

1 PETER NAUGHTON  
2 BRENDA BARNES  
3 MICHAEL McKINSEY  
4 LINNEA McKINSEY  
5 2461 Santa Monica Blvd., #507  
6 Santa Monica, CA 90404  
7 (310)795-3762

8 Plaintiffs in pro per

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE  
10 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

11 BERHANE HABTE, an Individual,

12 Plaintiff,

13 v.

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15  
16 MARC L. LUZZATTO, an Individual;  
17 VILLAGE TRAILER PARK, L.L.C., a  
18 California Limited Liability Company;  
19 VILLAGE TRAILER PARK, a California  
20 Corporation; J & H ASSET  
21 PROPERTY MGT. [*sic.*], INC., a  
22 California Corporation; JAMES JOFFE,  
23 an Individual; JILL ARTEAGA, an  
24 Individual; JUNE WILLIS, an Individual;  
25 MICHAEL CARLSON, an Individual;  
26 and DOES 1 through 20, Inclusive,

27 Defendants.

28 Notice of Motion to Consolidate in  
Case No. BC483237, For Filing and  
Service in Case BC544598

Assigned for All Purposes to the Hon.  
Judge Teresa Sanchez-Gordon, Dept. 74

**NOTICE OF MOTION AND MOTION TO  
CONSOLIDATE RELATED CASE;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION OF  
BRENDA BARNES IN SUPPORT  
THEREOF**

**COMPLAINT AND EXHIBITS IN  
PROPOSED CONSOLIDATED CASE  
LODGED WITH COURT SEPARATELY  
(ALL PARTIES HAVE BEEN SERVED)**

Hearing:

DATE: July 14, 2014

TIME: 8:30 a.m.

DEPT: 74

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

JUN 20 2014

Sherri R. Carter, Executive Officer/Clerk  
By Amirah Hendrickson, Deputy

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Case No. BC544598

PETER NAUGHTON, an Individual;  
BRENDA BARNES, an Individual;  
MICHAEL McKINSEY, an Individual;  
and LINNEA McKINSEY, an Individual;

Plaintiffs,

v.

MARC L. LUZZATTO, an Individual;  
VILLAGE TRAILER PARK, L.L.C., a  
California Limited Liability Company;  
VILLAGE TRAILER PARK, a California  
Corporation; J & H ASSET  
PROPERTY MGT. [*sic.*], INC., a  
California Corporation; JAMES JOFFE,  
an Individual; JILL ARTEAGA, an  
Individual; JUNE WILLIS, an Individual;  
and DOES 1 through 20, Inclusive,

Defendants.

**COMPLAINT FOR DECLARATORY  
RELIEF, BASED ON: (1) UNLAWFUL  
CONSTRUCTIVE EVICTION UNDER  
LOCAL RENT CONTROL AND STATE  
LAW; (2) RETALIATORY EVICTION;  
(3) INTENTIONAL OTHER VIOLATIONS  
OF LOCAL RENT CONTROL LAW;  
(4) FAILURE TO MAINTAIN AND  
FORCIBLE ENTRY CAUSING  
EXPOSURE TO PERSONAL INJURY;  
(5) ELDER ABUSE; (6) FRAUD; AND  
(7) INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS**

(C.C.P. §§ 338 and 1060 ; Civ. C. §§  
798.56(g), 798.26, 1942.5; Gov't C. §§  
12955 et seq. and 66427.4; Santa  
Monica Charter, §§ 1800 et seq. and  
2300 et seq.; Santa Monica Rent Control  
Board Regs., § 2004, Chapter 9,  
Evictions, Santa Monica Municipal Code  
Chapter 4.56, Tenant Harassment)



1 TO THE HONORABLE ABOVE-ENTITLED COURT AND TO PLAINTIFF,  
2 DEFENDANTS, AND THEIR ATTORNEYS OF RECORD:

3 At the place, date and time heretofore stated, or as soon thereafter as the matter  
4 may be heard, Case No. BC544598 Plaintiffs PETER NAUGHTON and BRENDA  
5 BARNES ("Plaintiffs,") will move and do hereby move the Court to Declare the Case (as  
6 listed in the concurrently lodged Notice of Related Case) Related and Consolidate Same  
7 with this Case, with the contemplation that the Court will thereafter Issue preliminary  
8 orders granting relief as necessary to preclude irreparable harm pending further order of  
9 this Court.  
10

11 This Motion will be and is made on the grounds that:

12 (1) This Court has the duty to decide when asked by a party filing a later related  
13 case, whether the cases are related and whether they should be consolidated to preserve  
14 judicial resources and effect justice in the circumstances;  
15

16 (2) This Court is familiar and has been for over two (2) years with the related case  
17 stating Defendants are proceeding and threatening to continue to proceed contrary to  
18 legal duties specifically enjoined upon them by law; and  
19

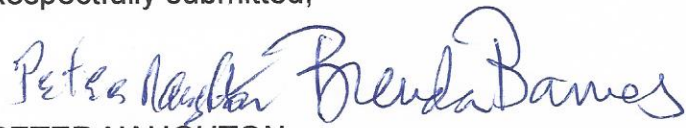
20 (3) Issues Plaintiffs raise in their Complaint filed in Case No. BC544598 on May 2,  
21 2014 (and in a First Amended Complaint to be filed and served before the hearing on this  
22 Motion), are in fact and law related to this pending Case, which has the same defendants,  
23 arose out of and involves the same facts and law, will require the same evidence; and  
24 otherwise will duplicate judicial efforts and could lead to conflicting decisions if tried in two  
25 separate courts.  
26

27 This Motion will be and is based on the attached Memorandum of Points and  
28 Authorities and Declaration of BRENDA BARNES, the verified Complaint in related Case

1 BC544598 lodged concurrently herewith, the First Amended Complaint in that case to  
2 be lodged with the Court when same is filed and served, and such further argument  
3 and/or evidence as is permitted by the Court at said hearing.

4 DATED: June 18, 2014

Respectfully submitted,



PETER NAUGHTON  
BRENDA BARNES  
Proposed Consolidated Plaintiffs in pro per

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1 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO  
2 CONSOLIDATE RELATED CASES

3 Introduction and Summary of Facts and Issues

4 This case, like the related case with which Plaintiffs seek to have it consolidated,  
5 arose out of many defects in procedure and substance in handling hearings on a  
6 Development Agreement between a land speculator claiming to be a proposed developer  
7 (Defendants in the two cases) and the City of Santa Monica. These defects concern  
8 property where Plaintiffs—who are husband and wife and parents of the remaining two  
9 plaintiffs in the newer case—live and have owned a home for the past 28 years  
(Declaration of Brenda Barnes, ¶ 1).

10 The related case has been pending before this Court since April 20, 2012,  
11 according to the court case summary—over two (2) years.

12 The new case sought to be consolidated, like the old case with which the Court is  
13 familiar, alleges Defendants know they cannot evict tenants from the property, so they are  
14 trying to harass and abuse the tenants into moving without being evicted.

15 Tenants of a Santa Monica trailer park, like the instant Plaintiffs and HABTE in the  
16 lower-numbered case, are legally protected from eviction by three (3) separate state laws,  
17 by the 1979 local rent control amendment to the City Charter, by a recent amendment to  
18 the Charter passed by voters in November 2010, and unless they are paid for adequate  
19 replacement housing, by another state law. They are also protected by constitutional  
20 provisions against being deprived of their property—their right to live under Santa Monica  
21 Rent Control in the space where their mobilehome has been situated since rent control  
22 passed in 1979, their right to possess and to have their mobilehome in the subject Park,  
23 their rights under the state Mobilehome Residency Law to live in the Park in that  
24 mobilehome or replacements they buy for it unless they are evicted for good cause under  
25 that law (Civ. C. §798.56), and the right to adequate replacement space for themselves  
26 and their mobilehome in a mobilehome park if developers change the use of the Park  
(Gov't. C. § 66427.4(a) and (c))—without due process of law and just compensation paid  
27 before their property is taken.

28 The new case complaint alleges that therefore, to try to rid the land of tenants they  
cannot evict, for the last 17 years Defendants have engaged in a conspiracy of harassing,



1 defrauding, abusing, trespassing upon, destroying former neighbors' houses without  
2 demolition permits and without taking any care for tenants' health and safety, and in  
3 numerous other ways otherwise mistreating tenants to try to make them move without  
4 Defendants' having to try in court to evict them.

5 It refers to the following facts from the past year, during which Defendants:

6 (1) Without any permits, several of which were required in the circumstances,  
7 allowed a film company to conduct high-speed car chases through the property without  
8 relocating tenants to protect them, as required by law;

9 (2) Allowed that company to overrun tenants' common areas with 120 people  
10 and 40 vehicles for a week, as well as to block off ingress and egress and the surrounding  
11 streets and have Santa Monica Police threaten tenants with arrest if they do not move out  
12 of space they have a right to be in because they rented it;

13 (3) Again without taking any care to protect tenants, destroyed a building known  
14 to be infested with mold and other toxins so dangerous that the former owner believes  
15 she contracted cancer from living there;

16 (4) Allowed their agents to trespass upon space rented to tenants and  
17 registered with the Rent Control Board as included for rent; and

18 (5) In general and specifically continued the patterns alleged in the lower-  
19 numbered case before this Court, of taking actions threatening to and possibly unknown  
20 yet to the tenants actually exacerbating asthma, heart trouble, and other illnesses  
21 Defendants know tenants have, by causing dust, water leaks, noise and other  
22 disturbances of peace and quiet, and by intimidating, harassing, and otherwise causing  
23 undue stress to tenants.

24 Plaintiffs are informed and believe that many facts indicate Defendants know they  
25 cannot evict Plaintiffs. Therefore, the latest escalations are just that, escalations of the  
26 former behaviors, all having the goal of getting Plaintiffs to move without being evicted,  
27 since Defendants know Plaintiffs cannot be evicted. Nonetheless, the fact Defendants do  
28 not have a legal right to do what they are claiming they have a right to do does not keep  
their claims from hurting Plaintiffs, which is why the recent case seeking only declaratory  
relief, in order to have legal priority, was filed. As this Motion to Consolidate indicates, the  
need for immediate relief is clearly manifest. Old people opposing a ruthless big money

1 machine can take only so much. That is why Plaintiffs are here seeking the Court's aid  
2 now.

3  
4 THE NEW CASE AND THE LOWER-NUMBERED ONE MEET ALL FOUR OF THE  
5 REQUIREMENTS, ONLY ONE OF WHICH IS REQUIRED, OF COURT RULE 3.300 FOR  
6 CASES TO BE RELATED

7 As the Declaration of Brenda Barnes attached hereto fully reflects, the case sought  
8 to be consolidated with the lower-numbered case the Court has considered already for  
9 over two (2) years, complies with all four reasons in the Court Rules for declaring cases  
10 related, any one of which reasons is enough:

11 **Rule 3.300. Related Cases**

12 **(a) Definition of "related case"**

13 A pending civil case is related to another pending civil case, or to a civil case that  
14 was dismissed with or without prejudice, or to a civil case that was disposed of  
15 by judgment, if the cases:

16 (1) Involve the same parties and are based on the same or similar claims;

17 (2) Arise from the same or substantially identical transactions, incidents, or  
18 events requiring the determination of the same or substantially identical  
19 questions of law or fact;

20 (3) Involve claims against, title to, possession of, or damages to the same  
21 property; or

22 (4) Are likely for other reasons to require substantial duplication of judicial  
23 resources if heard by different judges.

24  
25 The Court can see from the captions that the lower-numbered case has the same  
26 defendants as the HABTE case. The Declaration states the new case and the HABTE  
27 one are based on the same or similar claims and arise from the same or substantially  
28 identical transactions, incidents, or events requiring the determination of the same or  
substantially identical questions of law or fact. Declaration of Brenda Barnes, ¶¶ 2-25.



1 The first paragraph of each operative complaint states the cases concern the same  
2 property, 2930 Colorado Avenue, Santa Monica. Given all this, there is no way two  
3 courts deciding these two cases would not duplicate efforts.

4 Therefore, the two cases are clearly "related" under the Rule of Court.

5 II  
6 ACCORDING TO COURT RULE 3.350 AND ALL APPLICABLE LEGAL  
7 AUTHORITY, THESE RELATED CASES MUST BE CONSOLIDATED

8 As the Declaration of Brenda Barnes attached hereto also fully reflects, Plaintiffs in  
9 the new case have done everything the law requires to have the related case  
10 consolidated with the lower-numbered older case. All the law requires when cases are  
11 related is that a motion to consolidate be filed in all the related case courts, and then the  
12 judge in the lower-numbered one makes a ruling to consolidate or not.

13  
14 California Rules of Court, Rule 3.050 applies to motions to consolidate cases such  
15 as this one and reads in full as follows:

16  
17 **Rule 3.350. Consolidation of cases**

18 **(a) Requirements of motion**

19 **(1) A notice of motion to consolidate must:**

20 (A) List all named parties in each case, the names of those who have  
21 appeared, and the names of their respective attorneys of record;

22 (B) Contain the captions of all the cases sought to be consolidated, with the  
23 lowest numbered case shown first ; and

24 (C) Be filed in each case sought to be consolidated.

25 **(2) The motion to consolidate:**  
26  
27  
28



1 (A) Is deemed a single motion for the purpose of determining the  
2 appropriate filing fee, but memorandums, declarations, and other  
3 supporting papers must be filed only in the lowest numbered case;

4 (B) Must be served on all attorneys of record and all nonrepresented  
5 parties in all of the cases sought to be consolidated; and

6 (C) Must have a proof of service filed as part of the motion.  
7

8 (b) Lead case

9 Unless otherwise provided in the order granting the motion to consolidate,  
10 the lowest numbered case in the consolidated case is the lead case.

11 (c) Order

12 An order granting or denying all or part of a motion to consolidate must be  
13 filed in each case sought to be consolidated. If the motion is granted for all  
14 purposes including trial, any subsequent document must be filed only in the  
15 lead case.  
16

17 (d) Caption and case number

18 All documents filed in the consolidated case must include the caption and  
19 case number of the lead case, followed by the case numbers of all of the  
20 other consolidated cases. [Emphasis added.]  
21

22 In Martin-Bragg v. Moore (2<sup>nd</sup> Dist., 2013) 219 Cal.App.4th 367, 370-371, a case  
23 with its own possibly unique factual issues but with remarkably similar legal issues to  
24 those involved in the pending matter, the Court of Appeal reversed a judgment for  
25 possession and over \$100,000 in damages a landlord had received after trial of an  
26 unlawful detainer action, and states on the issue at hand here in this Motion as follows:  
27  
28

1 . . . . . we conclude that the trial court abused its discretion in refusing [the  
2 tenant]'s request to consolidate the unlawful detainer and quiet title actions for  
3 trial, and that [the tenant] was prejudiced by being forced to litigate the complex  
4 issue of title to the property under the summary procedures that govern actions  
5 for unlawful detainer. [Emphasis added.]

6 The Court of Appeal discusses at length the history and constitutionality of  
7 summary unlawful detainer statutes, concluding they have been found by the United  
8 States Supreme Court to be constitutional only in "the context of routine cases in which  
9 the tenant has failed to pay rent or has held over after the tenancy has expired, and the  
10 issue in the ensuing litigation is simply whether he has paid or held over." 219  
11 Cal.App.4th at 388.

12 The Court states on this subject:

13 . . . the Supreme Court did not approve the application of these justifications [for  
14 summary procedures without discovery and the other usual provisions for due  
15 process of law in deciding disputed legal cases] outside of the context of routine  
16 cases in which the tenant has failed to pay rent or has held over after the  
17 tenancy has expired, "and the issue in the ensuing litigation is simply whether he  
18 has paid or held over. . . ." (Lindsey v. Normet, supra, 405 U.S. at pp. 64-65.)

19 The constitutionality of these summary procedures is based on their limitation to  
20 the single issue of right to possession and incidental damages. 219 Cal.App.4<sup>th</sup>  
21 at 388.

22 The Court also discusses other factual contexts in which the same conclusion  
23 was reached that due process required consolidation of an unlawful detainer case with  
24 an unlimited civil case alleging a right to title to the subject property which was pending  
25 at the same time: Asuncion v. Superior Court (4<sup>th</sup> Dist., 1980) 108 Cal.App.3d 141, 147  
26 (unlawful detainer action based on title obtained through asserted foreclosure sale of the  
27 property, property's homeowners filed a superior court action alleging lender had  
28 obtained the deed through fraud); Mehr v. Superior Court (1<sup>st</sup> Dist., 1983) 139



1 Cal.App.3d 1044, 1050 (after being sued for unlawful detainer defendants filed answer  
2 claiming that plaintiff's trustee's deed had been obtained by fraud, and filed a separate  
3 action based on that claim, trial court required to stay unlawful detainer action); Berry v.  
4 Society of St. Pius X (2<sup>nd</sup> Dist., 1999) 69 Cal.App.4th 354, 362-363, *rehearing denied,*  
5 *petition for hearing denied* (plaintiff sought unlawful detainer against a religious society  
6 and several priests who were in possession of disputed church properties, claiming a  
7 right to possession by virtue of his appointment as pastor of the religious entity that held  
8 title as a corporation sole, court of appeal affirmed trial court's treatment of unlawful  
9 detainer action as an ordinary civil action for declaratory relief rather than applying the  
10 summary procedures that apply to unlawful detainer proceedings). 219 Cal.App.4<sup>th</sup> at  
11 390-391.

12 The Court concludes:

13 Each of these cases reflect the courts' recognition that when complex  
14 issues of title are involved, the parties' constitutional rights to due process in the  
15 litigation of those issues cannot be subordinated to the summary procedures of  
16 unlawful detainer.

17 Plaintiffs in the case sought to be consolidated by this Motion are alleging  
18 Defendants are claiming a right to evict them that for various factual and legal reasons  
19 does not exist. On the principles discussed above, these issues need to be determined  
20 with the ordinary procedures applicable to a declaratory relief action—which has priority,  
21 so is not an unfair delay in any event.

22 The legal principles discussed above therefore clearly require the Court to exercise  
23 its discretion so as to consolidate this case with another already pending making some of  
24 the same arguments—as well as others applicable only to Habte such as having been  
25 defrauded by a co-homeowner and having been subjected to racial discrimination by the  
26 landlord.

27 However, in addition, the summary procedures of an unlawful detainer that could  
28 possibly have entitled defendants to claim they had a right not to have the UD case they

1 had against Habte consolidated with the pending case he had against the landlord for  
2 damages do not even give the landlord-defendants any reason to claim all the disputes  
3 between them and these moving plaintiffs are not subject to resolution in an ordinary  
4 unlimited civil case.

5 That is because—unlike Habte—these defendants are alleged, in the Complaint in  
6 the case sought to be consolidated, to be requiring the subject plaintiffs to move, without  
7 even claiming these plaintiffs have failed to pay rent or are wrongfully holding over at the  
8 end of a lease. Because all plaintiffs involved are mobilehome park tenants, unless such  
9 failure to pay rent or unlawful holding over is at issue, the landlords are not entitled to any  
10 summary procedure at all.

11 We conclude that the 60-day notice provision of Civil Code section  
12 789.5 was intended by the Legislature to exclusively apply to proceedings for  
13 termination of mobilehome tenancies for non-payment of rent. The summary  
14 proceedings for obtaining possession of real property outlined in the Code of  
15 Civil Procedure are not applicable for termination of mobilehome tenancies.  
16 Palmer v. Agee (4<sup>th</sup> Dist., 1978) 87 Cal.App.3d 377, 386, emphasis added.

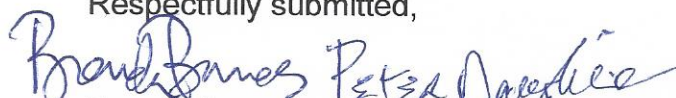
17 Therefore, there is no reason NOT to consolidate both the Habte case pending  
18 before this Court and any case claiming, as it does, that these landlord-defendants have  
19 spent years harassing, defrauding, abusing and/or otherwise wrongfully and unlawfully  
20 treating tenants they have no right to evict, in an attempt to cause those tenants to move.

#### 21 CONCLUSION

22 For all the reasons stated herein, the Court should in the exercise of sound  
23 discretion grant Plaintiffs' Motion to Consolidate Related Case, and ultimately must grant  
24 preliminary relief as will then be requested against Defendants, and thereby uphold the  
rights of Plaintiffs stated in the Complaint and attached Declaration.

25 DATED: June 18, 2014

Respectfully submitted,

26   
27 Brenda Barnes and Peter Naughton  
28 Plaintiffs in pro per



1 DECLARATION OF BRENDA BARNES IN SUPPORT OF MOTION TO CONSOLIDATE RELATED  
2 CASES

3 Brenda Barnes declares and says:

4 I make this declaration of my own personal knowledge, and if called as a witness could and  
5 would testify competently as stated herein.

6 1. I am one of the plaintiffs in Case No. BC544598 seeking to have that case filed  
7 May 2, 2014 consolidated with a lower-number related case in this Court, Case No. BC483237  
8 filed April 20, 2012. I and a co-plaintiff, my husband PETER NAUGHTON, sought an order  
9 shortening time to seek this relief ex parte on May 28, 2014 before this Court, and were  
10 informed there is a hearing scheduled in the case for July 14, 2014 and the Court did not see  
11 any urgency requiring extraordinary relief, so we are now seeking the relief by a noticed  
12 motion. Moreover, in the meantime Defendants or their successors in interest or someone  
13 related to them or an interloper, or someone—discovery will show who—issued a new 60-Day  
14 Notice claiming a right to immediate possession, which by its terms even if it were lawful  
15 expires in August 2014, so there is time for this noticed motion. In addition, in the meantime  
16 Defendants sought to have the Superior Court handling the pending unlawful detainer against  
17 Plaintiff HABTE in the related case which we are seeking to have this case consolidated with,  
18 dismiss that case first with prejudice and then without prejudice, which request was denied.  
19 Therefore, all the urgency that did exist regarding any of these cases has been removed.  
20 Finally, Defendants claimed to have filed, and did serve by overnight delivery on June 16,  
21 2014, a demurrer to our Complaint in the case we seek to have consolidated with HABTE's in  
22 this Court. That demurrer claims to be set for hearing on July 11, 2014, clearly in an attempt  
23 to deprive this Court of jurisdiction over our related case. I will determine how Defendants  
24 were able to get a demurrer set for hearing months before most matters are now being set by  
25 the courts in this area subject to budget constraints and over 25% loss of staff, and I will inform  
26 the Court whether or not that hearing was even actually set. In the meantime, when I have  
27 time after these papers are completed, I will review that demurrer and file and serve an  
28 amended complaint pursuant to CCP § 472, so the hearing, even if it has been properly set to  
occur before the hearing on this Motion, will be taken off-calendar as a matter of law..

1           2.       The new case my co-plaintiffs and I filed on May 2, 2014--the Complaint and  
2 exhibits in which were lodged with the Court along with our ex parte application--arises out of  
3 the same attempt to get tenants to move from the subject property without actually evicting  
4 them as did the lower-numbered case, HABTE v. LUZZATTO, Case No. BC483237. The  
5 primary method Defendants use is harassing and abusing tenants personally, but often they  
6 also use legal-appearing notices and cases that could never win if the tenant fought them.

7           3.       LUZZATTO and his companies and agents tried to evict HABTE because he  
8 objected to their trying to take the homes of 109 families away from those homeowners  
9 without paying the replacement cost of the homes.

10          4.       Defendants did so by using the false claim that he did not pay his rent, without  
11 filing a copy of the eviction notice with the Rent Control Board, and without actually having any  
12 factual or legal basis for the claim he did not tender rent after a three-day notice. I was there  
13 on the third day after a three-day notice to pay rent or quit was posted on HABTE's home  
14 addressed to all residents, when the resident manager refused to take his tendered check.  
15 With me and three other witnesses besides HABTE there, she said, "I have been instructed  
16 not to take rent from you." Then she repeated the same thing regarding his having offered the  
17 rent to her the day before. This means twice during the three-day period he tendered the rent,  
18 the second time with four witnesses and an admission that he had tendered rent the day  
19 before as well. Small wonder Defendants needed a continuance of the unlawful detainer trial.

20          5.       This same kind of lack of validity is true of the latest claim these same  
21 defendants are making that they can evict more tenants. They gave us an invalid notice,  
22 which claims the Park closed on March 6, 2014, when in fact nothing happened to change  
23 anything about the Park being open on March 6, 2014, or on any other relevant date since it  
24 opened in 1951. State law describes what it means to close a mobilehome park. One of the  
25 things is cap all the sewers. Nothing like that happened on March 6, 2014 or legally could  
26 happen, since there were about 38 families living in homes on this property on that date, so it  
27 would be illegal for a landlord to stop providing utility service.

28          6.       The reason Defendants are claiming that they closed the Park on March 6,  
2014, is they gave us a six-month notice September 4, 2013 saying they were going to close



1 the Park, so our tenancy was going to be terminated. They keep serving invalid notices  
2 hoping finally all tenants will move without their having to show they can evict anyone.  
3 Unfortunately for Defendants, this bluff is not going to work with HABTE, or us in the new case,  
4 since the Mobilehome Residency Law does not give any right to evict tenants to close a park.

5 7. Instead, the only possible good cause for eviction in that law is the cause to  
6 "change the use" of a park. That good cause, however, is "provided the management gives at  
7 least 15 days' written notice that the management will be appearing before a local  
8 governmental board, Commission, or body to request permits for a change of use of the  
9 mobilehome park."

10 Civil Code §798.56: A tenancy shall be terminated by the management only for one or more of  
11 the following reasons: . . . . .

12 (g) Change of use of the park or any portion thereof, provided:

- 13 (1) The management gives the homeowners at least 15 days' written notice that the  
14 management will be appearing before a local governmental board, commission, or body  
15 to request permits for a change of use of the mobilehome park.  
16 (2) After all required permits requesting a change of use have been approved by the local  
17 governmental board, commission, or body, the management shall give the homeowners  
18 six months' or more written notice of termination of tenancy. [Emphasis added.]

19 8. Defendants never gave us 15 days' written notice they would be appearing  
20 before a local governmental body to obtain permits to change the use of the park. In fact, they  
21 did not serve any notice of any kind stating anything approaching that. Management of this  
22 Park has since 2006 been serving notices that they were going to "close the park." They  
23 never have even tried to comply with this section about change of use of the Park.

24 9. Instead, governmental bodies served their own notices about numerous  
25 hearings held about this property during the last seven (7) years. Those notices were about all  
26 kinds of things—development agreements, removal from rent control, architectural review,  
27 tentative tract maps, etc.—but none stated what this Code section requires to be stated, and  
28

1 none stated what this section requires the management to state as a condition of having a  
2 cause for eviction: to change the use of a park.

3 10. Moreover, none of these notices were sent any more than 10 days before  
4 hearings, and they were mailed, so at most we got nine (9) days' written notice of whatever the  
5 government was trying to give us notice of. We never got 15 days' written notice.

6 11. Finally, none of the notices given by the government were to "homeowners," as  
7 the MRL section requires this one to be for management to have given the required notice for  
8 a good cause eviction for change of use of a park. All the notices we got of hearings from  
9 governmental agencies were addressed to "Resident" at the address of the unit. In many  
10 cases the homeowner under the MRL is a different person or entity from a "resident" the local  
11 government is required to notify of a hearing. These homeowners can be trusts, LLCs or  
12 corporations, different members of a family from the one(s) who reside in the home, or even  
13 an unrelated landlord who owns the home a resident rents and lives in.

14 12. In our case, for years I was the homeowner after I bought the home in 1986 but  
15 until recently I was never a resident. Then various family members—first my son MICHAEL  
16 McKINSEY, then his father, then the two, then my son and his wife LINNEA McKINSEY—were  
17 the "homeowner," while family members, sometimes "homeowners," sometimes not, were  
18 "residents" at various times. Then my new husband after 1991 PETER NAUGHTON, my son,  
19 his wife and I became members of an LLC that owns the home. NO homeowner—for any date  
20 of any hearing—ever got a notice of a hearing. Only residents got any notices.

21 13. Another similarity in our case to HABTE's case is Defendants' failure to follow  
22 required procedures along with serving invalid notices. On May 27, 2014 I checked with the  
23 Santa Monica Rent Control Board about whether a copy of the eviction notice that was served  
24 on three of the four plaintiffs in the new case on April 18, 2014 had been filed with the Board  
25 within three (3) days of service, as required by the City Charter. Evie Lansberry, an  
26 Information Coordinator for many years at the Board, very competent in my experience, told  
27 me there are no notices filed with the Board for this address going back to March 2014. As  
28 with HABTE, all indications are Defendants know they cannot without being openly frivolous



1 and malicious file an unlawful detainer against us, but they are trying to make us believe they  
2 will, or they hope we will not have the capacity to defend if they are forced to file.

3 14. Defendants know they cannot evict tenants from this property except to change  
4 its use, and they know they will not be ready to change the use until and unless they get  
5 certificates of occupancy to use the property for something other than a mobilehome park. If  
6 that happened, then they could serve a six-month notice, provided they gave 15 days' written  
7 notice to each homeowner of the meeting where they were going to get the final permits to  
8 change the use, since the MRL in Civ. C. § 798.56(g)(2) requires they have "all required [local]  
9 permits" before they can give the six-month's notice.

10 15. Defendants also know they cannot evict tenants to close a park, but they keep  
11 serving notices claiming they are going to do that. This is because they have been and are  
12 continuing to be successful in getting old, low-income, stressed-out, misinformed, and disabled  
13 tenants to move due to that intimidation. 109 families were here when they started this  
14 harassment in about 1997. In March there were only 38. By May 28, 2014 when we appeared  
15 ex parte there were fewer still. Today there are several fewer. Yesterday a resident—young  
16 and apparently healthy until he started telling several of us a few years ago that the stress of  
17 all the claimed eviction actions by defendants and his lack of anyplace else to go where his  
18 asthma does not act up had been causing acute attacks of it—died. We also hear 9-13 more  
19 families have agreed to move in the next few months to a park on a former City dump site on  
20 the lesser school district side of town.

21 16. We also hear some number more have agreed to take \$100,000 to move, up  
22 from the \$4,000-40,000 we had heard Defendants were offering until March when one tenant  
23 settled a case and got Defendants to offer more money. That four (4) times this increased  
24 amount is not nearly enough to get replacement housing one owns as we own these homes in  
25 Santa Monica is clear from the slightest perusal of ads or stopping at a random open house.

26 17. I did that on May 27, 2014 at a building I knew to be a converted apartment  
27 building just a few blocks from here on our same better school district side of town, so in a  
28 comparable location to the subject property where we live, the land Defendants claim they  
want to develop into a claimed \$350 million project. This other building in a comparable

1 location was converted under a special program unique to Santa Monica called TORCA,  
2 whereby apartment buildings were allowed to be sold to tenants without parking or any other  
3 code requirements to convert to condominiums. Those buildings are obviously substandard  
4 compared to purpose-built or converted up-to-code condos, but nonetheless I went to the  
5 open house to see how much such a substandard converted apartment costs currently.

6 18. I saw a 657 square foot apartment with a 10' x 3' balcony and one parking  
7 space for \$405,000 plus a \$355 per month homeowners' association fee. Adding that latter  
8 fee to the sales price and calculating the amortized value amount equates to a single family  
9 residence costing \$480,000, or **\$2,289 a month, plus property taxes**. By contrast, I paid  
10 cash for the home I own at the subject property 28 years ago, so we own it free and clear and  
11 do not owe property taxes on it, and now the entire space rent for 750 square feet with a  
12 private fenced yard, unlimited parking, and Olympic-sized swimming pool with iconic mid-  
13 century community room, plus numerous other amenities and rights, with no taxes or  
14 homeowners' fees, is **\$358 per month**.

15 19. Given this high cost of some kind of replacement housing, compared to what  
16 homeowners are losing in the same location, that Defendants are able to intimidate anyone  
17 into taking sufficient money to live only in a ghetto in California or in a totally inferior location  
18 somewhere else is criminal. And very sad.

19 20. However, we Plaintiffs in this new case consist of two young people in their 30s  
20 and 40s (the McKinseys, the "homeowners" Defendants choose to recognize on occasion but  
21 never gave the required notice to); a retired Santa Monica rent control and real estate litigation  
22 attorney (myself); and an urban planner with a Masters' degree from Cambridge University in  
23 England and a worldwide reputation for over 34 years (my husband PETER NAUGHTON).

24 21. All of us are standing up for and with our grandchildren, the McKinseys'  
25 children, who are only 13 and 19, to whom we promised beginning when they were toddlers  
26 that they would always have this home in Santa Monica when they grew up.

27 22. I raised my son from the age of nine (9) in Santa Monica. My granddaughter  
28 played varsity basketball for four years at Santa Monica High, was most valuable player and  
on the first team Ocean League as a senior, was captain for two years, and played on the only



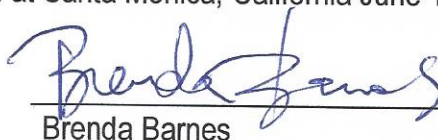
1 Samohi team to make state quarterfinals in 110 years and also the next year the only Samohi  
2 team to ever beat Long Beach Poly. To replace a family's life in Santa Monica so Defendants  
3 can make a profit is not a \$100,000 proposition. Neither do we have to live on a former dump  
4 site, or give up our home we own to live in an apartment, to stay in Santa Monica. We as a  
5 family have lived and traveled in many places, but this home in Santa Monica was always and  
6 is home. We would give it up without fighting on all legal grounds only if we got another  
7 comparable home here, as the law entitles us to receive (Gov't. C. § 66427.4(a) and (c) and  
8 Santa Monica City Charter Chapter 18).

9 23. We, along with all our neighbors, are exactly the people the MRL means to  
10 protect from eviction, but unlike most of our neighbors, HABTE and we know how to defend  
11 ourselves and ask for the Court's help.

12 24. Developers can evict us to change use of the park, but Govt. Code §66427.4  
13 states they must give us an adequate replacement space in a park for ourselves and our  
14 mobilehome. Since there is no such space in Santa Monica, they must pay the costs of  
15 replacement housing. Such replacement housing is expensive in Santa Monica, as indicated  
16 above, but that is precisely why Defendants want this land to develop: all land and housing  
17 are expensive here. The profit they can make is the flip side of the cost they have to pay.

18 25. Clearly Defendants never expected to have this kind of opposition. The Court  
19 must intervene to tell them claims are not legal grounds for eviction, \$100,000 will not replace  
20 a home in Santa Monica, changing use of a park is not the same thing as closing it, and so on,  
21 as requested in the new suit and HABTE's. Only that will protect Defendants' tenants from the  
22 same kind of harassment the HABTE suit shows started over two (2) years ago and the new  
23 suit shows is continuing.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
25 true and correct except for matters stated on information and belief, and as to them I believe them to  
26 be true, and this Declaration was executed at Santa Monica, California June 18, 2014.

27   
28 Brenda Barnes

PROOF OF PERSONAL SERVICE

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STATE OF CALIFORNIA            )  
  )  
COUNTY OF LOS ANGELES        )

Jack Waddington is sworn and says:

I am over the age of 18 and a party to the within action. My business address is 2461 Santa Monica Blvd., #507, Santa Monica, California.

On June 19, 2014, I served the **MOTION TO CONSOLIDATE RELATED CASES, etc.**, on the interested parties in the action by delivering a true and correct copy of each document in the set collectively in a sealed envelope to the office listed below and leaving it with the receptionist or other person apparently in charge, addressed as follows:

Eldon S. Edson  
Bradford G. Hughes  
SELMAN BREITMAN, LLP  
11766 Wilshire Blvd., 6<sup>th</sup> Floor  
Los Angeles, CA 90025

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration was executed on June 19, 2014 at Santa Monica, California.

  
\_\_\_\_\_  
Jack Waddington