: April Mitts, Finance Director

Approved By: Maya DeRosa, Planning & Building Director/Acting City Manager

BACKGROUND

This agenda item is for informational purposes only to guide and facilitate a policy discussion amongst the City Council regarding timeshare uses and fractional ownership of residences in the City. The issue is being discussed following concerns raised by both City residents and Council members after some residents discovered a real estate listing for a fractional or partial ownership interest in a residential home in town.

The St. Helena Municipal Code currently prohibits creation of a timeshare project as a means of ownership of any single-family, two-family or multiple-family dwelling or any apartment house within the City. (SHMC § 17.112.130) The prohibition is based, in part, on findings made by the City Council that timeshare uses are commercial or quasi-commercial uses that serve to reduce available residential housing and increase traffic and noise impacts. (See SHMC § 17.112.130(A).) As explained further below, though, a timeshare use differs from a fractional or partial ownership of a property.

DISCUSSION

What is a timeshare?

State law and the California Department of Real Estate regulate the advertising and sale of timeshares pursuant to "The Vacation Ownership and Time-Share Act of 2004." (Bus. & Prof. Code, § 11210 et seq.). That law defines a "time-share plan" to mean "any arrangement, plan, scheme, or similar device, other than an exchange program,

whether by membership agreement, sale, lease, deed, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years." (Bus. & Prof. Code, § 11212(z).) The law mandates certain registration and advertising requirements for timeshare plans and regulates the information and terms that must be included in a sale in order to protect consumers who may purchase time-share interests. However, the law does not regulate the location and use of timeshare plans, and it expressly does not invalidate or modify local "zoning, subdivision, or building code" ordinances. (Bus. & Prof. Code, § 11280.)

The St. Helena Zoning Code prohibits the creation of a timeshare project as a means of ownership of any single-family, two-family, or multi-family dwelling or apartment house. (SHMC § 17.112.130). The Code has a fairly circuitous definition to determine if a project is a prohibited timeshare or not. A "time-share project" means any real property subject to a "time-share program." A "time-share program" is defined as "any arrangement for time-share intervals in a time-sharing project whereby the use, occupancy or possession of real property has been made subject to either a time-share estate or time-share use whereby such use, occupancy or possession circulates among purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis for a specific period of time during any given year, but not necessarily for consecutive years." (SHMC § 17.112.130(A).) A "time-share estate" is defined in the Code to mean "an ownership or leasehold estate in property devoted to a time-share fee (tenants in common, time span ownership, interval ownership) or a time-share lease. (Id.) What emerges from these various definitions is that a timeshare, as defined in the City's Zoning Code, is not identical to a fractional or partial ownership; but, rather, a timeshare involves an ownership arrangement where the owners have purchased an allotted amount of time to use the property (a timeshare interval). The Code also notes that timesharing projects have the same character as commercial hotels and other transient uses.

Timeshares, thus, are somewhat similar to short-term rentals and fractional ownership hotels but differ from both in important ways. The City defines short-term rentals as a use in which overnight accommodations are provided to guests for compensation for periods of less than thirty (30) days in a single-family dwelling and are only authorized with a short-term rental permit. (SHMC § 17.04.160.) Short-term rentals are generally rented by guests on a short-term basis. After the guest leaves, they have no further obligation or ownership of the property. A timeshare, on the other hand, means that the person has an ongoing ownership interest in the property for a limited duration of time.

The City defines fractional ownership hotels as hotels with a minimum of 40 rooms, in which 75% or more of the rooms may be made available to individuals as "time-share estates," "which is defined as a time-share interest, which is the right to occupy a time-share property, coupled with a freehold estate or an estate for years with a future interest in a time-share property or a specified portion thereof, pursuant to Section 11212(x)(1) of the California Business and Professions Code, and subject to obtaining

permission required to do so obtained from the California Department of Real Estate." (SHMC § 17.112.150.) The Zoning Code provides that fractional ownership hotels are conditionally permitted in the Service Commercial district. Timeshares as discussed herein, by comparison, may be for any particular interval of time and are a type of fractional/partial ownership. But not all fractional/partial ownership interests are considered timeshare interests. For purposes of much of the discussion in this report, timeshares are discussed in the context of a single-family home rather than, for example, a large condominium project or converted hotel.

What are the challenges and limitations to regulating partial ownership in single-family residences?

City staff and the City Attorney's office have reviewed a small sample of other jurisdictions' ordinances regulating timeshares. What emerges as a theme from this limited review is that other jurisdictions appear to regulate timeshare uses as commercial uses, such as timeshare units in high-rise condominium buildings or something akin to fractional ownership hotels. The City's code appears to try to similarly regulate timeshare uses as a commercial use.

The most fundamental challenge to amending the Zoning Code to regulate fractional or partial ownership in single-family residences is that by law zoning regulations must focus on the use of land. (See, e.g., *O'Loane v. O'Rourke*, 231 Cal.App.2d 774, 780 (1965) [zoning is "the regulation of buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land."].) State law enumerates the specific types of permissible zoning regulations, which are likewise focused on "the use of buildings, structures, and land" and related physical requirements, such as the location and size of signs, buildings and structures. (Gov. Code, § 65850.) Thus, the City's Zoning Code focuses on the types of uses, including, for example, different types of residential uses, winery uses, and commercial uses.

While there may be a concern that non-permanent City residents are purchasing property in St. Helena as a second home(s) either for themselves or their guests, zoning regulations may not target individuals. In other words, the City may not adopt a zoning regulation based on the identity of a tenant or where a particular resident permanently resides. See, e.g., *Friends of Davis v. City of Davis*, 83 Cal.App.4th 1004, 1013 (2000) ["a city does not have carte blanche to exclude a retail merchant that it, or some of its residents, do not like"].) City ordinances also may not regulate or define what constitutes a "family" for purposes of limiting the number of unrelated people who live together in a dwelling. (*City of Santa Barbara v. Adamson*, 27 Cal.3d 123 (1980).)

There are also significant practical challenges to implementing and enforcing the existing timeshare regulations. Absent a proposed new development to specifically construct a timeshare project, the City does not know when a residence becomes a timeshare, since the ownership change is a private transaction between private parties. The City does not have an easily available means to scrutinize such agreements or monitor the terms of particular ownership arrangements. Additionally, there may be a

number of joint ownership scenarios that do not necessarily trigger the same concerns as commercial transient uses or that do not qualify as a prohibited timeshare under the City's ordinance. For example, multiple members of an extended family may all wish to purchase a residence together. The family members may not all necessarily live in the home together at the same time, but they also did not set up an arrangement where they each have a timeshare interval. While this residence may be owned by multiple people who each do not choose to live in the residence, the joint or partial ownership of the residence would not be considered a timeshare as each family member could have equal access to the residence (as opposed to purchasing a limited amount of time). These challenges do not necessarily preclude regulating or prohibiting timeshare uses but should be considered in determining whether additional or amended regulations are desired.

What may the City regulate with respect to timeshares?

For the above reasons, zoning based solely on ownership, as opposed to the use of land, is impermissible. Timeshare regulations should, thus, focus on the type and use of the property and its related impacts, such as specific intervals of exclusive occupancy that render the use more akin to a transient commercial use.

If the City Council is concerned about the potential neighborhood impacts timeshare uses may create, the City has existing regulations in place to address such impacts. For example, if the concern is that part-time owners may infrequently visit the property and have large parties, the City's noise ordinance addresses noise and authorizes abatement and issuance of an infraction. The City's Municipal Code also addresses nuisances generally and has parking standards in place. However, these regulations all regulate the impacts of certain activities on the land, not the land uses themselves.

FISCAL IMPACT

None at this time. Additional staff time and research will be required if zoning amendments are proposed.

RECOMMENDED ACTION

Receive this report, discuss, and provide direction to staff if desired. City staff is seeking guidance and clarification from the City Council concerning the specific problem(s) a Zoning Code amendment could help resolve, but with the limitations noted above for regulating timeshares and partial ownership.

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

PACASO INC. and PAC 6 CA 2021 LLC

(b) County of Residence of First Listed Plaintiff San Francisco (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

SHADDEN, ARPS, SLATE, MEAGHER & FLOM LLP 323 University Avenue, Suite 1400 Palo Alto, California 94301 Telephone: (650) 470-4500

DEFENDANTS

THE CITY OF ST HELENA, PLANNING AND BUILDING DIRECTOR MAYA DEROSA, MAYOR GEOFF ELLSWORTH, CITY ATTORNEY ETHAN WALSH, DOE DEFENDANTS # 1 - 5

County of Residence of First Listed Defendant Napa County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 2201 and 2202; 42 U.S.C. § 1983. Brief description of cause: Pacaso seeks declaratory relief based on constitutional violations, improper use of police power, the inapplicability of a City ordinance, and intentional interference with prospective economic advantage.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 4/6/2021

SIGNATURE OF ATTORNEY OF RECORD

/s/ Lance A. Etcheverry

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 - (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. **Origin.** Place an "X" in one of the six boxes.
 - (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.
Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. **Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."

Date and Attorney Signature. Date and sign the civil cover sheet.

(Effective 1/2018)

JUDGE ORRICK'S STANDING ORDER FOR CIVIL CASES

1. **Conformity to Rules**

Parties shall follow the Federal Rules of Civil Procedure, the Civil Local Rules, and the General Orders of the Northern District of California, except as superseded by this Court's Standing Orders.

2. **Communication with the Court**

Unless otherwise authorized, parties shall not attempt to make *ex parte* contact with the Judge or his Chambers staff by telephone, facsimile, letter, or any other means but may contact Judge Orrick's Courtroom Deputy, Jean Davis, at whocrd@cand.uscourts.gov or 415-522-2077 with appropriate inquiries.

3. **Scheduling**

Civil Law and Motion Calendar is generally conducted on Wednesdays at 2:00 p.m. in Courtroom 2 on the 17th floor.

Civil Case Management Conferences are generally conducted on Tuesdays at 2:00 p.m. in Courtroom 2 on the 17th floor. See Judge Orrick's Standing Case Management Conference Order for information on telephonic appearances for CMCs.

Pretrial Conferences are generally conducted on Mondays at 2:00 p.m. in Courtroom 12 on the 19th floor.

Counsel need not reserve motion hearing dates, but should check Judge Orrick's calendar (at www.cand.uscourts.gov under "Calendar" and "Judges' Weekly Calendars") or contact his Courtroom Deputy to determine the next available law and motion calendar date. Motions may be reset as the Court's calendar requires. The order of call on each calendar will be determined by the Court.

4. **Discovery Disputes**

In the event of a discovery dispute, lead trial counsel for the parties shall meet and confer in person, or, if counsel are located outside the Bay Area, by telephone, to attempt to resolve their dispute informally. A mere exchange of letters, e-mails, telephone calls, or facsimile transmissions does not satisfy the requirement to meet and confer.

If, after a good faith effort, the parties have not resolved their dispute, they shall prepare a concise joint statement of five pages or less, stating the nature and status of their dispute, and certifying that they have met the meet-and-confer requirement. Absent an order of this Court, parties shall not file affidavits or exhibits, other than copies of the written requests for discovery and the answers or objections thereto.

If a joint statement is not possible, each side may submit a brief individual statement of two pages or less. In addition to the certification of compliance with the meet-and-confer requirement, the individual statement shall include an explanation of why a joint statement was not possible. The joint statement or individual statements shall be filed or e-filed, if in an e-filing case, and courtesy copies submitted as provided by the Civil Local Rules.

The Court will advise the parties of the need, if any, for more formal briefing or a hearing, pursuant to Civil Local Rule 7-1(b). The Court may also elect to refer the matter to a magistrate judge or special master. If a magistrate judge is assigned to a case for discovery, that judge shall handle any future discovery disputes in that case and the parties shall comply with the procedures set by that judge for discovery.

(Effective 1/2018)

5. Courtesy Copies

All courtesy copies must be three-hole punched at the left margin. All courtesy copies of e-filed documents must bear the ECF stamp (case number, document number, date and page number) on the top of each page. Exhibits to motions or declarations shall be tabbed and numbered or lettered. Motions and briefs that are more than 50 pages in length, including exhibits, shall be submitted to chambers in binders. Courtesy copies are not required for certificates and proofs of service, notices of appearance, certificates of interested parties, and ADR certifications.

6. Summary Judgment Motions

Parties are limited to filing one motion for summary judgment. Any party wishing to exceed this limit must request leave of Court.

7. Class Action Settlements

Counsel are reminded to review and comply with the Northern District's Procedural Guidance for Class Action Settlements available on the Court's website at www.cand.uscourts.gov/ClassActionSettlementGuidance.

8. Service of Standing Order

Plaintiff (or in the case of removed cases, any removing defendant) is directed to serve copies of all Judge Orrick Standing Orders at once upon all parties to the action, and upon those subsequently joined, in accordance with the provisions of Federal Rules of Civil Procedure 4 and 5 and to file with the Clerk of Court a certificate reflecting such service, in accordance with Civil Local Rule 5-5(a).

9. Unrepresented (Pro Se) Parties

Parties representing themselves should visit the link titled "If You Don't Have a Lawyer" on the Court's homepage, www.cand.uscourts.gov. The link discusses the Court's "Legal Help Center" for unrepresented parties. The Legal Help Center can be reached at 415-782-8982. In San Francisco, the Legal Help Center is located on the 15th Floor, Room 2796, of the courthouse at 450 Golden Gate Avenue. In Oakland, the Legal Help Center is located on the 4th Floor, Room 470S, of the courthouse at 1301 Clay Street.

IT IS SO ORDERED.

Dated: 1/18/2018



William H. Orrick
United States District Judge

JUDGE ORRICK'S STANDING ORDER ON
ADMINISTRATIVE MOTIONS TO FILE UNDER SEAL

Any party seeking to file material under seal must comply with this Order and Civil Local Rule 79-5. The party that has designated material as confidential also must file a declaration in support of sealing that rebuts the strong presumption in favor of public access that applies to all documents other than grand jury transcripts and pre-indictment warrant materials. *See Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).

A. Administrative Motions to File Under Seal

Administrative motions to file materials under seal must contain the following information, presented in the following sequence:

1. A statement certifying that the filing party has reviewed and complied with this Order.
2. A statement certifying that the filing party has reviewed and complied with Civil Local Rule 79-5.
3. An identification of each document, documents, or portions of documents proposed to be sealed or redacted.
4. A statement identifying the entity that has designated the materials to be sealed as confidential. If a party seeks to seal numerous documents, the party shall provide a chart identifying the entity that designated each document as confidential.
5. A statement identifying the basis for sealing each document or portion of a document. If a party seeks to seal numerous documents, the party shall provide a chart identifying the basis for sealing each document or portion of a document. If the portions of documents sought to be sealed are voluminous, the Court will consider a single statement covering multiple documents if the basis for sealing those materials is the same.
6. All other materials required by the Local Rule, including courtesy copies in the correct format. *See* CIVIL L.R. 79-5(d).

B. Justification for Filing Under Seal

The following requirements apply to the Administrative Motion and/or declaration filed by the entity that has designated the material as confidential.

The party seeking to seal the material must establish that the following requirements are met:

1. The document or document portion sought to be sealed is “privileged, protectable as a trade secret or otherwise entitled to protection under the law.” CIVIL L.R. 79-5(b). Supporting declarations must “articulate [] reasons supported by specific factual findings” to warrant sealing. *Kamakana*, 447 F.3d at 1178. Note that “[r]eference to a stipulation or protective order that allows a party to designate certain documents as confidential is not sufficient to establish that a document, or portions thereof, are sealable.” CIVIL L.R. 79-5(d)(1)(A). Conclusory assertions of harm are also insufficient.
2. The “strong presumption of access to judicial records” is rebutted under the appropriate legal standard, i.e., the “good cause” or “compelling reasons” standard. The standard that

(Effective 3/2018)

applies depends on whether the underlying motion at issue “is more than tangentially related to the merits of a case.” *Ctr. for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). The Administrative Motion or declaration must identify the appropriate standard and articulate why the materials to be sealed satisfy that standard. “The mere fact that the production of records may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records.” *Kamakana*, 447 F.3d at 1179.

3. The request is “narrowly tailored to seek sealing only of sealable material” and does not indiscriminately seek to seal documents or portions of documents which do not contain sealable material. CIVIL L.R. 79-5(b).

C. Proposed Orders and Service

1. Proposed Orders must identify with specificity each document, documents, or portions of documents proposed to be sealed or redacted in compliance with Civil Local Rule 79-5(d)(1)(B). If a party seeks to seal numerous documents, the Proposed Order should include a chart identifying each document or portion of a document sought to be sealed and the justification for each proposed sealing.
2. Electronic copies of proposed orders must be sent in Word format to whopo@cand.uscourts.gov.
3. The filing party must serve the above items, this Order, and a copy of Civil Local Rule 79-5 upon (i) any party who is not on ECF, and (ii) any non-party that has designated as confidential any material to be sealed. The filing party must then file a certificate of service to confirm that it has complied.

D. E-filing

1. For instructions on how to e-file the Administrative Motion to File Under Seal, see the directions on the Court’s homepage at <http://cand.uscourts.gov/ecf/underseal>.
2. If the document sought to be filed under seal is a motion (for example, a motion to dismiss, a motion for summary judgment), counsel shall e-file, separately from the contents and attachments of the Administrative Motion to File Under Seal discussed above, a redacted version of the Motion. That separate filing will allow counsel to select a hearing date for the substantive Motion.

FAILURE TO COMPLY WITH THIS STANDING ORDER AND THE LOCAL RULES MAY RESULT IN SUMMARY DENIAL OF ADMINISTRATIVE MOTIONS TO FILE UNDER SEAL.

Dated: March 23, 2018



William H. Orrick
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

A jury trial has been set in this matter for << DATE >>, beginning at 8:00 a.m. with an attorney conference and jury selection to follow thereafter. A Pretrial Conference has been set for <<DATE >> at 2:00 p.m.

The following scheduling deadlines and hearing dates have been set:

1. Pretrial Conference and Statement

Not less than 28 days prior to the Pretrial Conference, counsel shall exchange (but not file or lodge) the papers described in Civil L.R. 16-10(b)(7), (8), (9) and (10), and any motions in limine.

At least 21 days before the Pretrial Conference, lead trial counsel shall meet and confer with respect to:

- Preparation and content of the joint pretrial conference statement;
- Resolution of any differences between the parties regarding the preparation and content of the joint pretrial conference statement and the preparation and exchange of pretrial materials to be served and filed pursuant to this Order. To the extent such differences are not resolved, the parties will present the issues in the pretrial conference statement so that the judge may rule on the matter during the Pretrial Conference; and
- Settlement.

At least 14 days prior to the Pretrial Conference, the parties shall file a joint pretrial conference statement containing the following information:

a. The Action

(i) Substance of the Action. A brief description of the substance of claims and defenses that remain to be decided.

(ii) Relief Prayed. A detailed statement of all the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents, or other evidentiary

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material to be presented concerning the amount of those damages.

b. The Factual Basis of the Action

(i) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(ii) Disputed Factual Issues. A plain and concise statement of all disputed factual issues that remain to be decided.

(iii) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

(iv) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

c. Disputed Legal Issues

(i) Points of Law. Without extended legal argument, a concise statement of each disputed point of law concerning liability or relief, citing supporting statutes and decisions setting forth briefly the nature of each party's contentions concerning each disputed point of law, including procedural and evidentiary issues.

(ii) Proposed Conclusions of Law. If the case is to be tried without a jury, unless otherwise ordered, parties should briefly indicate objections to proposed conclusions of law.

d. Trial Preparation

(i) Witnesses to be Called. A list of all witnesses likely to be called at trial, other than solely for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given.

(ii) Exhibits, Schedules and Summaries. A list of all documents and other items to be offered as exhibits at the trial, other than solely for impeachment or rebuttal, with a brief statement following each describing its substance or purpose and the identity of the sponsoring witness. Unless otherwise ordered, parties will indicate their objections to the receipt in evidence

1 of exhibits and materials lodged and that counsel have conferred respecting such objections.

2 (iii) Estimate of Trial Time. An estimate of the number of court days needed for
3 the presentation of each party's case, indicating possible reductions in time through proposed
4 stipulations, agreed statements of facts, or expedited means of presenting testimony and exhibits.

5 (iv) Use of Discovery Responses. Counsel shall cite possible presentation at trial
6 of evidence, other than solely for impeachment or rebuttal, through use of excerpts from
7 depositions, interrogatory answers, or responses to requests for admission. Counsel shall indicate
8 any objections to use of these materials and that counsel has conferred respecting such objections.

9 (v) Further Discovery or Motions. A statement of all remaining discovery or
10 motions, including motions in limine.

11 e. Trial Alternatives and Options

12 (i) Settlement Discussion. A statement summarizing the status of settlement
13 negotiations and indicating whether further negotiations are likely to be productive.

14 (ii) Consent to Trial Before a Magistrate Judge. A statement whether reference of
15 all or part of the action to a master or magistrate judge is feasible, including whether the parties
16 consent to a court or jury trial before a magistrate judge, with appeal directly to the Ninth Circuit.

17 (iii) Amendments, Dismissals. A statement of requested or proposed amendments
18 to pleadings or dismissals of parties' claims or defenses.

19 (iv) Bifurcation, Separate Trial of Issues. A statement of whether bifurcation or a
20 separate trial of specific issues is feasible and desired.

21 2. Witnesses

22 a. Jury Trials. The Pretrial Conference Statement shall include the witness list
23 required in part by 1(d)(i) above. In addition, in the case of expert witnesses, the summary shall
24 clearly state the expert's theories and conclusions and the basis therefore and shall be
25 accompanied by a curriculum vitae; if the expert has prepared a report in preparation for the
26 testimony, a copy thereof shall be furnished to opposing counsel. Witnesses not included on the
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list may be excluded from testifying.

b. Non-Jury Trials. In non-jury cases, any party may serve and lodge with the Court a written narrative statement of the proposed direct testimony of each witness under that party's control in lieu of a summary. Each statement shall be marked as an exhibit and shall be in a form suitable to be received into evidence.

3. Jury Instructions

a. Joint Set of Instructions. The parties shall jointly prepare a set of jury instructions, and shall file the proposed instructions at least fourteen days prior to the Pretrial Conference. The submission shall contain both agreed upon instructions (which shall be so noted), and contested instructions, all in the order in which they should be read to the jury. Where contested instructions are included, they should be annotated both with the proponent's authority for seeking the instruction and the opponent's reason for opposition. Counsel shall deliver to Chambers a copy of the joint submission on a CD/DVD in Word format. The label shall include the case number and a description of the documents.

b. Substance and Format of Instructions. The instructions shall cover all substantive issues and other points not covered by the Ninth Circuit Manual of Model Jury Instructions. Each requested instruction shall be typed in full on a separate page and citations to the authorities upon which the instruction is based shall be included. Instructions shall be brief, clear, written in plain English, and free of argument. Pattern or form instructions shall be revised to address the particular facts and issues of this case.

c. Preliminary Statement and Instructions. If the parties wish to have a preliminary statement read to the jury, and/or preliminary instructions given to the jury, they shall jointly prepare and file the text of the proposed preliminary statement and/or preliminary instructions at least fourteen days prior to the Pretrial Conference.

d. Voir Dire and Verdict Forms. Each party shall file proposed questions for jury voir dire and a proposed Form of Verdict at least fourteen days prior to the Pretrial Conference.

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4. Findings of Fact and Conclusions of Law

In non-jury cases, each party shall file at least fourteen days prior to the Pretrial Conference proposed Findings of Fact and Conclusions of Law on all material issues. The Court requests that the parties hyperlink each proposed Finding of Fact to any supporting evidence. Proposed Findings shall be brief, written in plain English, and free of pejorative language, conclusions and argument. Parties shall deliver to Chambers copies of Proposed Findings of Fact and Conclusions of Law on a CD/DVD in Word format, with a label including the name of the case, the case number and a description of the submission.

5. Exhibits

a. Provide Copies of Exhibits to Other Parties. Each party shall provide every other party with one set of all proposed exhibits, charts, schedules, summaries, diagrams, and other similar documentary materials to be used in its case in chief at trial, together with a complete list of all such proposed exhibits. Voluminous exhibits shall be reduced by elimination of irrelevant portions or through the use of summaries. Each item shall be pre-marked with a trial exhibit sticker (“Trial Exhibit No. ___”), not deposition exhibit label, and defendant’s exhibit numbers shall be sequenced to begin after plaintiff’s exhibit numbers. If there are numerous exhibits, they should be provided in three-ring binders with marked tab separators. All exhibits that have not been provided as required are subject to exclusion.

b. Stipulations re Admissibility. At least fourteen days prior to the Pretrial Conference, the parties shall make a good faith effort to stipulate to exhibits’ admissibility. If stipulation is not possible, the parties shall make every effort to stipulate to authenticity and foundation absent a legitimate (not tactical) objection.

c. Objections to Exhibits. In addition to the exhibit list, counsel shall confer with respect to any other objections to exhibits in advance of the Pretrial Conference. Each party shall file a statement briefly identifying each item objected to, the grounds for the objection, and the position of the offering party at least fourteen days prior to the date set for the Pretrial Conference.

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d. Provide Copies of Exhibits to Court. One set of exhibits shall be provided to the Court in Chambers on the Friday prior to the trial date, in binders, marked, tabbed, and indexed in accordance with Local Rule 16-10(b)(7). Exhibits shall be identified as follows:

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA TRIAL EXHIBIT 100 CASE NO. _____ DATE ENTERED _____ BY _____ DEPUTY CLERK

Blocks of numbers shall be assigned to fit the needs of the case (e.g., Plaintiff has 1-100, Defendant has 101-200). The parties shall not mark duplicate exhibits (e.g., plaintiff and defendant shall not mark the same exhibit; only one copy of the exhibit shall be marked).

e. Witness Binders. If all of the exhibits in a case do not fit in one binder, then the parties shall prepare a witness binder for each witness that will testify regarding three or more exhibits.

f. Disposition of Exhibits after Trial. Upon the conclusion of the trial, each party shall retain its exhibits through the appellate process. It is each party's responsibility to make arrangements with the Clerk of Court to file the record on appeal.

6. Motions In Limine

Any party wishing to have motions in limine heard prior to the commencement of trial must file them at least fourteen days prior to the date set for the Pretrial Conference. All motions in limine shall be contained in one document, limited to 25 pages pursuant to Civil L.R. 7-2(b),

1 with each motion listed as a subheading. Opposition to the motions in limine shall be contained in
2 one document, limited to 25 pages, with corresponding subheadings, and shall be filed at least
3 seven days prior to the Pretrial Conference. No reply papers will be considered. The motions will
4 be heard at the Pretrial Conference or at such other time as the Court may direct. Nothing in this
5 provision prevents a party from noticing its motions in limine regularly for hearing on or prior to
6 the final date for hearing dispositive motions. No leave to file under seal will be granted with
7 respect to motions in limine.

8 **7. Other Pretrial Matters**

9 a. Status Conferences. Any party desiring to confer with the Court may, upon notice
10 to all other parties, arrange a conference through the Courtroom Deputy, Jean Davis, at 415-522-
11 2077 or whocrd@cand.uscourts.gov.

12 b. Settlement Conferences. Parties wishing to arrange a settlement conference before
13 another judge or magistrate judge may do so by contacting the Courtroom Deputy.

14 c. Daily Transcripts. Should a daily transcript and/or realtime reporting be desired,
15 the parties shall make arrangements with Rick Duvall, Court Reporter Supervisor, at 415-522-
16 2079 or Richard_Duvall@cand.uscourts.gov, at least seven calendar days prior to the trial date.

17 **8. Trial Matters**

18 a. The normal trial schedule will be from 8:00 a.m. to 1:00 p.m. (or slightly longer to
19 finish a witness) with two fifteen minute breaks. Trial is usually held from Monday through
20 Friday.

21 b. Ordinarily, the Court will set fixed time limits for each side at the Final Pretrial
22 Conference.

23 c. Expert witnesses are limited to the scope of their expert reports on direct
24 examination. F.R.C.P. 26(a)(2) and 37(c).

25 d. Parties must meet and confer to exchange any visuals, graphics or exhibits to be
26 used in opening statements. Unless otherwise agreed, the exchange must occur no later than
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Wednesday before the trial. Any objections not resolved must be filed in writing by Thursday before trial. The parties shall be available by telephone Friday before trial to discuss the issue raised with the Court.

e. The parties shall disclose the witnesses whom they will call at trial on any given day by at least 2:00 p.m. the court day before their testimony is expected. Failure to have a witness ready to proceed at trial will usually constitute resting.

f. The Court takes a photograph of each witness prior to the witness's testimony.

g. Other than a party or party representative, fact witnesses are excluded from the courtroom until they are called to testify, and may not attend in the gallery until their testimony is complete.

h. The Court does not typically allow bench conferences. If there are matters that need to be raised with the Court outside the presence of the jury, the parties should raise them in the morning before trial or during recess. With advance notice, the Court is usually available at 7:30 a.m. to address such matters.

9. Miscellaneous

a. Please DO NOT call Chambers. If you need to contact the Courtroom Deputy, please call (415) 522-2077 and leave a message if the deputy is not available, or email whocrd@cand.uscourts.gov.

b. Copies. Each document filed or lodged with the Court must be accompanied by a three-hole punched copy for use in the Judge's chambers. In addition, one copy of the witness and exhibit lists should be furnished to the court reporter.

IT IS SO ORDERED.

Dated: February 2017



William H. Orrick
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IT IS HEREBY ORDERED that, pursuant to Fed.R.Civ.P. 16(b) and Civil L. R. 16-10, a Case Management Conference will be held in this case before the Honorable William H. Orrick on <<DATE>> at 2:00 p.m. in Courtroom 2, 17th Floor, 450 Golden Gate Avenue, San Francisco, California 94102. This conference shall be attended by lead trial counsel for parties who are represented. Parties who are proceeding without counsel must appear personally.

1. Case Management Conference Requirements

- a. Plaintiffs shall serve copies of this Order at once on all parties to this action, and on any parties subsequently joined, in accordance with the provisions of Fed.R.Civ.P. 4 and 5. Following service, plaintiffs shall file a certificate of service with the Clerk of this Court.
- b. Counsel are directed to confer in advance of the Case Management Conference. Not less than seven days before the conference, counsel shall file a joint case management statement in compliance with the Civil Local Rules and the Standing Order for All Judges of the Northern District of California. Failure to file a joint statement shall be accompanied by a signed declaration setting forth the grounds

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for such failure. Failure to show good cause for such failure may subject the parties to sanctions.

- c. Each party shall be represented at the Case Management Conference by counsel prepared to address all of the matters referred to in this Order, and with authority to enter stipulations and make admissions pursuant to this Order.
- d. Any request to reschedule the above date should be made in writing, and by stipulation, if possible, not less than ten days before the conference date. Good cause must be shown.
- e. At the Case Management Conference the parties should be prepared to address and resolve the following: setting the date and the estimated length of the trial; setting the date for discovery cutoff; setting the date to designate experts and other witnesses; and setting the date for the pretrial conference.

2. Telephonic Appearance Procedures for Case Management Conferences

- a. Although the Court prefers in-person appearances, the Court allows attorneys whose offices are more than **thirty miles** from the Courthouse to appear for civil Case Management Conferences (only) by telephone. No motion or other formal request is required. Unless the parties propose a different procedure that the court authorizes, telephonic appearances are made through CourtCall, an independent conference-call company, pursuant to the procedures set forth in section 2b. If an individual schedules a telephonic appearance and then fails to respond to the call of a matter on calendar, the Court may pass the matter or may treat the failure to respond as a failure to appear. Scheduling simultaneous telephonic appearances in multiple courts does not excuse a failure to appear.
- b. **SCHEDULING A TELEPHONIC APPEARANCE.** Absent an emergency, telephone appearances should be arranged by calling CourtCall at (866) 582-6878

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no later than 3:00 p.m. the court day prior to the hearing date.

- c. PROCEDURE FOR TELEPHONIC APPEARANCE. Court Call will provide counsel with written confirmation of the telephonic appearance, and give counsel a number to call to make the telephonic appearance. It is counsel's responsibility to dial into the call not later than 10 minutes prior to the scheduled hearing.

CourtCall does not place a call to counsel.

The initial charge per participant for a CourtCall appearance is \$30.00 for the first 45 minutes you are connected. For each additional 15-minute increment the charge is \$7.00. If you do not timely call and connect with the Court Call operator, you will be billed for the call, and the hearing may proceed in your absence.

Telephonic appearances are connected directly with the courtroom's public address system and electronic recording equipment so that a normal record is produced. To ensure the quality of the record, the use of mobile phones, speakerphones, public telephone booths, or phones in other public places is discouraged except when completely unavoidable. Participants should be able to hear all parties without difficulty or echo.

At the time of your hearing, you may be in the listening mode initially, in which case you will be able to hear the case before yours just as if you were in the courtroom. After your call is connected to the courtroom, the Clerk will call the case and request appearances. Each time you speak, you should identify yourself for the record. The court's teleconferencing system allows more than one speaker to be heard; so the Judge can interrupt a speaker to ask a question or redirect the discussion. When the Judge informs the participants that the hearing is completed, you may disconnect, and the next case will be called.

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3. Notice to Unrepresented (Pro Se) Parties in Non-Prisoner Cases

- a. Parties representing themselves should visit the link titled “If You Don’t Have a Lawyer” on the Court’s homepage, www.cand.uscourts.gov. The link discusses the Court’s “Legal Help Center” for unrepresented parties. In San Francisco, the Legal Help Center is located on the 15th Floor, Room 2796, of the courthouse at 450 Golden Gate Avenue. In Oakland, the Legal Help Center is located on the 4th Floor, Room 470S, of the courthouse at 1301 Clay Street. To make an appointment for San Francisco or Oakland, call 415-782-8982.

- b. If you are representing yourself and you have not been granted leave to proceed *in forma pauperis* (IFP) by the Court, you must comply with the service requirements of Rule 4 of the Federal Rules of Civil Procedure, as set forth below. Failure to follow the procedures may result, under Rule 4(m), in dismissal of your case:
 - (i) It is your responsibility to obtain a valid summons from the clerk and to effect service of the summons and complaint on all defendants in accordance with Rule 4 of the Federal Rules of Civil Procedure. If you have named the United States government, a federal agency, a federal official or a federal employee as a defendant, you must comply with the special requirements of Rule 4(i).
 - (ii) Service may be affected by any person who is not a party and who is at least 18 years of age, which means that you, as a party, may not affect service. If service of the summons and complaint is not made upon a defendant within 90 days after the filing of the complaint, your action will, under Rule 4(m), be dismissed as to that defendant.
 - (iii) Within 95 days after the filing of the complaint, you must file proof of service indicating which defendants were served within the 90 days allowed under Rule 4(m) and showing, in accordance with Rule 4(i), how each of those

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defendants was served (for example, by attaching appropriate certificates of service). You must also show cause why a defendant not served within the 90 days allowed under Rule 4(m) should not be dismissed without prejudice.

- (iv) Failure to do these things within the designated time will result in the dismissal of your case under Rule 4(m) and Rule 41(b).

Dated: January 2018



William H. Orrick
United States District Court Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOTICE OF ELIGIBILITY FOR VIDEO RECORDING

This case is assigned to a judge who participates in the Cameras in the Courtroom Pilot Project. See General Order 65 and cand.uscourts.gov/cameras. The parties' consent is required before any proceedings in this case may be recorded. If a party, the presiding judge, or a member of the media requests that a proceeding be recorded, consent of the parties will be presumed unless a party submits an Objection to Request for Video Recording form as directed by the Cameras in the Courtroom Procedures.

Parties objecting to video recording are asked, for research purposes, to communicate to the Court the reasons for declining to participate. If you decline to participate, you should candidly convey the reasons for your decision. Whether you agree to participate or decline to participate will have no effect on your case whatsoever.



Susan Y. Soong, Clerk of Court

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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

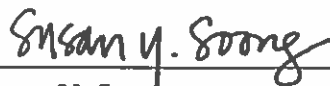
PACASO INC., et al.,
Plaintiffs,
v.
CITY OF ST. HELENA, et al.,
Defendants.

Case No. 21-cv-02493-KAW
ORDER REASSIGNING CASE

IT IS ORDERED that this case has been reassigned using a proportionate, random and blind system pursuant to General Order No. 44 to the Honorable William H. Orrick in the San Francisco division for all further proceedings. Counsel are instructed that all future filings shall bear the initials WHO immediately after the case number.

All hearing and trial dates presently scheduled are vacated. However, existing briefing schedules for motions remain unchanged. Motions must be renoticed for hearing before the judge to whom the case has been reassigned, but the renoticing of the hearing does not affect the prior briefing schedule. Other deadlines such as those for ADR compliance and discovery cutoff also remain unchanged.

Dated: April 9, 2021



Susan Y. Soong
Clerk, United States District Court

A true and correct copy of this order has been served by mail upon any pro se parties.

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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Susan Y. Soong, Clerk of Court