

1 GIBSON, DUNN & CRUTCHER LLP
DANIEL M. KOLKEY, SBN 79102
2 dkolkey@gibsondunn.com
MICHAEL LI-MING WONG, SBN 194130
3 mwong@gibsondunn.com
JOSEPH F. TARTAKOVSKY, SBN 282223
4 jtartakovsky@gibsondunn.com
555 Mission Street, Suite 3000
5 San Francisco, CA 94105-0921
Telephone: 415.393.8200
6 Facsimile: 415.393.8306

7 Attorneys for Plaintiffs
8 MHC Operating Limited Partnership, CountryPlace
Mortgage, Ltd., and ECHO Financing, LLC
9

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12
13 **FOR THE COUNTY OF SANTA CLARA**

14
15 MHC OPERATING LIMITED
PARTNERSHIP, COUNTRYPLACE
16 MORTGAGE, LTD., and ECHO
FINANCING, LLC,

17 Plaintiffs,

18 v.

19 THE NICHOLSON FAMILY
20 PARTNERSHIP,

21 Defendant.

CASE NO. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1
2 **I. INTRODUCTION AND SUMMARY**

3 1. Plaintiff MHC Operating Limited Partnership (“MHC”) operates and manages a
4 mobile home park, called Westwinds Mobile Home Park, in San Jose, California, pursuant to four
5 written ground leases with the master landlord and defendant, The Nicholson Family Partnership
6 (“TNFP”). The Westwinds Mobile Home Park provides affordable, rent-controlled homes to over
7 1,600 residents (subtenants), including numerous families with children and residents over 65 years
8 of age, pursuant to their subleases with MHC. Although MHC’s four leases with TNFP expire on
9 August 31, 2022, the operation of the Westwinds Mobile Home Park will then revert to TNFP.
10 However, TNFP has now demanded that MHC uproot all of the residents by August 31, 2022 and
11 deliver the property free and clear of all tenants.

12 2. TNFP’s outrageous demand has no legal basis, would violate the rights of the mobile
13 home residents at Westwinds (over 40% of whom have resided there for ten years or more), would
14 violate MHC’s rights under its leases with TNFP, would require MHC to violate the law, and would
15 interfere with Plaintiffs’ operations, contracts, and prospective economic advantage at Westwinds.
16 Accordingly, TNFP’s demand creates a present and serious controversy that threatens hundreds of
17 residents’ rights and the Plaintiffs’ economic interests. This requires this Court’s prompt
18 adjudication regarding the parties’ rights.

19 3. It could not be more clear that TNFP’s demand has no legal basis in contract or
20 statute. First, as a textual matter, the leases between MHC and TNFP impose no duty on MHC to
21 evict Westwinds residents, and indeed, such a demand violates the lease terms and the parties’ course
22 of dealing. Second, the demand would require MHC to violate state and San Jose municipal law,
23 which protect mobile home residents from being displaced from their homes unless the landowner—
24 here, TNFP—complies with certain procedures, which TNFP has not even begun to do.

25 4. Accordingly, Plaintiffs respectfully ask this Court (1) to declare that MHC has no
26 obligation to remove any of Westwinds’ residents before or upon the expiration of its leases; (2) to
27 declare that TNFP may not take any steps to remove or to cause the eviction of the Westwinds mobile
28 home residents without complying with California State law and San Jose municipal law and TNFP’s

1 lease obligations; (3) to enjoin TNFP from seeking to remove any tenants before the expiration of
2 MHC’s ground leases on August 31, 2022; and (4) to declare that TNFP’s additional participation in
3 revenues obtained from the sale of homes in the Westwinds mobile home community estops it from
4 converting the mobile home park for other uses.

5 **II. JURISDICTION AND VENUE**

6 5. This Court has jurisdiction under California Code of Civil Procedure section 410.10.
7 The Court may grant declaratory relief under California Code of Civil Procedure section 1060 and
8 injunctive relief under California Code of Civil Procedure section 526 and Civil Code section 3422.

9 6. Venue is proper under California Code of Civil Procedure section 395 because
10 Defendant TNFP entered into the contracts relevant to this dispute in Santa Clara County and TFNP
11 owns property, leases land, and conducts business relevant to this dispute in Santa Clara County.

12 **III. PARTIES**

13 7. Plaintiff MHC Operating Limited Partnership (“MHC”) is an Illinois limited
14 partnership, which manages and operates the Westwinds Mobile Home Park (also referred to as
15 “Westwinds”) pursuant to four written ground leases between TNFP and MHC.

16 8. Plaintiff CountryPlace Mortgage, Ltd. (“CountryPlace”), a Texas limited partnership,
17 is a full service mortgage lender, specializing in lending to purchasers of manufactured and modular
18 housing, including in the Westwinds Mobile Home Park, where it currently is servicing
19 approximately 14 manufactured home loans. The compelled removal of Westwinds mobile home
20 residents would jeopardize repayment of those home loans and would unlawfully interfere with
21 CountryPlace’s contractual relations and prospective economic advantage at Westwinds.

22 9. Plaintiff ECHO Financing, LLC (“ECHO”) is a Delaware limited liability company
23 that purchases and installs manufactured homes in mobile home communities managed by MHC,
24 sells and rents homes to residents in said mobile home communities, and purchases loans made to
25 purchasers of homes in such communities, including the Westwinds Mobile Home Park. ECHO is a
26 joint venture between Cavco Industries, Inc., a Delaware corporation, and an affiliate of Plaintiff
27 MHC. ECHO has a continuing interest in the operation of Westwinds as a mobile home park.
28

1 10. Defendant TNFP is a California limited partnership that owns the real property upon
2 which the Westwinds Mobile Home Park has been developed. It is the successor-in-interest to the
3 original owners identified in the four ground leases that were entered into to develop and operate
4 Westwinds.

5 11. As set forth herein, TNFP's demands to MHC that it remove the Westwinds mobile
6 home residents and deliver Westwinds free and clear of all subtenants upon the expiration of MHC's
7 leases with TNFP threaten to violate the rights of the residents of the Westwinds Mobile Home Park,
8 threaten to violate Plaintiffs' property rights, contract rights, legal rights, and/or prospective
9 economic advantage, and if carried out, would seriously damage Plaintiffs' economic interests in
10 amounts that would be extremely difficult to ascertain.

11 **IV. FACTUAL AND LEGAL BACKGROUND**

12 **A. The leases and relationships between MHC and TNFP**

13 12. Between 1971 and 1974, W.J. Nicholson (acting individually and as a trustee) and his
14 wife, Ruth Nicholson (collectively, the "Nicholsons") entered into a series of written ground leases
15 with a California limited partnership called Mobileparks West. These leases contemplated that
16 Mobileparks West would obtain permits from San Jose to establish a mobile home park, which
17 became the Westwinds Mobile Home Park, with the cooperation and coordination of the Nicholsons.
18 (*See, e.g.*, Ground Leases, Art. II, § 5; Art. IV.) For example, the Nicholsons agreed to aid
19 Mobileparks West in securing the necessary zoning, annexation, permits and government authority to
20 construct the contemplated improvements, to cooperate with lenders by providing requested
21 information, and to take responsibility for the cost and installation of various types of infrastructure,
22 among other things.

23 13. The Westwinds Mobile Home Park, located at 500 Nicholson Lane in San Jose,
24 opened in the 1970s.

25 14. TNFP is the successor-in-interest to the original landowners identified in those leases.

26 15. In 1997, Mobileparks West assigned its interest in the leases to MHC, creating a
27 contractual relationship between MHC and TNFP.
28

1 16. MHC, in turn, has subtenancy agreements with the residents of the Westwinds Mobile
2 Home Park. Because MHC’s leases with TNFP have an expiration date of August 31, 2022, and no
3 further right of extension, MHC has not entered into any subtenancy leases that extend beyond the
4 current term of MHC’s ground leases. However, as explained herein, those subtenancies continue by
5 operation of law beyond the expiration date of MHC’s ground leases.

6 17. TNFP has informed MHC that it will not renew MHC’s ground leases to operate the
7 Westwinds Mobile Home Park. At a meeting held in December 2018, TNFP announced for the first
8 time, its meritless position that MHC is obligated under its leases to deliver the property to TNFP free
9 and clear of any and all subtenants (i.e., residents) upon the expiration of its leases with TNFP on
10 August 31, 2022.

11 **B. The Westwinds Mobile Home Park and San Jose’s affordable housing crisis**

12 18. Today, the Westwinds Mobile Home Park provides 723 homes for 1,663 residents—
13 making it the largest mobile home park in San Jose and the fourth largest in California.¹

14 19. Westwinds is home to numerous families with children and residents older than 65.

15 20. Approximately 42% of Westwinds residents have lived there for 10 years or more, and
16 the average tenancy is 13 years. Some residents have lived there for as many as 45 years. The
17 median household income of Westwinds residents is approximately \$61,500, which is about 59% of
18 the median household income of the surrounding area. Westwinds residents are employed in fields
19 that include health care, engineering, pest control, manicuring, house cleaning, law enforcement,
20 social services, public schools, and construction. A number are employed by local municipalities and
21 counties.

22 21. San Jose and Santa Clara County suffer from a housing crisis. The *San Jose Mercury*
23 *News* has reported that the San Jose-Sunnyvale-Santa Clara metro area constitutes the least affordable
24 metro area in the United States.² Santa Clara County discloses that 62% of its homeless residents lack
25

26
27 1 Mobile Home Park Home Owners Alliance, “California Mobile Home Park Statistics,” Sep. 1, 2019,
 <https://bit.ly/35NrXlc>.

28 2 Holden Lewis, “The most and least affordable places to buy a home in the U.S.,” *San Jose Mercury News*, Mar. 8,
 2018, <https://bayareane.ws/38Ya0T8>.

1 housing because they cannot afford the rent.³ In 2018, San Jose—in a first-ever emergency measure—
2 set aside a parking lot for families living in cars and vans.⁴

3 22. Protecting mobile homes in particular—a unique and essential form of affordable
4 housing—has been a critical part of efforts to preserve affordable housing in San Jose. According to
5 KQED FM, some 35,000 residents of San Jose live in mobile homes, the most of any city in
6 California.⁵ A *San Jose Inside* report found that San Jose’s mobile home parks “have become one of
7 the last bastions of affordable housing in one of the most expensive markets in the nation.”⁶

8 23. The residents of Westwinds are vulnerable because most of them would find new
9 housing only with great difficulty, if at all. The Westwinds home that sold most recently, in October
10 2019, went for \$310,000, whereas the average home price in San Jose is over \$1.2 million.⁷
11 Westwinds residents currently enjoy a robust home resale market: During the prior twenty-four
12 months, residents have sold approximately 58 homes at an average sales price in excess of \$195,000.

13
14 **C. California’s Mobilehome Residency Law and San Jose’s “mobile home park conversion ordinance”**

15 24. A mobile home outwardly
16 appears like a traditional home. But it is
17 different in that residents typically own
18 their home, but pay rent for the land it sits
19 on. In fact, the term “mobile home” is a
20 misnomer in respects, since mobile homes
21 are neither vehicles nor easily moved to



A home at the Westwinds mobilehome park in San Jose.

22
23
24 3 County of Santa Clara, “Our Homelessness Crisis,” <https://bit.ly/2MhLna7>.

25 4 Grace Hase, “Life inside a cramped van: A look at San Jose’s safe parking program,” *San Jose Spotlight*, Jan. 31, 2019, <https://bit.ly/2EG5ZoD>.

26 5 Farida Jhabvala Romero, “San Jose Strengthens Protections for Mobile Home Park Residents,” *KQED News*, Feb. 25, 2019, <https://bit.ly/2Zhr6H5>.

27 6 Jennifer Wadsworth, “San Jose Discusses Ordinance on Mobile Home Park Closures,” May 15, 2017, *San Jose Inside*, <https://bit.ly/35Mg534>.

28 7 Christin Ayers, “San Jose Median Home Price Drops Slightly To \$1.2 Million,” *KPIX CBS Bay Area*, <https://cbsloc.al/2s9siQO>.

1 another location. Instead, the residential resale market for mobile homes operates the same as the
2 market for traditional site-built homes, with brokers facilitating transactions between sellers and
3 buyers.

4 25. In 1978, California enacted the Mobilehome Residency Law, commonly called the
5 “MRL.” (Civil Code, § 798 *et seq.*) This law conferred a unique set of protections on mobile home
6 residents—owing to the unique ownership characteristics of mobile homes—in order to secure their
7 rights and to deter the loss of mobile home parks.

8 26. In particular, the Mobilehome Residency Law forbids a mobile home resident’s
9 tenancy from being terminated except upon one of seven authorized for-cause grounds. These
10 grounds include not paying rent, committing certain crimes, disobeying park rules, and—the ground
11 relevant here—converting the use of the mobile home park to some alternative use. (Civ. Code, §
12 798.56 & subd. (g).) By so constraining the ability of landowners to eject mobile home residents, the
13 Mobilehome Residency Law effectively gives residents “a potential qualified life estate in the park.”
14 (*Rancho Santa Paula Mobilehome Park, Ltd. v. Evans* (1994) 26 Cal. App. 4th 1139, 1146.)

15 27. The Mobilehome Residency Law also imposes extensive procedural requirements on
16 an “owner of a mobilehome park” who seeks to close down a park. In particular, the owner must
17 give notice to park residents when the owner (1) seeks “permits for a change of use of the park”; (2)
18 intends to terminate tenancies once those change permits are approved; and (3) intends to change the
19 use even though no permit is needed. (Civ. Code, § 798.56, subds. (g)(1)-(2).) These provisions
20 apply to the party who “request[s]” the permits for a change in use or who “determin[es] that a
21 change of use will occur.” (*Ibid.*) In this case, that party is, and can only be, TNFP.

22 28. But TNFP has not provided any such notices to Westwinds mobile home residents.
23 Instead, TNFP seeks to foist its objective of removing these residents upon MHC, despite the absence
24 of any legal right to do so.

25 29. State law also requires that the “entity proposing the change in use” must submit a
26 report on the impact of the park’s closure or conversion upon the displaced residents “prior to closure
27 of a mobilehome park or cessation of use of the land as a mobilehome park.” (Gov. Code, § 65863.7,
28

1 subd. (a).) Plaintiffs are informed and believe and thereon allege that TNFP has not submitted any
2 such report.

3 30. Moreover, since 1986, to protect its mobile home residents, San Jose has had a
4 “mobilehome park conversion ordinance” that imposes further requirements on owners beyond the
5 rigors of the Mobilehome Residency Law. San Jose’s ordinance recognizes that the loss of mobile
6 home parks is an urgent civic concern, and accordingly, has declared it city policy to “maintain the
7 supply of mobilehome housing for low and moderate income persons and families.” (San Jose Mun.
8 Code, § 20.180.010(A).) Officials recently said that the city’s interest in “enhancing the protection of
9 existing mobilehome parks in San Jose from conversion to other uses...has grown in recent years due
10 to rapidly increasing housing costs.”⁸

11 31. In particular, the ordinance ensures that the dissolution of mobile home parks occurs
12 only following a rigorous review and a demanding process all designed to protect the interests of
13 mobile home residents. The ordinance requires a permit for any “conversion project”—a permit
14 issued only after the city finds, among other things, that the permit “applicant” offered relocation,
15 rental, and purchase assistance to “mitigate the conversion on displaced mobilehome owners.” (San
16 Jose Mun. Code, § 20.180.310, 410-430, 610-630, 720.)

17 32. Moreover, the ordinance, like the state law, imposes strict notice obligations on the
18 “owner” or “developer” seeking to convert a mobile home park into something else. (San Jose Mun.
19 Code, § 20.180.100.) That owner must apprise each mobile home resident of the owner’s “intent to
20 convert” months before applying for a permit to change the use. (*Id.* at § 20.180.340(A).) This
21 notice triggers a series of “rights” enjoyed by mobile home residents—for instance, the right to
22 associate with other residents and to try to buy the park themselves. (*Id.* at § 20.180.360 & 380.) If
23 that right is exercised, the City will not act on the permit for a half year, so that the owner and
24 residents can negotiate and take steps “likely to result in preservation of the mobilehome park and the
25 housing opportunities therein.” (*Id.* at § 20.180.390(1).)

26
27
28 ⁸ Memorandum, City of San Jose, “Mobilehome Preservation/Conversion Update,” Jul. 30, 2015,
<https://bit.ly/394cvTO>.

1 33. The Mobilehome Residency Law and San Jose’s “conversion” ordinance both obligate
2 the landowner or developer—i.e., the party who intends to shutter the park—to interact directly with
3 mobile home residents. In this way it creates, by operation of law, a form of privity between the
4 mobile home residents and landowner, even if they have no preexisting direct contractual
5 relationship.

6 **FIRST CLAIM – DECLARATORY RELIEF AGAINST THE NICHOLSON FAMILY**
7 **PARTNERSHIP’S (“TNFP”) DEMAND THAT MHC OUST THE WESTWINDS**
8 **RESIDENTS**

9 34. MHC repeats and incorporates each allegation set forth above as if fully set forth
10 herein.

11 35. During a meeting in December 2018, TNFP asserted that MHC has a duty, under its
12 lease agreements with TNFP, to evict MHC’s subtenants—the residents of the Westwinds Mobile
13 Home Park by the expiration date of its leases. Plaintiffs disagree that MHC has any such obligation
14 under the law. However, over the past year, TNFP has not wavered from its demand, and Plaintiffs
15 are informed and believe that TNFP have taken this meritless position in a bad faith effort to avoid
16 the bad publicity associated with their taking steps to remove the residents. TNFP’s demand has
17 created an actual controversy relating to the legal rights and duties of the parties and will interfere
18 with Plaintiffs’ prospective economic advantage at the Westwinds Mobile Home Park.

19 **A. TNFP’s demand has no basis in the leases between MHC and TNFP**

20 36. The text of the leases do not require MHC to deliver the property free of subtenants.

21 37. The leases provide that upon the termination date, MHC “shall surrender the property
22 to [TNFP] in good condition and repair.” (*See* Ground Leases, art. XI, §1.) The obligation to
23 surrender the property in good condition and repair says nothing about any obligation to remove
24 subtenants.

25 38. The leases also provide that “[a]ll improvements made by Tenant [i.e., MHC] during
26 the lease term shall remain the property of Tenant” and that “after the expiration of the lease term ...
27 Tenant *may* remove its furnishings and such other of its personal property and fixtures on the
28 property as can be removed without major damage to the structure.” (*See* Ground Leases, art. XI, §

1 2; italics added.) This provision, likewise, does not address removal of the subtenants in any respect.
2 Moreover, the provision's use of the word "may," and its context, make clear that the leases do not
3 require MHC to remove improvements. Also, the provision only relates to "improvements made by
4 Tenant" and "its personal property and fixtures," not the subtenants' mobile homes or related
5 improvements.

6 39. The leases further provide that any damage occasioned by MHC's removal of its
7 furnishings "shall be repaired by [MHC] at its expense" (Ground Leases, art. XI, § 2), suggesting that
8 the mobile home park is to remain intact to the extent possible.

9 40. As recently as 2002, TNFP and MHC negotiated an amendment to the ground leases
10 to permit TNFP to receive additional revenues from MHC's operation of the Westwinds Mobile
11 Home Park, including the rents the park receives. Further, the 2002 Amendment also granted TNFP
12 a percentage of gross revenues from the sale of new or used mobile homes and related services by
13 MHC or its affiliates. At the time of the negotiations over the 2002 Amendment, MHC requested that
14 TNFP extend the term of the ground leases, but TNFP refused. Yet, significantly, TNFP never raised
15 the claim that MHC was obligated to return the mobile home park free and clear of any residents
16 upon the expiration of its leases, nor did TNFP seek to add any term to that effect at the time of the
17 2002 amendment.

18 41. No California case has held that a ground lessee may be liable for failing to remove
19 subtenants where the ground lease does not expressly impose such an obligation.

20 42. Beyond the absence of any requirement in the text of the leases' terms to obligate
21 MHC to deliver the property free of MHC's subtenants, the leases' provisions and the parties' course
22 of dealing are inconsistent with such an obligation.

23 43. The leases provide that "[t]he property shall be used for a mobile home park and all
24 related accessory uses.... Tenant [MHC] agrees to operate its business on the property *continuously*
25 *during the lease term.*" (Leases, art. V, § 1; italics added.) MHC's obligation to use the property for
26 a mobile home park and to "operate its business on the property continuously" is inconsistent with
27 any obligation to deliver the property cleared of its subtenants upon the expiration of the leases.
28 Moreover, *any effort by MHC to compel subtenants to vacate before the expiration of MHC's leases*

1 *in 2022 would result in departures, and a loss of revenue for all Plaintiffs, months or even years*
2 *before MHC's ground leases actually terminate.*

3 44. The course of dealing between MHC and TNFP is also inconsistent with demands to
4 remove subtenants. The contracting parties entered into the ground leases decades ago to authorize
5 the development and operation of the mobile home park. MHC assumed Mobileparks West's
6 obligations under those leases on the understanding and expectation that MHC would be entitled to
7 benefit from the operations of the mobile home park.

8 45. TNFP has demonstrated a similar understanding. Among other things, TNFP
9 promoted the development of the mobile home park, sought additional revenues from the park's
10 operations, regularly received reports, and has been fully aware of, and has been a direct beneficiary
11 of, every aspect of the mobile home park operations, including receiving a percentage of the
12 subtenants' rents as well as a percentage of gross revenues from the sale of new or used mobile
13 homes within the park resulting from the efforts of MHC or its affiliates, as more fully described in
14 the 2002 Amendment to the ground leases. If TNFP was considering closing the park, the proper
15 time to have addressed it would have been the 2002 Amendment. Instead, TNFP was silent on the
16 point while financially benefiting from the sales of mobile homes.

17 46. Any arrangements to deliver the property free and clear of all subtenants at the
18 expiration of the leases would necessarily harm sales and purchases of mobile homes, devastating
19 home resale prices to the detriment of Westwinds mobile home residents and diminishing the
20 revenues for Plaintiffs and TNFP arising therefrom during the lease term, as well as the revenues
21 from subtenants' rents, contrary to MHC's and TNFP's course of dealing.

22 47. Furthermore, under the ground leases, TNFP "covenants and warrants that [MHC]
23 shall have quiet and undisputed possession of the property as long as it faithfully performs its
24 obligations." (*See Leases*, art. XII, § 4.) Thus, any action by TNFP to accelerate the termination of
25 the mobile home subtenancies or otherwise disrupt MHC's relationship with the subtenants, through
26 notices to the subtenants or otherwise, would breach that warranty of quiet enjoyment and undisputed
27 possession.
28

1 48. Even if there were no warranty of quiet enjoyment, any actions accelerating the
2 termination of the subtenancies during the leases’ term would interfere with MHC’s contractual
3 relations with its subtenants and all of Plaintiffs’ prospective economic advantage at the Westwinds
4 Mobile Home Park.

5 **B. TNFP’s demand would require that MHC violate California and San Jose law**

6 49. Any obligation under the leases to evict tenants before surrendering the property to the
7 TNFP would also be preempted and barred by state and local mobile home law.

8 50. Two separate bodies of law forbid the removal of the mobile home residents—by
9 anyone—except under certain conditions, none of which have been triggered here. The *Westwinds*
10 *residents*, by operation of law, enjoy rights independent of those they possess under their leases with
11 MHC directly or under MHC’s leases with TNFP.

12 51. The Mobilehome Residency Law provides that no resident of a mobile home park may
13 be dislodged except upon certain circumstances. Pursuant to this law, Westwinds residents must
14 receive notice from the landowner before it attempts to change the park’s use, whether by seeking
15 permits to allow it to do so or by undertaking that change in use where no permit is required. (Civ.
16 Code, § 798.56, subd. (g).) On information and belief, Plaintiffs allege that TNFP has not provided
17 any such notice to Westwinds residents.

18 52. TNFP’s demand would require MHC to violate the Mobilehome Residency Law and
19 violate the rights that the Westwinds mobile home residents have under that law.

20 53. Furthermore, Government Code section 65863.7 requires that the party seeking to
21 abolish a mobile home park provide a report on the impact of that closure “prior to closure of a
22 mobilehome park” to ensure a proper assessment of the consequences of that closure. (*Id.* at subds.
23 (a) & (e).) Plaintiffs are informed and believe and thereon allege that TNFP has not provided such a
24 report. The law also authorizes cities to “require, as a condition of the change, the person or entity to
25 take steps to mitigate any adverse impact of the conversion.” (*Id.* at subd. (e).)

26 54. San Jose’s “conversion” ordinance ensures that mobile home residents can be ousted
27 only under certain conditions. The process ensures that park residents’ voices are heard by officials
28 before they lose their homes. Any such removal must be approved by the City of San Jose, and only

1 after the owner provides a plan to resettle those residents. Those rights would be meaningless if an
2 owner could remove residents *before* commencing the process of seeking to change the use.

3 55. In sum, no party here—neither Plaintiffs nor Defendant—may displace any residents
4 of the Westwinds Mobile Home Park without compliance with the Mobilehome Residency Law and
5 San Jose’s conversion ordinance. This process must precede any effort to evict, no matter who is
6 ultimately responsible for carrying out the eviction. Thus, TNFP may not, by way of claimed lease
7 terms or otherwise, circumvent the law by purporting to obligate MHC to displace residents now.

8 56. TNFP’s demand conflicts with the Mobilehome Residency Law and the San Jose
9 municipal code. Plaintiffs contend that TNFP’s demand is unlawful, and are informed and believe
10 that TNFP insists that its demand is lawful and that MHC will be liable for any expenses that TNFP
11 incurs to remove Westwinds mobile home residents itself.

12 57. Plaintiffs respectfully request that this Court adjudicate this dispute and issue a
13 judgment declaring that (1) MHC has no obligation to deliver the property free and clear of
14 Westwinds residents upon the expiration of its leases with TNFP, (2) TNFP may not take any steps to
15 remove or to cause the eviction of the Westwinds mobile home residents during MHC’s lease term,
16 and (3) TNFP may not take steps to remove or cause the eviction of the Westwinds mobile home
17 residents without complying with California State law and San Jose municipal law.

18 **SECOND CLAIM – INJUNCTIVE RELIEF AGAINST ANY ATTEMPTS TO REMOVE OR**
19 **CAUSE THE REMOVAL OF THE WESTWINDS RESIDENTS**

20 58. MHC repeats and incorporates each allegation set forth above as if fully set forth
21 herein.

22 59. MHC has leases and economic relationships with the residents at the Westwinds
23 Mobile Home Park, of which TNFP is aware.

24 60. TNFP’s demand reflects an intent to encourage, take, or authorize actions that would
25 illegally remove Westwinds residents from their homes, which, if effectuated, would breach TNFP’s
26 leases with MHC and violate the Mobile Residency Law and San Jose’s mobile home park
27 conversion ordinance.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

61. CountryPlace and ECHO have economic relationships arising out of the operations at the Westwinds Mobile Home Park and are informed and believe, and thereon allege, that TNFP has constructive or actual knowledge of such economic relationships at Westwinds and that TNFP has taken and intends to take actions to encourage the unlawful removal of Westwinds tenants from their homes, which is designed to, and will necessarily, disrupt those ongoing economic relationships.

62. Given TNFP's demand and its failure to acknowledge MHC's rights under its ground leases and TNFP's obligations under State and municipal law, an injunction is necessary (i) to protect MHC's right to quiet enjoyment and to continually operate its mobile home business, (ii) to protect MHC's subtenants, (iii) to require TNFP to comply with its obligation under its leases with MHC, and (iv) to protect Plaintiffs' economic interests in the continuation of the Westwinds mobile home park. There is no adequate remedy at law because, inter alia, it would be extremely difficult to ascertain the amount of compensation which would afford Plaintiffs adequate relief.

63. Plaintiffs are entitled to a preliminary and permanent injunction because, among other proper grounds for an injunction, TNFP's position would violate Plaintiffs' rights and cause irreparable injury to Plaintiffs; TNFP's position would also result in a violation of the rights of Westwinds mobile home residents; and pecuniary compensation would not afford adequate relief because it would be extremely difficult to ascertain the amount of compensation which would afford Plaintiffs adequate relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for a judgment against Defendant as follows:

1. A declaratory judgment that MHC has no obligation to deliver the property free and clear of any and all tenants upon the expiration of its leases with TNFP on August 31, 2022;
2. A declaratory judgment that TNFP may not take any steps to remove or to cause the removal of the Westwinds mobile home residents during MHC's lease term;
3. A declaratory judgment that TNFP may not take any steps to remove, or to cause the removal of, any residents of the Westwinds Mobile Home Park without complying with California State law, San Jose Municipal Law, and its leases with MHC;

1 4. An order preliminary and permanently enjoining TNFP from taking any steps to
2 remove, or to cause the removal of, any residents of the Westwinds Mobile Home Park, before the
3 expiration of MHC's leases and without complying with California state law and San Jose municipal
4 law;

5 5. A declaratory judgment that TNFP's additional participation in revenues obtained
6 from the sale of homes in the Westwinds Mobile Home Park estops it from converting the mobile
7 home park for other uses;

8 6. An award to Plaintiffs of their costs and reasonable attorneys' fees;

9 7. Such other and further relief as this Court may deem just and proper.

10
11 Dated: December 30, 2019

GIBSON, DUNN & CRUTCHER, LLP

12
13 By: _____
14 Daniel M. Kolkey

15 Attorneys for MHC Operating Limited
16 Partnership, CountryPlace Mortgage, Ltd., and
17 ECHO Financing, LLC