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CALIFORNIA COURT OF APPEAL

SIXTH APPELLATE DISTRICT

333 West Santa Clara Street, Suit 1060

San Jose, CA 95113

COUNTY OF SANTA CRUZ, ) Case No.: H035505  
) Santa Cruz County No.  
Plaintiff and Respondent, ) CV158731  
)

vs. ) **APPELLANT'S OPENING**  
) **BRIEF**

PAUL M. CARRICK, )  
)  
Defendant and Appellant, )  
\_\_\_\_\_)

Dated this July 20, 2010

\_\_\_\_\_  
Paul M. Carrick, pro per



## **TABLE OF CONTENTS**

CERTIFICATE OF INTERESTED ENTITIES, PERSONS	2
CASES	4
LAWS	8
MISCELLANEOUS	15
INTRODUCTION	17
THE CASE	20
ANALYSIS ( omitted due to space)	
ARGUMENT	55
CONCLUSION	68
CERTIFICATE OF WORD COUNT	77
ATTACHMENTS:	78

## **CASES**

Cedar Shake and Shingle Bureau v. City of Los Angeles, *supra*, 997 F.2d at p. 624

Summa v. California, 104 Supreme Court Reports 1751(1984)..

Monterey City v. Del Monte Dunes at Monterey, 526 U.S. 687; 119 S.Ct. 1624.

Fuentes v. Shevin, 407 U.S. 67; 92 S.Ct.1983

*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board*, 100 Cal. App. 4<sup>th</sup> 1066; 123 Cal. Rptr. 2d 278

Robert G. Leslie et al. v The Superior Court of Ventura County, 73 Cal. App. 4<sup>th</sup> 1042; 87 Cal. Rptr. 2d 313

Breseno v. City of Santa Ana(1992) 6 Cal. App.4<sup>th</sup> 1378

Western Petroleum v. Superior Court, Los Angeles, 9 Cal.4<sup>th</sup> 559

Big Creek Lumber v. Santa Cruz County, 115 Cal. App. 4<sup>th</sup> 952; 10 Cal. Rptr. 3d 356

People ex rel Deukmejian v. County of Mendocino, 36 Cal. 3d 476; 683 p.2d 1150; 204 Cal. Rptr. 897

CLD Construction v. City of San Ramon

Sherwin Williams Co. v. Los Angeles, 12 Cal. App. 4<sup>th</sup> 301; 7 Cal. Rptr. 2d 71

20<sup>th</sup> Century Insurance Co. Quakenbush(1998) 64 CA 4<sup>th</sup> 135.

Hurwitz v. Orange,122 Cal.App.4<sup>th</sup> 835

Western States Petroleum Assn. v. Superior Court(1995) 9C4th 559,566 38 CR2d 139

Hansen Bros. Enterprises v Board of Supervisors, (1996) 12 Cal 4<sup>th</sup> 533, 540

Melton v. City of San Pablo (1967) 252 Cal. App 2d 794, 804

Warren v. Marion County(1960) 222Ore. 307, 313-315[353 P.2d 257]

Ward v. Superior Court, 55 Cal. App. 4<sup>th</sup> 60, 64 Cal. Rptr. 2d 731

Smith v. Village of Maywood (1988) F. Sup. 157

People v. Minor (2002)96 Cal.App.4th 29

Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board, 100 Cal. App. 4<sup>th</sup> 1066; 123Cal. Rptr. 2d 278; 2002 Cal.App. LEXIS 4471.

Sherwin-Williams Co. v. City of Los Angeles, 12 Cal.App. 4<sup>th</sup> 301;7 Cal. Rptr. 2d 71.

Martin v. Riverside County Department of Code Enforcement et al. 166 Cal.App. 4<sup>th</sup> 1406; 83 Cal. Rptr. 3d 624.

Flahive v. City of Dana Point(199) 72 Cal. App. 4<sup>th</sup> 241; 85 Cal.Rptr. 2d 51

City of Monte Sereno v. Padgett(2007) 149 Cal.App.4<sup>th</sup> 1530

Sounheim v. San Dimas(1996), 47 Cal. App. 4<sup>th</sup> 1181,

Foretta v. California, 422 U.S. 806, 812-13(1975)

Mira Development Corp. v. City of San Diego,(1988) 205 Cal. App.3<sup>rd</sup> 1201,1218.)

Naturist Action Committee v. California State Dept. of Parks & Recreation, Cal Ct of Appeals, 4<sup>th</sup> Appellate Dist., Div 3, 2009, G040929

Tidewater Marine Western, Inc. v. Bradshaw, sup., 14 Cal 4<sup>th</sup> 557.

Morningstar Co. v. State Board of Equalization (2006) 38 Cal. 4<sup>th</sup> 324,333).

Modesto City Schools v. Education Audit Appeal Panel ( 2004) 123 Cal. App. 4<sup>th</sup> 1365, 1381.

McDonald v. Cuperior Ct. 180 Cal. App. 3d, 6-7, 172 Cal. Rptr. 394 ( 2d Dist. 1986)

Perkins v. Superior Court, 117 Cal. App. 3d, 6-7, 172 Cal. Rptr. 427 ( 2d Dist. 1981).

Clements v. J.R. Bechtel Co. 43 Cal. 2d 227, 242,273 P. 2d5 (1954).

Baum Elec.Co.v. City of Huntington Beach(App.4 Dist. 1973) 109 Cal.Rptr.260, 33 Cal.App.3d 573.

Building Industry of Northern California v. City of Livermore, 45 Cal. App. 719; 52 Cal. Rptr.2d 902

ABS Institute v. City of Lancaster, supra 24 Cal.App.4<sup>th</sup> 288

Padgett v. City of Monte Serano(2007), 149 Cal.App.4<sup>th</sup> 1530.

Haines v.Kerner, 404 U.S. 519 S.Ct. 594

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U.S v. Broussard(1991)767 F.Supp.1536

U.S. v. Jackson(1991)768 F.Supp.97.

Olmstead v. United States, 277 U.S. 4Alvarez v. Sanchez(1984) 158 CA3d 709, 715, 204CR 864.

Hartbrodt v. Burke(1996) 42 CA4th 168, 175, 49 CR2d 562.

Fremont Indemnity Co. v. Superior Court(1982) 137 CA3d 554, 560,  
187 CR 137.

Palomar Mortgage Co. v. Lister(1963) 212 C.A. 2d 236

Petrillo v. Bay Area Rapid Transit Dist., 197 Cal. App.3d 798.

People v. Johnson, 42 Cal. App. 2d Supp. 827

Nasha v. City of L.A. 125 Cal. App.4<sup>th</sup> 470.

People v. Swink, 150 Cal.App.3d 1076, 198 Cal.Rptr.29

Dublin v. State, 181 Ohio App.3d 384, 2009-Ohio-1102

Vidaurri v. Superior Court of San Diego County(1970) 13 Cal. App. 3d  
550,553

Gonzalez v. City of Santa Monica, 140 Cal.App.4<sup>th</sup> 1134, 45 Cal. Rptr.  
3d 84

West Pico Furniture Co. v. Superior Court(1961) 56 C2d 407, 15 Cal  
Rptr 119, 362 P2d. 295.

CLD Construction v. City of San Ramon, 120 Cal.App.4<sup>th</sup> 1191, 16  
Cal. Rptr. 3d 555, 2004.

## **LAWS**

Santa Cruz County Code

1.1.04(C) Intent

1.1.04(D) Void

1.12.010 continuing violations

1.12.050 nuisance abatement

1.12.070(A) Code infraction

1.12.070(B) Illegal rents

1.12.070(C) Costs of enforcement

1.12.070(D) Hearing Officers

1.12.070(E) Code misdemeanor

1.12.070(F) Limit of Penalty

1.12.070(G) Written decision final

1.12.070(H) Gov 53069.4 Authority

1.12.070(I) Recordation of Lien

1.12.070(J) Release of Lien per Gov Code 27631.3

1.12.070(K) Penalties and Costs of Enforcement excess to Affordable Housing or General Fund

1.12.070(L) Enforcement Costs and Attorney's Fees Liability

1.12.070(M) Penalties in addition to other provided by Law

12.10.125(a) Permit required

12.10.125(q) Code compliance

13.10.140(a) Zoning applicability

13.10.279(a) Continuing violation

13.10.279(b) Nuisance Declaration

13.04

13.10.265(a)

16.11.160 Failure to Correct cause of erosion

16.20.260(b)(4)

16.22.260(c)(2)

12.10.070 enforcement

12.10.070(B) Illegal Rents

12.10.070(C) Attorneys

12.10.070(D) Hearing Officers

12.10.070(D)(5)(a) Hearing Procedures

12.10.070(D)(5)(c) Interpretations

12.10.070(D)(5)(d) Decisions

12.10.070(D)(5)(d) (ii) enforcement costs Code 12.10.070(D)(5)(d) (iii)  
illegal rent penalties

12.10.070(D)(5)(d) (iv) terminating tenancies

Santa Cruz County Code 12.10.070(D)(5)(d) (v) special assessment e

12.10.070(E) Factors for Penalty Ammount

12.10.070(G) Decision final and written

12.10.070(H) Judicial Review:Gov 53069.4

12.10.070(I) Copies of Decision

12.10.150 The Building Official, Building and Fire Code Appeals Board

12.10.210 Definitions: Structure

12.12.010 through 070

12.12.435

19.01.030 Enforcement Alternatives

19.01.030(a)(1) Abate nuisance

19.01.030(a)(4) Administrative hearing

19.01.030(a)(7) Record NOV

19.01.02 Land use enforcement

19.01.050 Rescind Red Tag

Santa Cruz County Ordinance 4682, October 1, 2002, building codes registered with Building Standards Commission

Santa Cruz County Ordinance 1578, February 23, 1971.

Santa Cruz County Ordinance 4682, October 1, 2002, Resolution 360-2002, Findings of Necessity for Amendment of Certain Sections of the California Code Standards Unique to the Monterey Bay Region.

Santa Cruz County Ordinance 4894, December 3, 2007

Santa Cruz County General Plan, May 24, 1994

Health and Safety Code

17912 State Building Standards Code not to apply to existing buildings

17920(e) enforcement

17920(k) nuisance defined as CC 3479 and 3480

17920.3 Substandard building conditions

17920.5 Local Appeals Board

17920.6 Housing Appeals Board: use, maintenance, change of occupancy

17921 ( California Code of Regulations 74)

17922

17922(a) counties must adopt Housing Code

17922(c) local jurisdiction: use zoning

17922(e) existing housing modifications

17922(g) abatement only on substandard structures

17922.9 affordable housing

17925 local appeals board amendments

17930 appeals to Building Standards Commission about Building Standards

17932 Appeals to Standards Board

17945 Appeals to Standards Commission

17950 BSC applies throughout state

17951 Reasonable fees only

17958 Every city and county shall adopt Housing regulations

17958.2 Owner-built rural dwellings local variances reasonably necessary

17958.7 make express findings public

17958.8 materials used for alterations

17958.11 convert factories to dwellings

17959.3 housing appeals board deferral of abatement

17959.5 housing appeals board grants zoning variances

17960 enforcement, State Building Standards

17961 health department enforcement

17962 fire department enforcement

17972 no inspection without court order

17980 nuisance abatement

17980 .1-5 costs of abatement

17980 .6 terminating tenancies

17995 violation is misdemeanor

Div. 13, Part 1.5 et seq

17910 et seq ( State Housing Law)

17949.25 et seq mandates certified employees

17870 license employees

17959.4 “housing appeal board”

18941.5 (b) revising Building Standards

Government Code 25845

Government Code 27201

Government Code 53069.4 penalties: fines only

Government Code 54951

Government Code 800

Government Code 18909 Only Bldg Stds Committee can modify

Government Code 38773.5

Government Code 66014-25 fee schedule

Government Code 65755 Planning Department activities

Government Code 65000 General Plan

Government Code 11340 Administrative Practices Act

Code of Civil Procedure 170.1(2)(B)

Code of Civil Procedure 335-349.4 Statute of limitations

Code of Civil Procedure 405.3 Recording Real Property Notice

Code of Civil Procedure 526(a) Injunctive relief

Code of Civil Procedure 597 special defense proceeds to bifurcation

Code of Civil Procedure 904.1(a)(6)

Code of Civil Procedure 1085

Code of Civil Procedure 1094.5 writ of mandate

Code of Civil Procedure 1087

Code of Civil Procedure 1060 writ for relief

Code of Civil Procedure 1021.5

Code of Civil Procedure 1032

Code of Civil Procedure 1822.5                      Warrant for Search

Civil Code 1094.5, 1094.5

Civil Code 3479, 3480                      Nuisance defined

Penal Code 802.

Penal Code 836.5 arrest for misdemeanor in presence of officer.

Penal Code 502(n)(2).California Code of Regulations Title 24 (California Building Code)

Evidence Code 404

Evidence Code 940

Evidence Code 660

Evidence Code 668

Evidence Code 669

California Rules of Court 3.1308

California Rules of Court 3.1590

California Rules of Court 10.603

California Rules of Professional Conduct ProfC 1-300

California Rules of Professional Conduct ProfC 3-310(F)(3)(b)

Constitution of the United States Article 1 Section 9 Clause 3

Constitution of California Art I, Section 19.

Constitution of California Art I, Section 26

Constitution of California Art III, Section 3

Constitution of California Art IV, Section 1

Constitution of California Art IV, Section 16

Constitution of California Art 11, Section 7, local government

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### ***MISCELLANEOUS***

Judiciary Act of 1789, Ch 20 Sect. 35, 1 Stat 73,92 ( 28 U.S.C. Sect. 1654(2009))

Model Rule of Professional Conduct Rules 4.2 and 4.3.

Model Rule of Judicial Conduct Rule 2.23

Wiltkin Evidence (4<sup>th</sup>) Burden of Proof, Presumptions, pp110

A Standard State Zoning Enabling Act, Department of Commerce

Declaration of Independence

Development: Cases and Materials, Mandelker and Cunningham

Am. Jur. 2d Property or Use of Property as Nuisance

Code Ethics for Certified Planners, CACEO



## ***INTRODUCTION***

This is an appeal by Paul M. Carrick from Amended Judgment of Superior Court by Honorable Jeff Almquist, April 9, 2010. This judgment is appealable by California Code of Civil Procedure 904.1(a)(6). March 16 was the date of filing. And there is a NOTICE OF ENTRY OF AMENDED JUDGMENT, April 14, (CT4-885).

This case is about the attempt of Santa Cruz County Planning Department to enforce un-necessary and invalid building permits and restrictions on occupancy on some existing buildings on parcels 106-011-58 and 106-011-25 owned by Paul M. Carrick, RT-150.8, by substituting the use of Santa Cruz County Codes for the State Housing Law. Land Use is regulated by the State of California Department of Housing and Community Development's Health and Safety Laws, H&S 18917 and its ownership is protected by the United States and California State Constitutions. Counties Use Zones regulate density and type of buildings, building offsets, and set-backs from roads, H&S 17922. But the current case is not about zoning. A lot line change, (2010-0023980 in Official Records of Santa Cruz County, June 23, 2010), corrected those violations.

Santa Cruz County Codes used to regulate my property pre-empt Health and Safety laws, ( see Appendix A), and are therefore invalid under California Constitution Article IV section 16(b): "A local or

special statute is invalid in any case if a general statute can be made applicable.” Such pre-emption attempts by local municipalities of state law have a legal precedent in *Breseno v. Santa Ana*(1992)6 Cal. App.5<sup>th</sup> 1378,8 Cal. Rptr.2d 486. *Breseno* concerns pre-emption by the State in the area of the Housing Code occupancies, H&S 18917. This present case, also involves pre-emption by the Housing Code over local law, not just over number occupants per room as with *Breno*, but over a multiplicity of issues within the Housing law including Due Process, Enforcement, Building Code, grading.

In subject matter the alleged Code violations actually parallel Health & Safety 17960-17995 but there was no offer of the Appeal Board as required by H&S 17920. In each area, the above Santa Cruz County departments ignore specifics of current day, legislature-enacted law. For example, whereas Santa Ana used population density as an issue to drive *Briseno* and his family out of their apartment, Santa Cruz County uses lack of building permits to do the same thing<sup>1</sup>. Just as excessive population density was not an allowable reason to amend

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<sup>1</sup> The more basic issue in *Breseno* was not occupancy but rather that reasons other than topology, climate, or geography were used to justify changing state Housing Code: “If the Legislature had not intended for the Uniform Housing Code to generally preempt local regulations, sections 17958.5 and 17958.7 would have little meaning.” “It is undisputed the City made no findings that local climatic, geological, or topographical conditions necessitated a departure from the occupancy standards set forth in the Uniform Housing Code. Unless the Uniform Housing Code is invalid on some other ground, the City’s ordinance must be stricken.” The City had added population density as a restriction

Housing Law in Breseno, so also building without permits is not an allowable reason to amend it in the case of Santa Cruz County.<sup>2</sup>

Building permits and population density are topics found in the Standard State Zoning Enabling Act of 1924 which served among cities as the basis for local zoning law, “Planning and Control of Land Development,” Mandelker and Cunningham. The California Supreme Court ruled to enforce the more fundamental concerns Health and Safety Sect 17922 against Santa Ana.

This present case, not only local pre-emption of the state law but also courtroom procedures used by the County protect those laws. When I refused to produce evidence to support prosecution of a law which I was contesting because it was pre-empted by a State law, (CT2-426, OJBECTIONS TO ORDER TO PRODUCE ANSWERS TO INTERROGATORY, Nov. 2, and COMMENTS AND OBJECTIONS TO TENTATIVE ORDER FOR FURTHER ANSWERS, October 27). The Court granted County Counsel’s motion to strike my testimony and ordered a default judgment against me, (“ENTRY OF DEFAULT AND ORDER STRIKING ANSWER”, filed 11-6). Also Discovery Law was bent so as intimidate my expert witnesses and statutory justification for Bifurcation ignored.

**THE CASE:**

This case commences with the attempt of Santa Cruz County Planning Department Code Enforcement officer Jacob Rodriguez to enforce Santa Cruz County Codes on parcels 106-011-58 and 106-011-25 owned by myself, Paul Carrick.

**INSPECTION BY PLANNING DEPARTMENT**

On April 13, 2006, I intercepted Rodriguez with Holsman trespassing and photographing the above property. He already had been denied entry for inspection in writing . He made threats saying “things could get ugly” if I didn’t purchase Building Permits and wouldn’t leave as I requested until he left me with a Notice of Violation and Intention to Record Notice of Violation, ( NOV),CT1-6,RT-256, per Santa Cruz County Code 1.12.070.(D)(2).

At first he admitted trespassing, ( see Exhibit F of DECLARATION OF PAUL.M. CARRICK’S IN OPPOSITION TO PLANNING DEPARTMENT OF THE COUNTY OF SANTA CRUZ’S EX PARTE APPLICATION FOR AN INSPECTION WARRANT, Sept. 9, 2006) then denied,( CT4-820). He had been summoned by and was accompanied tenant Mark Holsman who was behind in his rent.

Holaman later waged a suit against me, ( Appeals Court case H033054).

### **NOTICE OF VIOLATION**

The NOV contained numerous presumptions. On it were written eighteen violations of Santa Cruz County Codes called Land Use Regulations. In spaces printed on the form “Stop all construction” was marked even though there was no construction. “Cease all illegal uses” was marked even though no known illegal use was occurring. “Vacate illegal structures” was checked even though there was no indication given which, if any, were illegal . “Immediate corrective actions required” was followed by written “submit plans to legalize habitable and non-habitable structure.” Santa Cruz Code 1.12.070(d) was marked stating “correct all posted violations within thirty days and face “Administrative Hearing” otherwise. Neither recordation, nor civil action, nor referral to District Attorney, nor notification of licensing, nor abatement, nor permit revocation were checked on the NOV as possible outcomes. An opportunity was offered to protest the NOV by writing to the Planning Director within 20 days.

During the first inspection, Mr Rodriguez ventured far beyond the 1/3 acre Premises which Holsman had possession of and spied additional “causes” to conduct a second inspection In Vidaurri v. Superior Court of San Diego County(1970) 13 Cal. App. 3d 550,553,illegal drugs

which a trespassing fruit inspector discovered were ruled inadmissible evidence. Likewise, Mr. Rodriguez had weak grounds for a second inspection.

In order to secure Judge Atack's signature on his Warrant, he bolstered his case by lying about substandard/dilapidated structures, ( I was not present to counter his claim) but no evidence of substandard/dilapidated structures was produced on the second visit held on September 21, 2006.

#### **PROTEST MEETING, May 11, 2006**

Without being offered an Appeals Board per H&S 17920.6, I was forced to attend a "protest meeting" or else suffer the financial loss of having the "NOV" recorded by the County Recorder. The Protest Meeting was chaired by Principal Planner Glenda Hill. With evidence from his April 13 tainted, Jacob Rodriguez presented photographs, maps and other information he had accumulated to support his enforcement of the County Codes listed on the Notice of Violation. Also present was supervisor Kevin Fitzpatrick. None of these three people offered any proof of their credentials and in fact, admitted that they had never taken an oath of office, CT4-745. There were no oaths taken for evidence nor was record made of the proceedings nor the

evidence, (RT1p43-11, RT1p192-7)<sup>3</sup>. I presented evidence of my ownership of the land and for Rodriguez's trespassing on it, (CT2-322). I presented how Land Patent 4889 which never mentioned any restrictions on what could otherwise placed on the land. The plain statement of property protections contained in the Land Patent are reinforced with a recent Supreme Court case which upheld those rights: Summa Corporation v. California, 104 U.S. 1754, 1984: "[all claims on the property] must, like other claims, be asserted on the patent proceedings or be barred."

I also presented a brief from a similar case, "Golden Gate Water Ski Club v. County of Contra Costa, " to how latches and estoppel protected the present state of the land."

Finally, I presented Federal Title 18 section 241 penalties for those who conspire to defraud land owners of their property rights, .

Rodriguez had not specified which structures were habitable nor on which parcel they were, CT2-322. No evidence for on-going construction was offered either by direct testimony or by the many photographs taken. Jacob Rodriguez trespassed inside every structure taking photographs as he went, CT1-23-28.

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<sup>3</sup> Where the Record is "yes" should be "There was no transcript of the meeting. No minutes were kept. There were no oaths taken. Those involved were not qualified."

Illegal uses were not described. It was implied that un-permitted buildings were being lived in. Among the eighteen violations alleged were violations of zoning but these were not identified. It was not said how the structures were “public nuisances” according to the general use definition found in CC 3479. Nothing was alleged to be “substandard” per H&S 17920.3. It was not said how “submitting plans” was supposed to do anything except earn the County revenue. Although aerial photographs are available back for each year, none of three Planning Department officials attempted to mitigate their charges by presenting evidence that the buildings were too old to require permits or that they may have been built before 1980 and therefore be eligible for the Santa Cruz County Supervisor’s ‘do not enforce’ ruling, August 2002, ( CT4-788-801). Rodriguez did not present evidence as to which of the two parcels each structures were on. No reference to state law as made, ( Revenue and Taxation sections were not marked on NOV). No evidence was given that any of the County Codes contained in the NOV had been filed with the California Building Standards Board and made publicly available as required in Health and Safety sections 17958.5 and 17958.7

I gave an argument for estoppel against the County’s alleged violations since several permits had been issued on the property by the

Health Department more than three years before, (CT4-705--707), and nothing more had requested at that time.

Glenda Hill promised a Letter of Determination within two weeks.

## **EX PARTE HEARING FOR INSPECTION WARRANT**

Without waiting for the promised Letter of Determination from the May 11 Protest Meeting but nevertheless alleging “violations of the Santa Cruz County Code relating to health and safety violations specifically; occupation of substandard/dilapidated structures”, (INSPECTION WARRANT, PLANNING DEPARTMENT OF THE COUNTY OF SANTA CRUZ, Sept. 8, 2006. Jacob Rodriguez obtained an Inspection Warrant on September 8, 2006. Attorney Barri Bonepart represented me at the hearing. DECLARATION OF PAUL M. CARRICK IN OPPOSITION TO THE PLANNING DEPARTMENT OF SANTA CRUZ’S EX PARTE APPLICATION FOR AN INSPECTION WARRANT, Sept. 9, 2006, contained Jacob Rodriguez’s admission that he trespassed on April 13. In *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523; 87 S.Ct. 1727, complaint by the tenant was not enough to override the lack of consent of the property owner. See also *Right of Entry*, Chapter 1, Administration Section 104.2,3 in 1997 “UBC Handbook.”

In “AFFIDAVIT OF Jacob Rodriguez FOR INSPECTION WARRANT”, Rodriguez claimed “Specific violations include: health and safety specifically; occupation of substandard/dilapidated structures built without Zoning or Building approval.” Since the first inspection was carried out without consent or warrant and in violation of the Fourth Amendment, the fruits of that inspection were tainted.

### **INSPECTION OF SEPTEMBER 21, 2006**

The inspection was conducted on September 21, 2006. The inspectors included Kevin Fitzpatrick, Matthew Johnson, as well as Jacob Rodriguez. Planning consultant Patrizia Materassi helped me. Johnson wrote a NOV for grading. violations, (CT1-8).

### **LETTER OF DETERMINATION**

Glenda Hill signed the Letter of Determination long after the second inspection on September 21 apparently not wanting to mention the illegality of the April 13 investigation. Since the granting of quash of her subpoena, ORDER TO QUASH SUBPOENAS, filed Nov. 6, she could never be questioned. Since COUNTY’S OPPOSITION TO MOTION TO COMPEL PRODUCTION OF EMPLOYEE RECORDS, filed 9-18, was also granted, it could never be determined directly whether she was a lawyer as required, County Code

1.12.070(D)(2)(c). What is known is that her name is not found among registered lawyers in California and that she had never taken an oath to protect or defend the Constitution, CT4-745.

months rather than 2 weeks as promised. Her letter stated that “this decision is final and not subject to further appeal.”

In “Protest Meeting Determination,” Principal Planner Glenda Hill, and Request for Admission Number 23, CT4-821, the County admits that a member of the County Counsel wrote part of the Letter of Determination. Therefore both Hill and at least one member of Santa Cruz County Counsel engaged in Unauthorized Practice of Law, Rules of Professional Conduct, ProfC 1-300.

Glenda Hill falsely states in her letter that I acknowledged “substandard conditions” on my property. Hill’s deposition and the request for her employment records were quashed so I was unable to verify her credentials or to determine her justification for “substandard conditions.”

#### **RECORDATION OF NOTICE OF VIOLATION**

On December 20, 2006, the Notice of Violation was recorded by Santa Cruz County Recorder. I had been notified in “Protest Meeting Determination,” but no hearing was held and no Court authorization was granted to do so.

### **APPEAL OF RECORDATION**

In November 29, 2006, my Counsel, Barri Bonapart, prepared Writ of Mandate according to Government Code 53069 and County Code 1.12.070 sections (G) and (H), ( see PAUL M. CARRICK'S NOTICE OF APPEAL FROM ADMINISTRATIVE DETERMINATION PURSUANT TO GOVERNMENT CODE 53069.4, November, 2006).

### **COMPLAINT BY COUNTY FILED**

Although not indicated as a possible option on the April 13 NOV, COMPLAINT FOR PERMANENT INJUNCTION, CIVIL PENALTIES, ILLEGAL RENTS, ATTORNEY'S FEES AND COSTS was filed on November 28, 2007. The Notice of Violation left unchecked line 3 beneath FAILURE TO CORRECT THE POSTED VIOLATIONS(S) WITHIN THIRTY(30) DAYS which states "civil action for injunction, civil penalties, or other appropriate remedies." Health & Safety 17981 only authorizes civil action after structures have been declared Substandard.

### **COMPLAINT BY COUNTY ANSWERED**

On February 21, 2008, I filed an answer to the County: VERIFIED ANSWER OF PAUL. M. CARRICK TO COMPLAINT FOR PERMANENT INJUNCTION, CIVIL PENALTIES, ILLEGAL RENTS, ATTORNEY'S FEES AND COSTS.", CT1-34. This Answer was later struck when I refused to produce Rental Agreements.

**COMPLAINT BY CARRICK FILED**

VERIFIED PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY RELIEF, November 29, 2007, by PAUL M. CARRICK, III, against COUNTY OF SANTA CRUZ, PLANNING DEPARTMENT AND CODE COMPLIANCE SECTION OF THE COUNTY OF SANTA CRUZ, BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ, and DOES I-XX,inclusive.

**DEMURRER BY COUNTY**

A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Haines v. Kerner*, 404 U.S. 519. S. Ct. 594.

Accordingly the Court rejected the County's DEMURRER AND MEMORANDUM OF POINTS AND AUTHORITIES IN FAVOR OF DEMURRER, CT1-126, stating, "I would overrule the demurrer here on the basis that there is a factual dispute as to whether or not the County afforded the Petitioner a hearing and made the requisite factual findings for the purposes of determining whether, in fact, the nuisance existed even the County's own definition of nuisance," Reporter's Transcript of Proceedings, November 18, 1008. . With the County

arguing that allowing Laches and Estoppel Cause of Action to be tried would do “serious damage to the County’s ability to stop un-permitted building,” the Court changed two Causes of Action, Laches and Estoppel, to “demurrer granted with leave to amend.”

### **LAW FIRM WITHDRAWS**

Lack of funds forced me to give up the Law Firm of Remy, Thomas, Moose, and Manley, LLP, CT1-218. I am not experienced in the fine points of trial procedure and the County But while the law firm left me with a helpful schedule of actions needed to prepare for a November 9 Trial date, I only had two weeks to understand what Summary Judgment meant, master the details of the case, and produce the required briefs.

By Judiciary Act of 1789, Ch 20 Sect. 35, 1 Stat 73,92 ( 28 U.S.C. Sect. 1654(2009)) I used my right to self-representation. This is supported by Faretta v. California, 422 U.S. 806, 812-13(1975). The Court has no obligation to act as counsel to pro se litigants but has the same obligation to answer questions concerning legal words of art, laws, and their interpretation that any jury or licensed attorney might ask. For Opposing Counsel, communication with pro se litigant is o.k. under Rule of Professional Conduct 4.2, but they should communicate

only as necessary and make sure no misunderstanding occurs by Rule 4.3.

For the Court's part, it is judge's responsibility to see that merits of a case are resolved fairly and justly, Rule Judicial Conduct Rule 2.23. It is also the Judge's duty to Order the Presentation, Evidence Code 320

Citing *Bianca v. Highway Patrol*, County Counsel insisted that I be held to the same standard as licensed attorneys. This conflicts with *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594: "those who are unschooled in the law shall be addressed in the substance of the law." There seems to be a conflict between *Bianca v. Highway Patrol* and *Haines v. Kerner* until we put County Counsel's quote in to its correct context:

[the]petitioner, appearing in propria persona, could not challenge on appeal the trial court's finding that "uncontradicted evidence" supported the court's finding, where the record on appeal contained no reporter's transcript of the hearing. It was petitioner's responsibility to include the transcript.... Further, the in propria persona litigant is held to the same restrictive

rules of procedure as an attorney. Bianca v. Highway Patrol, 24 Cal. App. 4<sup>th</sup> 1113.

I at no time tried to change procedures of Court as Bianca did, but I would have benefited being addressed 'in the substance of the law' rather than by 'words of art' in which I have not been schooled.

When the County's "MOTION TO QUASH SUBPOENA" was granted, nor on other quashes which destroyed my Discovery, I was not informed the reason by the Court. Since multiple grounds had been given I simply had to guess. Finally I deduced that the cause was issuance of Subpoena by my self propria persona as I had been told to do by the Clerk's office.

### ***PROGRESS OF TRIAL***

After obtaining the Administrative Record, the Remy, Thomas, Moose, and Manley attorneys had learned that the County had no legal basis to continue their case: The County was relying on its Police Powers granted by the California Constitution. Unfortunately for the County the Constitution also restricts these police powers to 'laws not

in conflict with general laws.” It had evidently been a long time since the County checked to see whether its County Codes regarding the subject matter of building code enforcement were still “general laws” as specified by California Constitution Article 4 section 16(b). The entire set of Health & Safety and Labor and Zoning Laws that emerged after the 1979 Legislative Low Cost Housing Initiative had never found recognition in Santa Cruz County Codes. As another example, none of the Building Code Enforcement codes by which I was being accused had been registered as required by Health & Safety 17959.5 and 17959.7, with the State let alone published as required.. Isolated clerical mistakes have been overlooked by courts in the past, ( see Gonzalez v. City of Santa Monica, RT2-341. However, lack of due process is inexcusable, ( Gonzalez v. City of Santa Monica,88 Fed.Appx. 161,RT2-241, Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board, 100 Cal. App. 4<sup>th</sup> 1066, 123 Cal. Rptr. 2d 278, RT2-315, Administrative Procedures Act.

Santa Cruz County Planning Depart hadn’t even observed their own County Code 1.12.070(a-m), let alone Health & Safety17920.6 and 179297 which provide for an independent citizens Appeals Board. Even if as the County contends they are entitled to use their own administrative procedures, Santa Cruz County Code 1.12.070(a-m),RT1-325.9, they don’t follow them. And if as the County

contends, their Land Use Codes were of different subject matter than the California Housing Code, Health & Safety 17910-17995, and the California Building Code, Health & Safety, 18900-18960, because they effect property value, they still have observe due process.

### **MOTION FOR SUMMARY JUDGMENT**

In order to allow the County to withdraw at a minimum expense for both of us, I timely filed Motion for Summary Judgment supported by Memorandum of Points and Authorities and Statement of Undisputed Facts , California Civil Procedure 437c(a) and 1005(b) on July 24.,CT2-223

### **DISCOVERY**

In order to begin to find out why Santa Cruz County employees had allowed the operation of their Planning Department waiver so far from State law, I subpoenaed employee records under California Civil Procedure 598, on July 30, “SUPPORT OF SUBPOENA OF EMPLOYEE RECORDS”. Discussions with ex-employees of the Planning Department and lawyers who dealt the Planning Department gave me a list of thirteen persons likely to know those responsible..

### **BIFURCATION**

Since the evidence gave credence to a legal position that undercut that of the County, I filed Notice of Motion for Bifurcation under California Civil Procedure 597, August 28, 2009, CT2-234 . Claim of Statute of

Limitations my Answer, CT1-34, made way for discretionary bifurcation.

This case has two parts: The first—the County’s side-- is about my violation of certain Santa Cruz County Codes; the second—my side—concerns the lack of jurisdiction of those County Codes over me. I attempted to Bifurcate the case into separate cases corresponding to these two sides, but I was opposed by the County, ( see COUNTY’S OPPOSITION TO MOTION FOR BIFURCATION AND REQUEST TO STRIKE THE DEMAND FOR A JURY TRIAL, filed 9-18-09), and was ultimately ruled against.

#### JURY TRIAL

This caused problems with Jury trial I demanded: Hoopes v. Dolan(2008) 168 Cal.App. 4<sup>th</sup> 146, 151, 85 Cal. Rptr. 3d 337.: : The court held that the trial court erred in disregarding the jury's verdict when fashioning equitable relief founded on the same evidence and the same operative facts as the verdict

Since property rights were at stake here, even though Federal Statute had not been invoked, Monterey City v. Monterey Dunes, 526 U.S. 687; 119 S.Ct. 1624, applied. See MEMORANDUM IN FAVOR OF JURY TRIAL, CT 257.

## **EXCHANGE OF EXPERT WITNESS INFORMATION**

On August 28, Under California Civil Procedure 2034.010—  
2034.730,,2016.060, Demand for Exchange of Information Concerning  
Expert Trial Witnesses was requested for September 21. The  
Opposing Counsel was apparently not satisfied with the amount  
information requested to be exchanged on that date but offered no date  
on which the proposed exchange would occur. Therefore the proposed  
exchange was invalid under California Civil Procedure 2034.270.

The qualifications for expert witnesses who volunteer their  
testimony as concerned citizens are different from paid experts. Not  
only were my two experts acting completely in public interest, but they  
even composed details of their own testimony. Both experts stood out  
among multiple candidate witnesses for their sincerity and depth of  
knowledge relevant to this case. Dan Bronson and Claire Machado,  
both of whom had a long list of public pronouncements and actions in  
their respective fields. As non-retained witnesses they were not  
required to tell more than their identities and contact information under  
CCP 2034.210(a). Their resumes would be examined by the judge at  
trial time. But County Counsel introduced a MOTION IN LIMINE

RE: EXPERT WITNESSES<sup>4</sup> on November 6 to exclude Dan Bronson and Claire Machado on grounds that “No other information such as qualifications, declarations or writings were offered” [in my witness list of September 23]. Judge Jeff Almquist granted County Counsel’s Motion in Limine without giving me an opportunity to answer, see ORDER RE:OSC. In addition, these expert witnesses were excluded from the courtroom so they could not speak concerning their credentials, RT1-5. When they were allowed to re-enter the courtroom and began to testify, the Court was informed of their qualifications, but their testimonies were down-graded to that of percipient witnesses, see OBJECTION TO GRANTING MOTION IN LIMINE, CT4-836.

County Counsel had given attendance at a Trial Ready-ness Conference on the Friday before trial as a reason for her Motion in Limine. According the Presiding Judge, CRC 10.603, and the Master Calendar Judge, CRC 4.115, have no duty to check credentials of expert witnesses.

### **PRE-TRIAL DISCOVERY**

Discovery was initiated with subpoenas issued to 5 county employees, ( Tom Burns, Kevin Fitzpatrick, Ken Hart, Glenda Hill, and Jacob Rodriguez), for production of employment records on July 30, asking

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<sup>4</sup>This Motion and supporting Declaration was not file stamped but was included in ORDER TO QUASH SUBPOENAS and ORDER RE:OSC, November 6. See Request for Supplementary Documents.

for certification and training. Discovery was continued with subpoenas issued to 7 county employees, ( Susanne Mariello, Tom Burns, Jacob Rodriguez, Glenda Hill, Ken Hart, Dana McRae, Tamyra Rice for production of documents under CCP 2020.410-2020.440 on August 3.. Subpoena of business records was again made on September 8 using SUBP-020 on each of the thirteen below. I issued Interrogatories using Judicial Council DISC-003 also on August 6. SUBP-020 was again sent out on September 21 to Susan Mauriello, Rahn Garcia, Tamyra Rice, Jason Heath, Marie Costa, Dwight Herr, Alex Rodriguez, Kevin Fitzpatrick, Tom Burns, Glenda Hill, Dana McRae, Ken Hart, and Christopher Cheleden. SUBP-020 was again sent out September 29 to Susanne Mauriello, Tom Burns, Jacob Rodriguez, Glenda Hill, Dana McRae, and Tamyra Rice again pursuant to evidence on presumption of failure to exercise due care and unlawful intent, ( Evidence Code 660, 668, 669), specifically regarding the Uniform Housing Code.

Special Interrogatories were sent by County, September 4. Requests for Admissions were sent out by myself in three sets using Judicial Counsel Form DISC-020: Request for Admissions 1—51, Appendix 5, on September 8; Request for Admissions 52—73, Appendix 6, on September 21; Request for Admissions 74--91, on September 28. On October 26, SUBP-002 was sent to Michael J.McDougall, Director Records Department, for employment records

concerning training to Susan Mauriello, Rahn Garcia, Tamyra Rice, Jason Heath, Marie Costa, Dwight Herr, Alex Rodriguez, Kevin Fitzpatrick, Tom Burns, Glenda Hill, Dana McRae, Ken Hart, and Christopher Cheleden.

### **SUBPOENA COUNTY RECORDS DIRECTOR**

The records of the above thirteen employees showing their training, continuing education, and job assignments were required to further trace the County's violation of State law, notably the Uniform Housing Code. Subpoena for their records were presented to the Director of Personal Records on October 26. When County Counsel complained about this request for training, I sent a letter on November 2 to Michael McDougall, stating that I was only seeking compliance with Government Code 68616(f) and personal information was not to be included.

### **ORDERS TO COMPEL PRODUCTION**

When the employee records subpoenaed July 30 did not arrive, I requested ORDER TO COMPEL PRODUCTION OF EMPLOYEE RECORDS, on October .1. Assistant County Counsel, Tamyra Rice requested and got a two week continuance on my request, effectively killing it.

### **SUBPOENING OF WITNESSES**

Four county employees, Tom Burns, Glenda Hill, Jacob Rodriguez, and Kevin Fitzpatrick, were subpoenaed to testify at trial, October 19. This and several other dates were allowed to slip three days because of “furlough Friday” in which work stopped on Friday. Again, my subpoena was quashed successfully possibly because I lacked standing as an attorney to issue the subpoena, ( see ORDER TO QUASH SUBPOENAS, filed 11-6). This seems contrary to established law, ( OPPOSITION TO NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA AND FOR SANCTIONS, 10-4, and OPPOSITION TO MOTION TO QUASH SUBPOENA OF WITNESSES, 10-26, and OPPOSITION TO MOTION TO QUASH DEPOSITION SUBPOENA AND NOTICE OF MOTION TO COMPEL PRODUCTION, 10-19\_), and inconsistent with expanded scope of practice of paralegals.

#### **LONG CAUSE MASTER CALENDAR CALL**

By Local Rule 2.2.02(a), witness lists, exhibit list, and trial briefs, and jury instructions were due. Except for jury instructions, since no jury trial was to occur, these were filed with the Court Clerk.

#### **SPECIAL INTERROGATORIES**

The County composed special interrogatories for the purpose of producing documentary evidence. I attempted to answer the requests

according to their exact meaning without reading into them additional meaning. But when questions infringed on their jurisdictional boundary I was careful not to give more information. The County had carefully phrased their interrogatories to conform to admissible discovery, CCP 2017.010 and 2017.030, ( see COUNTY OF SANTA RUZ'S DEMAND FOR PRODUCTION OF DOCUMENTS AND INSPECTION, SET ONE, of 9-4, and COUNTY OF SANTA CRUZ'S SPECIAL INTERROGATORIES, SET ONE, 9-4).

So when I was asked for 'proof of habitation' in Special Interrogatories 1, Request 27, 29, 31, I responded correspondingly with Sherriff's Trespass Letters which I had maintained to help protect the property over the years.

But the County tried to compel production of documents over which they had no jurisdiction due to the fact that their legality was being contested, ( see COUNTY'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS, ). What the County now wanted specifically was rental agreements so they could use them to prosecute me and Tamyra Rice said so. I protested that they could not re-word their request after having already made it. In Opposition to Motion to Compel and Opposition to Motion to Strike, I claimed that the Rental Agreements were protected work product under CCP 2018.010-2018.080, CCP 2033.230(b), were outside of their scope of discovery, (

see OPPOSITION TO MOTION TO COMPEL FURTHER ANSWERS, 10-20, CT2-428), and were an invasion of the privacy of my tenants, ( see COMMENTS AND OBJECTIONS TO TENTATIVE ORDER FOR FURTHER ANSWERS TO INTERROGATORIES, 10-30, CT2-426).

My Rental Agreements were also protected from discovery by 5<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution, California Constitution art.1 sect 15, and Evidence Code 404,940, ( self-incrimination), but I chose not to claim these immunizing statutes in order to state my case, ( OBJECTION TO ORDER FOR SANCTIONS FOR NOT PRODUCING DOCUMENTS, 10-13, CT4-833). I did manage to get two former tenants to agree to share their Rental Agreements. I reproduced it as an appendix in my Request for Summary Judgment and also in my Trial Brief , CT4-665.

The fact that discovery of Rental Agreements crosses the boundary of admissible discovery under CCP 2017.010 and 2017.030 is illustrated by West Pico Furniture Co. v. Superior Court (1961) 56 C2d 407, 15 Cal Rptr 119, 364 P2d 295. In it the names and addresses of employee who participated in various transactions were ordered disclosed because that information “was reasonably calculated to lead to discovery of admissible evidence.” The transactions in this case

involved loans at usurious rates of interest . The employees requested were suspected of being involved.

The County has to prove that County Code 1.12.050, Illegal Rents, has any relation to General Laws rather than being in opposition to them, ( H&S 17922(g)). That is my third Cause of Action. People v. Diaz(1992) 3 C4th 495,529, 11 CR2d 353.

The renters in this present case are suspected of no crime and should be immune from having their Constitutionally protected privacy intruded upon, ( Article 1, California State Constitution). Within the window of time allotted for tentative judgments, CT4-833, CRC 3.1308, CRC 3.1590, I appealed to fifth and fourteenth Amendments to the U.S. Constitution

### **MOTION TO STRIKE**

The County made Motion to Strike and for Default Judgment, Nov. 6, because of misunderstanding about questions 27—31 on their Special Interrogatories of September 4, and my unwitting lack of attendance at an OSC meeting. I opposed the motion, COMMENTS AND OBJECTIONS TO TENTATIVE ORDER FOR FURTHER ANSWERS, Oct 27, on grounds that I had adequately answered the questions of the Interrogatory and that the specific items requested, Rental Agreements, I was privileged not produce. Their intention was

obtain information to be used to incriminate me for their charge, Illegal Rents, which I claim in my suit is an invalid law unrelated to “general laws” and well beyond any example of “police powers as broad as the legislature,” and conflicting with H&S 17922(g). The Court rejected my claim that Santa Cruz County Code 1.12.050 had no jurisdiction granted the County’s Motion striking my answer, ( ORDER RE: OSC, filed Nov. 6). As I stated in my OPPOSITION TO NOTICE OF MOTION AND MOTION TO QUASH AND FOR SANCTIONS, CT2-437, the motion by the County to produce Rental Agreements violates my Third Cause of Action, Pre-emption by State Law, Clements v. J.R. Bechtel Co. 43 Cal. 2d 227,242,273 P.2d5 (1954). The demand by the County was in violation to state law, ( there is no such a thing as ‘illegal rents’ in state law conflicts with H&S 17922(g)), and should rejected, Calif. Civil Procedure 436(b),( see also CLD Construction, Inc. v. City of San Ramon, 120 Cal. App. 4<sup>th</sup> 1191).. The Motion was improper and irrelevant since I had already provided proof of occupancy as requested by the County, CCP 436(a). The privacy of the rental agreements is essential to my case and should be banned under Cal. Code of Civil Procedure 431.10(a), ( see also McDonald v. Superior Ct. 180 Cal. App. 3d 297, 303-304, 225 Cal. Rptr. 394 ( 2d Dist. 1986); and Perkins v. Superior Court, 117 Cal. App. 3d, 6-7, 172 Cal. Rptr. 427 ( 2d Dist. 1981).

While the Decision on the Motion to Strike was still tentative, I filed my OBJECTION TO ORDER FOR SANCTIONS FOR NOT PRODUCING DOCUMENTS, CT4-833, claiming that I was being forced to testify against myself in violation of my 5<sup>th</sup> Amendment and in violation of Rules of Evidence 940.

### **THE TRIAL**

The Trial was held on November 9 & 10, 2010.

Three witnesses did not show up: Rodriguez, Glenda Hill, and Dwight Herr. Fitzpatrick was present but I was not able to question him because of the Default, ( RT1-318, ORDER RE: OSC, filed 11-6).

Witnesses on my behalf --Dan Bronson and Claire Machado— presented their resumes but were prevented from testifying fully as experts by the Court in violation of CCP 2034.210(a). Both Dan Bronson, Chairperson of BAF CAB, had two pages of resume, Appendix 2, and Claire Machado had a similar amount, Appendix 3.

Of the 29 questions I had been given for Dan Bronson, ( not counting background questions), he was permitted to answer only 2 and I had to make up percipient witness-level questions ad hoc. Of the 248 questions for Claire Machado, only 45 were permitted. Dan Bronson and Claire Machado testified, receiving no re-numeration, out of public interest. I was not permitted by the Court to answer many questions of

myself. The ninety-one requests for admission were for all three us on my side who favored the Uniform Building Code.

### **DAN BRONSON**

myself. The ninety-one requests for amyself.

### **CLAIRE MACHADO**

Despite that she was a non-retained witness volunteering in community interest, Claire Machado was allowed to testify only as a percipient witness. This is interpreted as entry-level when she was actually a lead employee of the County for nine years, RT1-112.20. She was not allowed to testify to facts not favorable to the County. For instance when I asked her to say why she left, the Court over-ruled Rice's inevitable objection thinking that it would reveal her bias and prejudice; and when it didn't, he would use one of Rice's follow-on objections to immediately over-rule her testimony, CT1-114. The Court failed to exercise due care in protecting the County: The identity of the Planning Department's Chief Building Official, is something anybody who has any dealings with the Planning Department knows, but the Court did not want it in the Record, RT1-117<sup>5</sup>. When I explained why Claire's testimony supported my contention that the

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<sup>5</sup> The position of Chief Building Official is a key political position. The Building Code defines it in H&S 18949.27. In December 2007, County Ordinance 4894 redefined the position, ( County Code 12.10.150), even though it had nothing do with topography, climate, or geology as required by H&S 17959.7.

County acted 'capriciously', the Court tried to re-define my case away from my Causes of Action, RT1-119--121, and refuses any evidence to support them.

After refusing Claire's testimony the Court blames it on me for not disclosing her qualifications, ( see Limine Ruling), CT1-125,126. The Court excluded any action on my Causes of Action and tried to force my questions into defense even when facts of Ruth Owen and Claire's 1996 Red-tag of my property, CT1-128, invalidates the County Case by Statute of Limitations.

Even though filing changes in the California Building Standards made by the Planning Department is a job of a low-level clerk, the Court refuses this testimony useful to my contention that the Codes in my NOV were not registered with California Building Standards Commission and therefore are void, ( Briseno v. City of Santa Ana(1992) 6 Cal.App.4<sup>th</sup> 1378).

### **PAUL CARRICK**

After being sworn in, I began my own testimony with the First Cause of Action, Due Process, CT-190. The only due process I was given the so-called "protest meeting" with the Director of Planning, CR-190. There was no transcript, oaths taken, or qualified hearing

officer, RT2-259, CR-192(7).<sup>6</sup> The closest I could offer in evidence other than my testimony was “May 11, 2006 Building Violations Protest,” Exhibit R in my trial brief, CT4-743. Court expected an Administrative Record, RT1-197, but none had ever been prepared. I discovered after the Protest Meeting began that no person there was a qualified Hearing Officer who could give oaths or prepare an Administrative Record. Therefore, I offered the record of proceedings taken from my own memory and notes. A Code Enforcement Officer Fitzpatrick was present who could have been called upon to refute anything I produced, but he did not, RT1-196.17. .

I began my testimony December 10 placing the County’s Non-Enforcement Policy into Exhibit C, RT2-263.1. Jacob Rodriguez failure to exercise due care by withholding this mitigating evidence from his Protest Meeting presentation. Jacob brought up no zoning violations at the meeting nor any habitability violations.

Jacob Rodriguez also failed to exercise due care by offering proof that my buildings were not pre-1980, ( which they are).

Jacob committed a prejudicial abuse of discretion in the statements he made in the NOV, RT2-218.18<sup>7</sup> He also failed to exercise due care by

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<sup>6</sup> This following sentence, “ There was no transcript, to oaths taken, and those in charge were not qualified,” was replaced by “yes.”

<sup>7</sup> ‘didn’t constitute’ should read ‘committed’

not recognizing the non-conforming status of several of my buildings that occurred statutorily in 1973 when the zoning code changed, Santa Cruz County Code 13.10.260, RT2-276. .

Pre-emption of County Law by State Law leaves the Housing Code as law of the land in Santa Cruz County. RT2-281.9-22. The Court was unsure of enactments by the Board of Supervisors in 2002. They are contained in County Ordinance 4682, Oct. 1, 2002. Since Uniform Housing Code isn't listed, it becomes adopted by default after 180 days after the California State Building Standards Commission adopts it, H&S 17958. The Santa Cruz County Codes written on my NOV are void because they were not made available, H&S 17958.7. The Codes written on my NOV are not found authorized in County Ordinance 4682, Oct 1, 2002, RT2-284.4-7. Because Santa Cruz County Codes 1.12.070(D)(2)(a-v) describing the NOV are not found in County Ordinance 4682, the "red tag written on it is an invalid instrument of enforcement," RT2-284-3-7. The buildings listed on the NOV are "existing structures" by the California Housing Code and are not subject to 'notice and order,' ( similar to a Red Tag), unless they are 'substandard,' ( H&S 17920.2), RT 2-284.8-25.

Rice persuaded the Court that I cannot present my Fourth Cause of Action, Nuisance definition, because the Default stipulated to the definition being Santa Cruz County 1.12.050, RT2-286.7. This is an

abuse of discretion and error by the Court: The Default as applies only to my Answer, CTI-34, not my Causes of Action.

Seventh Cause of Action, Civil Procedure 1060, calls for declaratory relief. I leave unlawful recordation till later when I cite law and cases., RT2-289.18-20. The Court will also rule on whether it is lawful to collect fees and penalties, RT2-290.

#### LEGAL ARGUMENT GIVEN BY CARRICK

Department of Alcoholic Beverage Control v. Alcoholic Beverage Appeals Board, 100 Cal. App. 4<sup>th</sup> 1066, 123 Cal. Rptr. 2d 278, RT2-315, illustrates abuse of due process when the ‘judge’ and ‘prosecutor’ talk to each other in the case of liquor license lifted for 3 month. This concerns the Administrative Practices Act, ( A.P.A.), which also important in *Naturist Action Committee v. California State Dept. of Parks and Recreation*, Cal.Ct.of Appeals, 4<sup>th</sup> Appellate Dist. which was used to show importance of inter-department and inner-department memos which I was denied discovery of.

*Fuentes v. Shevin*, 407 U.S.67; 92 S.Ct.1983, RT2-316, supports me against the abuse of the Santa Cruz County Planning Department by denying me rental of my houses when there was no finding of substandard, but only the unproven allegation that they needed building permits, Santa Cruz County Code 13.10.279.

Sherwin Williams Co. v. Los Angeles, 12 Cal.App.4<sup>th</sup> 301; 7 Cal. Rptr.2d 71, RT2-320., is approved by California Supreme Court, and protects Sherwin Williams paint products from being withheld from public access because of miss-use by graffiti artists. Likewise, my unpermitted buildings should not be summarily condemned just because they don't have papers but in accordance with Housing Law, are condemned only if they are justifiably declared substandard, H&S 17922(g).

Briseno v. City of Santa Ana(1992) 6 Cal.App.4<sup>th</sup> 1378, RT2-321, rejected Santa Ana's occupancy standards that didn't conform to California Housing Law the same way that Santa Cruz County's 'building permit' occupancy standard doesn't conform to Housing Law. Occupancy is defined by H&S 18917.

Leslie v. Superior Court of Ventura County,73 Cal.App.4<sup>th</sup> 1042; 87 Cal.Rptr.2d 313, confirms grading code enforcement is a pre-emptive matter of state concern just like any physical disturbance of our environment. Non-physical specification like zoning can be the domain of countys.

California Public Resources Code pre-empted the more restrictive Los Angeles County Air Resources Board in Western States Petroleum v. Superior Court, Los Angeles, 9 Cal.4<sup>th</sup> 559, RT-329.

Tests for pre-emption are defined in *Deukmejian v. County of Mendocino*, 36 Cal.3d 476; 683 p.2d 1150; 204 Cal.Rptr. 897, as pertains to insecticide use, RT-330.

The enhanced standards insisted on by City of Livermore saved homes in recent fires illustrating the use of H&S 17958.7 ‘topological, climatic, or geographical’ standards are valid qualifiers of locally revised building standards, ( *in Building Industry of Northern California v. City of Livermore*, RT2-333).

Superior heat resistance of foam-filled ABS tubing in the desert won *ABS Institute v. City of Lancaster*, RT2-334.

Fire-resistant cedar shakes qualified in L.A. after *Cedar Shake and Single Bureau v. City of Los Angeles* supra, 997 F.2d at p. 624, RT2-335: Fire marshal regulations did qualify as “other rules or regulations” under H&S 17922(a) but being more stringent than other class B roofing, could not exclude class B treated shakes. Being more stringent the County of Santa Cruz’s definition of ‘nuisance’ cannot pre-empt State law.

*Baum Electric Co. v. City of Huntington Beach*, tested state-wide mandate of H&S 17910. by not allowing aluminum wiring to enforce state-wide uniformity, RT2-339.

State Housing charges the Building Official to enforce conformance by corrections applied to Substandard Housing by inspection, H&S

17960. Santa Cruz's 'as-built' policy is more stringent than State Housing Law requires by including more corrective actions than are needed. RT2-340,341. An example of Housing Code only requiring necessary repairs is Gonzales v. City of Santa Monica. Gonzales was not required to get all new permits for his house, but only perform electrical repairs. By the end, he couldn't even do that and the house went to into receivership, H&S 27980.1, and the receiver decided to demolish it. The Appeals Court was assured of due process at every stage.

Attorney General Opinion 79-601 pg 571 verified the Uniform Building Code's conflicts with California State Constitution Art. 4 sect 1, RT2-342, but remedied it with an effective Appeals Board, RT2-343. Santa Cruz's failure to exercise due care with its citizen Appeals Board made its Planning Department's activities unconstitutional.

People v. Swink, 150 Cal.App.3d 1076 , RT2-346, decided that government must publicize due process for it to be effective. I was not told about the Appeals Board at any time during my dealings with the Planning Department..

The Santa Cruz County Board of Supervisors enacted a do-not-enforce policy which couldn't benefit me because I was not told about it. But that policy would eventually have been forced by the result of

Padgett v. Monte Serano, 149 Cal.App.4<sup>th</sup> 1520, RT2-349. ( see Non-Conforming Use, above).

Hurwitz v. Orange, 5129016 Sup. Ct. Calif., the City of Orange could not get out of paying when they tried to make their best of their failure to exercise due care when they tried to condemn Hurwitz's property, RT2-350.

Attorney General Opinion 80-697 shows Santa Cruz County Code 19-01-030 .requiring recordation of properties contrary to Government Code 27201 which authorizes the County Recorder, RT2-351. Ward v. Superior Court, 55 Cal.App.4<sup>th</sup> 60 condemns recordation by a Home Owners association. The Court responded: "it gives the property owner incentive." Is this exercising due care? Olmstead v. United States, 277 U.S. 438: "when a government becomes a law breaker, it breeds contempt for the law."

Hansen Brothers Enterprises v. Board of Supervisors, 12 Cal.4<sup>th</sup> 533, allowed use of a non-conforming house to continue, RT2-353,354.

***ANALYSIS: ( omitted due to space)***

***ARGUMENT:***

**DUE PROCESS, First Cause of Action  
Due process for code enforcement is defined by  
the Housing Appeals Board, H&S17920.6 and  
Uniform Housing Code Chapter 13 on Appeals  
Board. When such a statutorily prescribed  
procedure exceeds minimum due process  
standards, the statute must be followed, ( People  
v. Johnson(1941) 42 CA.2d Supp 827,833, 109  
P.2d 770.**

**Separation of Powers, California Constitution Art.  
III Sect. 3, is at issue with Model Codes of  
H&S17922. Attorney General Opinion 79-601,  
CT3-648, identifies three unconstitutional features  
of model codes. Safe-guards against miss-use of  
arbitrary delegation of legislative power include an  
effective Appeals Board, CT3-655. See also 20<sup>th</sup>  
Century Insurance Co. v. Quakenbush (1998) 64  
CA4th 135.**

**“property interest(disability payments) which, as a matter of due process, could not be terminated without a hearing” in Petrillo v. BART District, 197 Cal. App.3d 798. “appellant did not waive his right to such a hearing by failing to request one because respondent district had no procedures in place to afford him a hearing.”**

**Public Resources Code§ 21168.5. Restriction of inquiry to prejudicial abuse of discretion**

In any action or proceeding, other than an action or proceeding under Section 21168, to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.

Santa Cruz County has not proceeded in a manner required by law by not adopting the Uniform Housing Code. There are several Appeals Boards provided for: Local Appeals Board, H&S 17920.5; Housing Appeals Board, H&S 17920.6, and Appeals Board for Handicapped, H&S 19957.5.

Using the Santa Cruz County Code as supporting evidence, H&S 17922 is not observed by Santa Cruz County Planning Department.

## Non-Conforming Use, Second Cause of Action

Judge Almquist initiated 'do-not-enforce' ruling for pre-1980 structures when he was a Santa Cruz County Supervisor, RT.357-20. The reason for that ruling was software problems in the County's database, ( see Exhibit C, ALUS software). The case of Padgett v. City of Monte Serano (2007), 149 Cal.App.4<sup>th</sup> 1530, was decided in favor of Padgett because of software problems Monte Serano code enforcement had. Most of my buildings are pre-1980 and should come the exclusion of 'do-not-enforce' policy. Of course, if there was actually anything causing any of my buildings to be substandard as defined in H&S 17920.3, I would get permits if necessary and make the needed repairs.

## **PREEMPTION, Third Cause of Action**

### **CALIFORNIA HOUSING LAW APPLIES TO SANTA CRUZ COUNTY**

If the County does not move to amend Uniform Housing Code within 180 days of its release, ( Health and Safety 17958), by making express findings pursuant to Health and Safety 17958.5 and 17958.7, RT-86.1-20, RT4-892-901. Because Health and Safety 17958 specifically mentions only Building Code it is easy to miss that it refers to other codes pursuant to Health and Safety 17922, such as Uniform Housing Code.

By California Constitution Article 4 section 16(b), closely matching Santa Cruz County Codes in NOV and those in Health & Safety Housing Law pre-empts the former. Those found in my NOVs, CT1-6, CT1-8, are listed in Appendix A.

### **COUNTY CODES VOID**

The County presented no evidence that its codes written on the April 13 NOV and September 21 NOV are not covered by Uniform Housing Code. Uniform Housing Code concerns occupancy of buildings.

“Occupancy” is defined in Health and Safety 18917 as “the purpose for which a building, . . . , is used or intended to be used.” The Amended Judgment makes a point that building code enforcement codes are not Building Codes and therefore are not the subject of the Local Appeals Board in H&S17920.5. It never considers that Building Code Enforcement is the subject of the Housing Appeals board in H&S17920.6 and that this Appeals Board becomes the same as the Local Appeals Board if local government so chooses. Santa Cruz County ‘Use Codes.’ are defined in H&S17922(c):

**Except as provided in Section 17959.5, local use zone requirements, local fire zones, building setback, side and rear yard requirements, and property line requirements are hereby specifically and entirely reserved to the local jurisdictions notwithstanding any requirements found or set forth in this part.**

In the Health and Safety Law, 17910 et seq., State Housing Law. Use Codes specify the space between buildings. That is the limit which Santa Cruz County can control.

State Housing Law prevails over State Building Code through the State Building Standards Code, 17912, “which shall not apply to existing buildings or structures,” ( which is why no ‘as built’ building code exists). Enforcement of Building Code, 17920(e), is the responsibility of the Building Official, H&S 18949.27, and can be appealed to the “housing appeals board,” 17920.6. “In any area in which there is not such a board or agency, ‘housing appeals board’ means the local appeals board having jurisdiction over such area.” H&S 17920.5.

H&S 17960 through 17995 is enforcement. Code enforcement has its own continuing education requirement, H&S 18949.29. The make-up of the Appeals Board is described in Uniform Housing Code Chapter 13 and is like Santa Cruz County Code 1.12.070(D). By California State Constitution Art. 4 Section 16(b), “A local or special statute is invalid in any case if a general statute can be made applicable.” *Leslie v. Superior Court*(1999) 73 Cal.App.4<sup>th</sup> 1042 states “Counties may not make and enforce laws conflicting with general state laws.” and *Sherwin-Williams v. City of Los Angeles*, supra, 4 cal. 4<sup>th</sup> at p. 897: “A conflict exists if an ordinance duplicates, contradicts, or enters and area fully occupied by general law, either expressly or by legislative

implication.” The Santa Cruz County Codes fitting that description are therefore void, ( list in Appendix A).

Local Building Codes are generally pre-empted by State Law, Dublin v. State, 181 Ohio App.3d 384, 2009-Ohio-1102.

Even if such codes were validly recorded, they do not necessarily pass the California State Health and Safety requirement of geological, topographical, and climatic uniqueness.

The County presented no evidence that its codes written on the April 13 and September 21 NOV were not pre-empted by the State Housing Law, see Trial Brief..

The County presented no evidence that it had filed its codes used for building code enforcement with the California Building Code Commission as required by Health and Safety 17958.5. Where the County Land Use Codes and California of Health and Safety Code occupy the same area of law, the California Code takes precedence.

The County presented no evidence that it had found climatic or topological or geographical conditions unique to Santa Cruz County

which necessitated its codes used for building code enforcement as required by Health and Safety 17958.5 and 17958.7..

The County presented no evidence that it had “made available” its modified codes used for building code enforcement with the California Building Code Commission as required by H&S 17958.5 and 17958.7. To sell building permits for a profit is a violation H & S17951 but that is what Santa Cruz County Code 1.12.070(K) does.

### **SEARCH WARRANT OBTAINED UNDER FALSE PRETENSES**

Jacob Rodriguez had no credentials to determine health and safety violations nor what constituted a substandard structure, Recorders Transcript, Holsman v. Carrick, RT1-67.15-18. Therefore the Inspection Warrant obtained on September 2006 from Judge Attack was obtained under false pretenses, ( see PLANNING DEPARTMENT OF SANTA CRUZ’S EX PARTE APPLICATION FOR AN INSPECTION WARRANT, Sept. 9, 2006).

### **RECORDATION OF NOTICE OF VIOLATION CONFLICTS WITH COUNTY CODE**

**Not only is the Notice of Violation and Intent to Record Notice not found in Santa Cruz County Code, but because it lowers property**

**value, it is void. Santa Cruz County Code 1.04.080(C), ( Particular applications—Intent—Validity—Time limitations).**

Santa Cruz County is not a Charter County, therefore the above County Codes embody the intent of a charter. As the Court agreed, an NOV recorded in the County Records lowers the property value, RT2-353. An NOV recorded in the County Records is therefore contrary to the Intent of the County and is Void by Santa Cruz County Code 1.04.080(D).

#### **RECORDATION OF NOTICE OF VIOLATION CONFLICTS WITH STATE LAW**

From *Sounheim v. San Dimas* (1996), 47 Cal. App. 4<sup>th</sup> 1181, “looking to the plain meaning of the statute in context, the city was prohibited by section 65852.2 subdivision (b) from imposing the condition which restricted the future use and sale of the property.” Accordingly, Santa Cruz County Code 19.01.080 allows Code Enforcement to “red-tag” a property for Use Code 12.10.125(a), Construction without permits. By contrast, Health and Safety Code 17980 et seq. only allows recordation of a lien for “substandard structures.” In *Ward v. Superior Court* (1997) 55 Cal.App.4<sup>th</sup> 60, at page 64, the court states: “There is no specific authorization for recordation of a notice of noncompliance by homeowners association.” and on page 66, that only documents

authorized by law can be recorded. By Health and Safety 17980.11 and 17985(b), a property lien can be recorded with county recorder only if a civil case is opened up on after notice of substandard or untenable conditions.

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The County's Trial Brief claims that Briseno's subject is only occupancy which is not the subject of this case. Occupancy is the effect of the County Codes listed in Appendix A. Leslie v. Superior Court makes the point of pre-emption of State Housing law over local codes as well for grading.( Leslie v. Superior Court, 73 Cal.App.4th 1042, 87 Cal.Rptr.2d 313, Util. L. Rep. P 26,714, 99 Cal. Daily Op. Serv. 6105, 1999 Daily Journal D.A.R. 7765, Cal.App. 2 Dist., July 29, 1999 (NO. B128002) ).

Counties may not make and enforce laws conflicting with general state laws. Cal. Const. Art. 11, §7

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...county. As a general rule, a government entity may not recover the costs of law enforcement absent authorizing legislation; under the general law, the expense of capture, detention, and prosecution of persons charged with crime is to be borne by the county. Counties Government Organization and Powers in Legislative control of acts,

rights, and liabilities. Legislative control is broader over counties, as mere political subdivisions of the state, than it is over cities, and the legislature has inherent power to prescribe county power, duties, and obligations in exercising governmental functions on the state's behalf.

[4] Counties Organization and Powers in Legislative control of acts, rights, and liabilities. While charter cities are granted broad authority over municipal...People v. Minor

***NUISANCE DEFINITION, Fourth Cause of Action***

Adoption of Uniform Housing Law standardized definition of nuisance:

**§ 18909. "Building standard"**

(k) "Nuisance" means any nuisance defined pursuant to Part 3(commencing with Section 3479) of Division 4 of the Civil **Code**, or any other form of nuisance recognized at common law or in equity.

Sections 17953, 17954, 17955 are not "enforcement" as defined in H&S 18909(e) but rather "procedural ordinances" as included in the H&S18909(c) definition of "building standard." And "procedural ordinances" do include "enforcement" as defined in H&S18909(e). "Enforcement" is subject of H&S17960 through 17992:

**H&S § 17960. Enforcement by city or county**

**building department:**

The building department of every city or county shall enforce within its jurisdiction all the provisions published in the State Building Standards Code,”

This also is also found in Santa Cruz County Code 1.12.070,

“Enforcement” in the area of un-permitted structures is the subject of H&S 17980 through 17992, see also Appendix A.

Although it is not clear how enforcement could be effected by climate, topology or geography, Health and Safety 17958.5 and 7 are still necessary to change State Law. The subject matter of Santa Cruz County Code 12.10.125 is the same as the subject matter of California Health & Safety 17980 and is therefore pre-empted by California Contitution Article 4 section 16(b).

**ENFORCEMENT OF BUILDING CODE, HOUSING CODE, AND LOCAL HEALTH CODES**

The existing Planning Department Code Enforcement does not enforce Housing Standards but rather County Land Use Codes.

**Santa Cruz County Land Use Codes have no jurisdiction over Existing Housing**

State Building Standards Code “shall not apply to existing buildings:”

That is the responsibility of State Law, in particular H&S 17912,

( Applicability of regulations to existing buildings or structures).

**PROPERTY RIGHTS**

Santa Cruz County position never addresses property rights: They never consider that intrusion into a private residence to enforce building permits is a violation of the Fourth Amendment to the Constitution of the United States and Article 1 of the California Constitution.

...county. As a general rule, a government entity may not recover the costs of law enforcement ...People v. Minor

***LEGITIMATE LOCAL ADMINISTRATION***

Department of health and community development is vested with supervisory powers over the administration and enforcement of building regulations but the day to day administration and enforcement of regulations are vested in local building department. [Baum Elec. Co. v.](#)

[City of Huntington Beach \(App. 4 Dist. 1973\) 109](#)

[Cal.Rptr. 260, 33 Cal.App.3d 573. Health 392](#)

### **MOTION TO STRIKE AND DEFAULT JUDGMENT ABUSED**

Generally, privilege against self incrimination applies only to civil defendants and third party witnesses, not to the plaintiff, *Fremont Indemnity Co. v. Supreme Couty*(1982)137 CA 3d 554, 560, 187 CR 137.

But I was unable to prove my Causes of Action because of constant objections by County Counsel that any mention of them was barred by default, RT1--44-14,RT1-199.15, RT2-286. The Court repeatedly agreed to forbid testimony because of the Default judgment RT1-57-4,RT1-57-25, RT59-2, RT74-9,RT1-199.15, RT2-286.9,10. Likewise in *Alvarez v. Sanchez*(1984) 158 CA3d 709, 715, 204CR64, it was concluded that striking and default judgment were too harsh a sanction for exercise of the 5<sup>th</sup> Amendment protection against self-incrimination. Default gave the respondents a totally unjustified advantage in proving their claim.

In this case, the Court usually sustained objections by County Counsel based on Default Judgment, RT44-22, RT57-4, RT57-25,RT59-2,RT74-9. Overturn of judgment on Appeal where abuse of discretion is found, is *Hartbrodt v. Burke*(1886) 42 CA4TH 168, 175, 49 CR2d 562.

Likewise in this present case, County Counsel was guilty of misuse of the discovery process, CCP 2023, by attempting to obtain information outside of limits of permissible discovery. She asked for “proof of habitation” in her original SPECIAL INTERROGATORIES of September 4 and instead demanded and got the Courts complicity in obtaining incriminating evidence against me for the purpose of prosecuting Santa Cruz County Code 1.12.070(C), Illegal Rents. County Counsel withdrew the charge of Illegal Rents, but after Default Judgment, she didn’t need it anymore.

### **THE TENTATIVE JUDGMENT**

see Comments on Tentative Statement of Decision, CT4-844. The obvious deficiency was its one-sidedness: There was no mention of the Uniform Housing Code which is the law of the land.

### **CONCLUSION:**

Santa Cruz County Planning Department at the date of my NOV was not qualified under the Housing Code to issue building permits or citations for not having one, because it was in violation of State

Housing Law. The County's "Use Codes" overlap areas which are under the governance of California State Housing law, ( see Appendix A).

Santa Cruz County erroneously applies land use codes to housing standards. The County has authority over local zoning codes but limited authority over building standards and limited authority over housing standards.

Wording on the Notice of Violation applies Santa Cruz County's Code Enforcement in place of Health & Safety 17960 through 17992.

Use Codes in my NOV are defective law and are pre-empted by State Law, ( Appendix A) The Codes themselves are void because, (1) they occupy the same subject matter jurisdiction as Health & Safety sections 17960 through 17995 in conflict with California Constitution Art 16 sect 7; and (2) Santa Cruz County Planning Department never bothered either to file them with the State Building Code Commission or to publish them—both of which are required for the Codes to be binding according to Health & Safety 17958.5,7.

Most importantly, enforcement in Santa Cruz County is not supported by Due Process to protect property rights. "Housing Appeals Board" aka "Building Appeals Board" aka BAF CAB aka "Local Appeals Board" were not publicized adequately, *People v. Swink*, 150 Cal.App3d. To avoid conflict of interest, State law stipulates Appeal

Board members be citizens uninvolved with the County government whereas the County Code 1.12.070 does not exclude County Employees from serving on Appeals Board.

And as the County defrauds residents of their rights to Due Process in Housing Law and Building Law, it also defrauds inhabitants of the County of their right to low-cost housing. The proclivity of county governments to keep the high-cost, high revenue-producing housing within their boundaries and exclude low-cost, low revenue-producing housing out side the county has been legislated against at the State level in 1979 in the Low-Cost Housing initiative. . The definitions of Nuisance, CC 3479 and CC 3480; the definition of Substandard, 17920.3, 17922(g) restricting abatement, and 17958.11 on conversion to residential were signed into law in 1979 along with other laws which were part of a legislature-wide effort to provide low-cost housing but are excluded from Santa Cruz County Codes.

The County demonstrated its proclivity to exclude low-cost housing when the Planning Department issued the first NOV against me on April 13, 2006. A formerly homeless person who was having trouble paying his rent. Instead of taking oversight and withdrawing from the situation, the Code Enforcement officer took a course of action that would ultimately further reduce the supply of low-cost housing. The County applied for and received an Inspection Warrant for a second

search on September 21 under the false pretense that there were Health and Safety violations. Neither search found any Health and Safety violations nor any on-going construction—only finished buildings. Neither inspection found anything but effective control of erosion.

The County's Claim for Injunctive Relief, CT1-1, is miss-applied. There is no danger to the public from my residences at 101, 105, 110, and 114 Silverline Road. The County is only diminishing the already low supply of low-cost housing. Under CCP 904.1(a)(6) this Appeal should be admitted for consideration.

No civil action was indicated by the April 13 Notice of Violation. The only demand --to apply for Building Permits--has no jurisdiction under State Housing Law. There is no jurisdiction of California State Building Law over finished housing. Blanket As-Built permits over entire buildings promoted by Santa Cruz County are not found within California State Housing Law. Rather, the Housing Law advocates permits for correction of deficiencies which cause a building to be substandard. When I chose to stand on the law and resist their intended intimidation to buy useless Building Permits, the County singled me out for retaliation and filed suit against me, CT1-1.

The County Codes cited in the April 13 and September 21 and the ensuing Lawsuit conflict with themselves, conflict with common sense,

conflict with State law, conflict with recorded California case law, and conflict with non-California case law.,.

Finally, is justice being served by Santa Cruz County which holds on to the same policies as when the judge was a County Supervisor in 2002. It is now thirty years since the California State legislature's Low-Cost Housing Initiative made many of Santa Cruz County Codes illegal, yet despite being unable to meet its Housing Element quota set by the State, Santa Cruz County refuses to implement the main laws in effect state-wide since 1980: 1) A structure must be substandard to be abated, ( H&S17922(g)); 2) Substandard means dangerous and unhealthy, ( lacking a building permit cannot be a factor); 3) Nuisance means an offense to the entire community per CC 3479, 3480—not in violation of whatever issue the Board of Supervisor happens to make as an ordinance; 4) Conversion of existing structures to residential use, H&S 17958.9. For these state laws to be effective, the Appeals Board, made mandatory for every county in 1970, is still not in effect in Santa Cruz County. Along with the Housing Law, “the governing body of every city or county shall adopt ordinances and regulations the same requirements as are contained in the regulations adopted pursuant to Section 17922....” Health and Safety 17958. Hundreds of thousands of Santa Cruz Residents have been forced to pay unnecessarily high rent or forced to move away because Santa Cruz County government—

including the Judge sitting in this action when he was a on Board of Supervisors—refused to obey the state housing reforms implemented by the state legislature to reduce housing cost.

It was the intention of the Court to allow absolutely no testimony in favor of adopting California Housing Law and criticizing the established way of doing things in Santa Cruz County.

Santa Cruz County Codes 1.12.070(D) are tangled disarray by comparison to California Housing Law Chapter 13: PROCEDURES FOR CONDUCT OF HEARING APPEALS. When Housing Law expert Dan Bronson tried to testify he was not allowed to say a word in favor of Housing or in criticism of Santa Planning Department. .

When Expert on Code Enforcement in Santa Cruz County, Claire Machado, tried to testify on the abuses of discretion within the Planning Department, she was forbidden to mention anything contrary to the Planning Department but only give testimony that could be used against me.

In her Trial Briefs, CT4-665,CT4-802, ( which I did not receive until after the trial, CT4-838), and also at the hearing when my testimony was done, RT2-355,356, County Counsel made the statement: “there is clear law that indicates where a State Law and a County ordinance or local law have similarity of effects, that it does not amount to pre-emption.” There is clear law to refute that statement:

.California Constitution Article 4 section 16 which states: “ A local or special statute is invalid in any case if a general statute can be made applicable.”

. The only case the County cites which might be construed to mix Housing Law with local ordinances, ( zoning in this case) is Mira v. San Diego, which concludes according to zoning.

#### TRIAL OR TRIBUNAL?

The trial was carried on as a tribunal, not a hearing. The instance in RT-73.1 where County Counsel objects before I even finish my sentence and the Court sustains the objection is typical. If the trial had been conducted according to Evidence Code 8320, the Plaintiff's rebuttal argument would have come next after the Defendant's final argument.

My repeated Objections to process of the trial, CT2-437, CT4-831,CT4-833,CT4-836, CT4-838, CT4-866, and “Objections to Order to Produce Answers to Interrogatory,” 11-2-09, were all issued within the window of notice of Tentative rulings per CRC 3.1308, CRC 3.1590, yet were ignored. The errors of the Court in requiring personal proof from my non-retained witnesses before trial, CT4-836, and forcing me to testify against myself, should have been obvious both to Court and Opposing Counsel.

A Statute of Limitation violation on a standing 1996 NOV was not allowed to bifurcate the trial under CCP 597 and lead to a gravamen of action in accordance with my VERIFIED AMENDED CROSS

ACTION FOR PETITION FOR WRIT OF MANDATE AND  
COMPLAINT FOR DECLARATORY RELIEF, CT1-83.

When I included the citation *Monterey City v. Del Monte Dunes at Monterey*, 526 U.S. 687;119 S.Ct. 1624, I did not intend to re-open Request for Jury Trial from October 21, but because, like Santa Cruz County, The City of Monterey argued “that because the Constitution allows the government to take property for public use, a taking for that purpose cannot be tortuous or unlawful.” The Supreme Court’s decision stating “We reject this conclusion,” is worth repeating.

Had my “Objection to Hearing to Compel Answers,” November 1, had it been responded to, might have saved the Court from the position of having granted the County’s NOTICE OF MOTION AND MOTION TO QUASH, October 26, and later claiming that I hadn’t produced an administrative record, RT-255. The law firm of Remy, Thomas, Moose, and Manley requested the administrative record but because it was so lacking, I had to subpoena the more complete documentation listed in Subpoena for Production of Documents, August 3, Attachments 3 and Attachments 4 of Judicial Council Forms SUBP-020, September 8 and September 29, and Attachment 2 of SUBP--002, September 21. Also I made Requests for Admission, on Judicial Council Forms DISC-002 on September 8, ( CT4-818), September 21, and September 28 for a total of 91 requests. There was Subpoena for Employee Records from five employees of the Planning Department on July 30. There was Subpoena for Employee Records on Judicial Council Forms SUBP-002 to Director of Records Department Michael J. McDougall on October 26. The Assistant County Counsel moved to quash and all was granted without explanation over my Opposition. Judge Burdick even scheduled an Order to Show Cause

meeting for me to explain why I needed personnel records. But not understanding the time or place or purpose, I did not attend, ( I had already submitted “Support of Subpoena of Employee Records to the Court,” September 23). The above discovery directed at thirteen county employees resulted in not a single document, not a single admission, not a single deposition, not a single adverse witness in court. The County Counsel justified with holding discovery with insubstantial reasons. The Court did not call for a word of explanation on my behalf as a pro per, ( in conflict with Haines v. Kerner, 404 U.S. 519 S.Ct. 594.

Neither Judge or County Counsel understand the gravity of their non-compliance to the California State Housing Code. The County Counsel was herself the subject of Subpoenas, but did not seek outside counsel to represent the County, ProfC 3-310(F)(3)(b). In 2001, then-Supervisor Judge Almquist initiated the ‘Do not-Enforce’ policy, RT357-20, Defendant’s Exhibit C, which was important to my Second Cause of Action. This past association may disqualify him as judge under Code of Civil Procedure 170.1(2)(B). The Court does not seem to realize that the County is subject to the Uniform Housing Code if the County does not move to amend it within 180 days of its release, ( Health and Safety 17958 by making express findings pursuant to Health and Safety 17958.5 and 17958.7, RT-86.1-20, RT4-892-901. Because 17958 only mentions Building Code specifically they don’t realize that it also refers to other codes pursuant to Health and Safety 17922 The first of these is the Uniform Housing Code except its definition of ‘substandard housing.’ The Court’s AMENDED JUDGMENT, RT4-892, never even mentions the Uniform Housing Code, CT3-441.

## RESOLUTION

A complaining tenant, Holsman, was the genesis of this series of legal actions, CV 155620, CV 155817, and CV 158731. Yet the unnecessary expense and bother was not due to Holsman, but the County's disobedience the California State Housing Law which was designed to support Landlord-Tenant Law, ( CV 155620, RT1-112). An Appeals Board should have collected facts and produced a decision on whether Holsman complained because he couldn't make his rent, or whether he really had something to complain about , or whether he caused his own problems. The time that Health and Safety laws could have remedied Holsman's problem is past. The reason the Health and Safety laws did not perform is that no agency had been charged with the task of keeping them.

## CERTIFICATE OF WORD COUNT

Microsoft Word Word Count Tool

13,985 words including footnotes

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Dated \_\_\_\_\_

Signed \_\_\_\_\_

## **ATTACHMENTS**

### **APPENDIX 1: TABLE OF COUNTY CODES AND STATE LAWS**

Santa Cruz County Code	California Law	Subject Matter
1.12.070(a)	H&S 17960	Building Code Enforcement
1.12.070(b)	H&S 17980(b)	Vacating a Building
1.12.070(c)	H&S 17980(C)	Enforcement costs
1.12.070(d)	H&S 17920.5,6	Appeals Hearings <sup>8</sup>
1.12.070(e)	H&S 17984	Ammount of Civil Penalties
1..12.070(f)	H&S 17960	Authority over Civil Penalties
1.12.070(g)	H&S 17960	Appeal of Decision
1.12.070(h)	H&S 17920.5,6	Review of Appeals Hearing
1.12.070(i)	H&S 17980.11	Recording Appeals Decision
1.12.070(j)	H&S 17925,80.2	Tax Lien recorded
1.12.070(k)	H&S 17980.1,2	Civil Action
1.12.070(l)	H&S 17980.4	Liability for Litigation Costs
1.12.070(m)	H&S 17980.11	Liability for Other Costs
12.10.125(a)	H&S 17920.3(n)	Building Permit Violation
13.10.140(a)	H&S 17980.10	Nuisance Declaration
13.10.279(a)	H&S 17980.7	Continuing violation

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<sup>8</sup> UNIFORM HOUSING CODE Chapter 13 is appropriate California Law

13.10.279(b)	H&S 17980.11	Nuisance declaration
16.20.210(a)	H&S 179800J	Grading Violation
12.22.160(a)	H&S 160(a)	Failure to prevent erosion
1.12.050	H&S 17920(k), CC 3459	Definition of Nuisance
12.10.150	H&S 18949.27	Building Official Defined
	H&S 17980.1,7	Court-appointed receiver
	H&S 17980.1	Abatement Order
	H&S 17980.3	Receiver's Expenses

## **APPENDIX B: Evidence of Disruption of Trial Preparation:**

October 25, 2009



