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7
8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF DEL NORTE

9
10 MAGAN L. NATHA AND SARLA M.
11 NATHA,

12 Petitioners,

13 v.

14 CITY OF CRESCENT CITY, A
MUNICIPAL CORPORATION OF THE
15 STATE OF CALIFORNIA AND DOES 1-
10,

16 Respondents.

Case No. CVPT-2021-1184

**PETITIONERS' OPPOSITION TO
DEMURRER**

Date: October 29, 2021

Time: 10:00 a.m.

Dept.: One

17
18 Petitioners Magan L. Natha and Saria M. Natha (hereinafter "Natha" or "Petitioners")
19 submit the following document in opposition to City of Crescent City's ("City") demurrer.

20 **I. BACKGROUND**

21 Petitioners are the owners of Anchor Beach Inn ("Inn") located in the unincorporated
22 area of Del Norte County at 880 Highway 101 South, Crescent City, California. In 1999,
23 after engaging in litigation with City, Natha and City entered into a Settlement Agreement
24 and General Release of Litigation Claims ("Settlement Agreement"). A copy of the
25 Settlement Agreement is attached to the Declaration of Bradford C Floyd (Floyd Declaration)
26 as **Exhibit 1** and incorporated herein by reference. The litigation between Natha and City
27 involved Natha's assertion that Natha was entitled, on behalf of the Inn, to a wastewater
28 service connection to City's effluent system.

1 The Settlement Agreement provided that City would provide Inn a wastewater service
2 connection to its effluent system if Natha would get the necessary permits, pay sewer
3 connection fees, pay standard sewer service fees, and pay an additional fee to City of 2
4 percent of the gross revenues generated by the Inn. Stated another way, City would charge
5 Natha a 2 percent Transient Occupancy Tax (“TOT”) even though Inn was not in City. This
6 charge by City for connecting to City’s effluent system was not a fee required of other motels
7 and businesses and amounts to an improper tax and fee.

8 After entering into the Settlement Agreement Natha and City performed as required
9 by the agreement. Since 1999 Natha has paid the 2 percent TOT even though it appears now
10 this fee charged by City was illegal and contrary to the laws of the State of California. In
11 fact, it appears City understood at the outset of the Settlement Agreement that charging Natha
12 the 2 percent TOT was contrary to California law, based upon the language City insisted be
13 included in the Settlement Agreement. For instance, the Settlement Agreement contains a
14 provision for dispute resolution between the parties first and then by the Court if any portion
15 of the agreement is determined as invalid. Specifically, paragraph 19 of the Settlement
16 Agreement states:

17 19. The payment of “in lieu” fees and Nathas commitment to
18 annexation is integral to this Agreement and may not be severed from
19 the remainder of the provisions of this Agreement. In the event any
20 portion of this Agreement is invalid or inoperable or any party is denied
21 the full benefits conferred under this Agreement as set forth herein, in
22 whole or in part, then Natha on behalf of the Nathas’ own selves and on
23 behalf of all persons or legal entities hereafter succeeding to Nathas’
24 interest in and to the Premises and any part thereof, and City agree to
25 reform this Agreement and any and all documents attached hereto or
26 executed concurrently herewith to accomplish the intent of Nathas and
27 City as set forth herein. In the event Nathas and City cannot reach an
28 understanding in regard to the reformation of this Agreement within six
months, then Nathas and/or City may file a petition with the Del Norte
County superior Court to judicially reform this Agreement.

29 In accordance with paragraph 19, on or about September 9, 2019, Natha’s attorney
30 sent a letter to City’s attorney requesting City immediately cease charging Natha the 2

1 percent TOT since the tax was illegal pursuant to California Health and Safety Code
2 section 5471 and other California Codes and common law. A copy of this letter is
3 attached to the Floyd Declaration as **Exhibit 2** and incorporated herein by reference.

4 On January 3, 2020, City's attorney, Martha Rice, responded to Natha's September
5 9, 2019 letter. In that letter City declined to cease charging Natha the 2 percent TOT. A
6 copy of this letter is attached to the Floyd Declaration as **Exhibit 3** and incorporated
7 herein by reference.

8 On December 9, 2020, Eric Wier, City Manager for City, by letter reiterated City's
9 position that City intended to continue charging Natha the 2 percent TOT and if Natha did
10 not timely pay, City would charge Natha interest and disconnect the Inn from City's
11 effluent system. A copy of this letter is attached to the Floyd Declaration as **Exhibit 4**
12 and incorporated herein by reference.

13 Since six months had transpired from the time the dispute arose and the parties
14 were unable to resolve the matter and reform the Settlement Agreement, Natha filed their
15 Petition with the Court, just as the parties had agreed to do in the Settlement Agreement.

16 Instead of answering the Petition, as contemplated by the Settlement Agreement,
17 City instead demurred to Natha's Petition.

18 **II. GENERAL LEGAL STANDARDS FOR DEMURRERS**

19 **A. Legal Authority Regarding Demurrers**

20 A demurrer can be used only to challenge defects that appear on the face of the
21 pleading under attack; or from matters outside the pleading that are judicially noticeable.
22 In ruling on a demurrer, plaintiff's allegations in the complaint must be accepted as true.
23 (*Del V Webb Corporation v. Structural Materials Company* (1981) 123 Cal.App.3rd 593,
24 604; Code Civ.Proc., §430.10.) A demurrer simply tests the sufficiency of the complaint;
25 the demurrer admits the truth of all material facts properly pleaded (i.e., all ultimate facts
26 alleged.) (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) The question of plaintiff's ability
27 to prove the allegations, or possible difficulties in making such proof, is of no concern in

1 ruling on a demurrer. (*Committee On Children's Television, Inc. v. General Foods Corp.*
2 (1983) 35 Cal.3d 197, 213-214). Finally, the court should **not** sustain a demurrer unless
3 the objection is clearly well taken. The complaint must be construed "liberally . . . with a
4 view to substantial justice between the parties." (Code Civ.Proc., §452.)

5 Code of Civil Procedure ("CCP") section 430.10 sets forth the grounds for a
6 demurrer. Of the seven grounds which exist, as near as plaintiffs can tell in this matter,
7 defendants' demurrer addresses only three of those grounds. Those grounds are: 1) The
8 pleading does not state facts sufficient to state a cause of action (CCP § 430.10(e); 2) The
9 pleading is uncertain (CCP § 430.10(f); and 3) Labor Code section 3600 is employee's
10 exclusive remedy. Demurrers for failure to state a cause of action or for uncertainty are
11 commonly referred to as "general" demurrers. (*McKenney v. Purepac Pharmaceutical*
12 *Co.* (2008) 167 Cal.App.4th 72, 77.)

13 1. Demurrer for Failure to State a Cause of Action

14 A demurrer can be used only to challenge defects that appear on the face of the
15 pleading under attack; or from matters outside the pleading that are judicially noticeable.
16 (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) No other extrinsic evidence (often called a
17 "speaking demurrer") can be considered by the Court. (*Ion Equip. Corp. v Nelson* (110
18 Cal.App.3d 868, 881.)

19 Any valid cause of action overcomes a general demurrer for failure to state a cause
20 of action. It is not necessary that the cause of action be the one intended by plaintiff. The
21 test is whether the complaint states any valid claim entitling plaintiff to relief. Thus,
22 plaintiff may be mistaken as to the nature of the case, or the legal theory on which he or
23 she can prevail. But if in the essential facts of the complaint, some valid cause of action is
24 alleged, the complaint is good against a general demurrer. (*Quelimane Co., Inc. v.*
25 *Stewart Title Guar. Co.* (1998) 19 Cal.4th 26, 38-39; *Adelman v. Associated Int'l Ins. Co.*
26 (2001) 90 Cal.App.4th 352, 359; *Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th
27 992, 998.) If there are sufficient allegations to entitle plaintiff to relief, other allegations

1 cannot be challenged by general demurrer. (*Kong v. City of Hawaiian Gardens*
2 *Redevelop. Agency* (2003) 108 Cal.App.4th 1028, 1046; *PHII, Inc. v. Sup.Ct. (Ibershof)*
3 (1995) 33 Cal.App.4th 1680, 1682.)

4 Simply put, as long as plaintiff can show just one valid cause of action exists in the
5 entire complaint, the general demurrer for failure to state a cause of action must be
6 overruled with respect to the entire complaint.

7 **III. LEGAL ARGUMENTS**

8 **A. The Waiver Clause in the Settlement Agreement is Unenforceable**

9 Petitioner agrees there is a waiver clause contained in paragraph 18 of the
10 Settlement Agreement, as set forth on page 7 of City's demurrer. However, with all
11 contracts, the Settlement Agreement must be read as a whole rather than cherry pick one
12 paragraph of an 11-page agreement. (Civ. Code, § 1641; *County of Marin v. Assessment*
13 *Appeals Bd of Marin County* (1976) 64 Cal.App.3d 319, 324-325.)

14 In fact, as set forth in the BACKGROUND section above, the Settlement
15 Agreement specifically provides a procedure for the parties to resolve disputes if any
16 provision of the Settlement Agreement is "invalid or inoperable". (Exh. 2, p.9, ¶ 19.)
17 That procedure requires the parties to try to resolve the dispute regarding the illegal
18 provision in the Settlement Agreement, and then, after six months, if the parties are
19 unsuccessful at resolving the dispute, to petition the Court to judicially reform the
20 agreement. This is exactly what Petitioner has done. Since the parties are unable to
21 resolve this dispute regarding the illegal 2 percent TOT, and since over six months have
22 elapsed since resolution was attempted, Petitioner in now petitioning the Court to
23 judicially reform this illegal provision.

24 Furthermore, the parties cannot waive statutory provisions that are established for
25 a public reason. (Civ. Code, § 3513.) Also, California cases take a very loose view of
26 severability, enforcing valid parts of an apparently indivisible contract where the interests
27 of justice or the policy of the law would be furthered. (*Calvert v. Stoner* (1948) 33 Cal.2d
28

1 97, 104.) For instance, as the court observed in *Keen v. Harling* (1964) 61 Cal.2d 318,
2 324, [A] contract is severable if the court can, consistent with the intent of the parties,
3 reasonably relate the illegal consideration on one side to some specified or determinable
4 portion of the consideration on the other side.

5 In the instant case, Health and Safety Code section 5471(a) requires City to have
6 an ordinance, approved by a two-thirds majority of the members of the legislative body,
7 for the charges it will charge for allowing persons and entities to connect to its sewage
8 system. No such vote was ever taken by the City Council. Without an ordinance passed,
9 no 2 percent TOT money can be collected. (*Pinewood Investors v. City of Oxnard* (1982)
10 133 Cal.App.3d 1030, 1039; *Cavalier Acres Inc. V. San Simeon Acres Community*
11 *Services District* (1984) 151 Cal.App.3d 798, 801-802.) Many other cases stand for a
12 similar proposition.

13 In this matter, Natha is the only individuals or entity charged a 2 percent TOT for
14 connecting to City's sewage system regardless of whether the property seeking the
15 connection was within City's limits or outside of that limit. Per the authorities cited
16 above, City cannot legally collect this 2 percent TOT from Natha and that provision
17 certainly can be severed from the contract.

18 Wherefore, City's waiver argument involving paragraph 18 of the Settlement
19 Agreement does not support City's position in this matter. City's argument for demurrer
20 based on the doctrine of waiver should be denied.

21 **B. The Doctrine of Laches does not Apply to a Demurrer**

22 For a demurrer to be sustained on the basis of the equitable defense of laches both
23 the prejudice resulting from the delay and the injury to the demurring party must be
24 disclosed in the petition or complaint. (*Sangiolo v. Sangiolo* (1978) 87 Cal.App.3d 511,
25 514.) Stated another way, "Laches may be raised by demurrer, but only if the complaint
26 shows on its face unreasonable delay plus prejudice or acquiescence." (*Conti v. Board of*
27 *Civil Service Comm'rs* (1969) 1 Cal.3d 351, 362.)

1 In our case, the four corners of the Petition do not show unreasonable delay by
2 Natha that prejudiced City or acquiescence by Natha. To the contrary, the Petition
3 attaches the Settlement Agreement and that agreement, without any limitations of time,
4 allows either party to seek reformation through the court if the parties were unable to
5 resolve any invalid portions of the Settlement Agreement. (See Settlement Agreement
6 p.9, ¶ 19.)

7 Based upon the above, City's demurrer arguments based on the doctrine of laches
8 is without merit.

9 **C. Petitioner's Reformation Cause of Action Alleges all Essential Elements**

10 The object of a contract must be lawful. (Civ. Code, § 1550.) In other words, it
11 must not conflict with an express statute or public policy. (Civ. Code, § 1667.) However,
12 where the consideration is only partially illegal and the agreement is severable, the legal
13 portion may be enforced. (*Keene v. Harling, supra*, 61 Cal.2d at 324.) Also, if the
14 contract has several distinct objects, and one or more of those objects is lawful, the
15 contract is valid and enforceable as to the lawful object(s) so long as it is severable from
16 the rest of the contract. (Civ. Code, § 1599; *Crowell v. Downey Comm. Hospital*
17 *Foundation* (2002) 96 Cal.App.4th 167, 184.)

18 California courts take a very liberal view of severability, enforcing the valid parts
19 of an apparently indivisible contract where the interest of justice or the policy of the law
20 is furthered. (See *Calvert v. Stoner, supra*, 33 Cal.2d at 104; *Carter v. Seaboard Finance*
21 *Co.* (1949) 33 Cal.2d 564, 573.) In *Carter*, for instance, the court severed illegal
22 consideration from legal consideration which is what Natha is seeking in their Petition.

23 Natha's Petition, in the first cause of action, seeks, "in the interests of justice
24 and/or the policy of the law, to reform (severe) the illegal consideration (the 2 percent
25 TOT) from the lawful consideration (permit and hookup fees and monthly standard sewer
26 service fees). Although the caption for the first cause of action uses the term
27 "Reformation of Contract" the body of the Petition asks the court to "... have the illegal in
28

1 lieu fee severed from the Agreement and Settlement Agreement” and enforce the valid
2 parts of the agreement. (Petition p.5, ¶ 18.)


3 Based upon the above, City’s reformation arguments are without merit.

4 **IV. CONCLUSION**

5 Based upon the above, City’s demurrer is without merit and should be denied.

6
7 Dated: October 13, 2021

FLOYD LAW FIRM

8 By 
9 _____
10 Bradford C Floyd
11 Attorneys for Petitioner
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14 CITY OF CRESCENT CITY, A
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10,

16 Respondents.

Case No. CVPT-2021-1184

**DECLARATION OF BRADFORD C
FLOYD IN SUPPORT OF
PETITIONERS' OPPOSITION TO
DEMURRER**

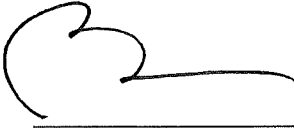
Date: October 29, 2021
Time: 10:00 a.m.
Dept.: One

17
18 I, Bradford C Floyd, declare:

- 19 1. I am an attorney at law licensed to practice before all courts of the state of
20 California and am the attorney of record for petitioners in the above-entitled action.
- 21 2. Attached hereto as **Exhibit 1** is a true and correct copy of the Settlement
22 Agreement and General Release of Claims entered into between Petitioners and Respondent
23 dated August 17, 1999.
- 24 3. Attached hereto as **Exhibit 2** is a true and correct copy of the letter addressed
25 to Respondent dated September 9, 2019.
- 26 4. Attached hereto as **Exhibit 3** is a true and correct copy of Respondent's
27 response to my September 9, 2019, letter.
- 28

1 5. Attached hereto as **Exhibit 4** is a true and correct copy of the letter from Eric
2 Wier, City Manager for the City of Crescent City, dated December 9, 2020.

3 I declare under penalty of perjury under the laws of the state of California that the
4 foregoing is true and correct and that this declaration was executed this 13th day of October
5 2021 at Eureka, California.

6 

7 _____
8 Bradford C Floyd

Settlement Agreement and General Release of Litigation Claims

This Agreement (the "Agreement") is effective August 17, 1999, by and between the following, who are hereinafter sometimes referred to as "parties": (a) MAGAN L. NATHA and SARLA M. NATHA hereinafter sometimes "Natha" or "Nathas"); (b) CITY OF CRESCENT CITY, a municipal corporation (hereinafter sometimes "City").

WHEREAS, Natha owns that real property and the motel improvements thereon (hereinafter referred to as the "Premises") described in the Petitioner for Writ of Mandamus filed in Del Norte County Superior Court Case No. 980336 on July 2, 1998, ¶ 1, and commonly referred to as 880 Highway 101, South, Crescent City located in the unincorporated area of Del Norte County, State of California, more particularly described as:

Lots 1 through 16 in Block 2 of Walton docks according to the map thereof filed in the office of the County recorder of Del Norte County, California on July 13, 1915, in book 2 of Maps, page 35.

EXCEPTING therefrom that portion thereof conveyed to the State of California in deed recorded July 29, 1959, in Book 58 of Official Records, page 275, Del Norte County Records.

WHEREAS, the Premises is commonly known as The Anchor Beach Inn, consisting of 55 units, more or less, and related facilities (hereinafter the "Motel"), and

WHEREAS, Natha has filed an action in Del Norte County Superior Court entitled "Natha v. City of Crescent City", Case No. 980336, grounded on three causes of action, being administrative mandamus, a second cause of action for inverse condemnation for regulatory taking, and a third cause of action for deprivation of rights under color of state law. These three causes of action centered around Nathas' assertion that it is entitled a service connection for wastewater service to the Motel to be provided by the City of Crescent City's effluent system, and

EXHIBIT 1

1599

WHEREAS, the City disputes the claims of Nathas and contends that Natha claims have no legal or factual basis, and

WHEREAS, the County of Del Norte has a Community Service Area that has jurisdiction over the provision of wastewater services to the area that the Motel is located but does not have effluent facilities that immediately extend to the Premises, and

WHEREAS, City presently provides wastewater treatment services to the Crescent City Harbor District and City's effluent facilities are located much nearer to the Premises so that it would be significantly more cost effective for the Premises to connect to City's effluent lines rather than those of the county's Community Service Area, and

WHEREAS, on July 10, 1997, City adopted a policy to promote annexation to the City by restricting its infrastructure to properties located within the city limits, and

WHEREAS, Nathas desire to annex to the City so that both City and the Premises may benefit therefrom but Nathas have been advised that they can not occupy the Premises and commence business operations unless they have a satisfactory means of wastewater disposal available and the immediate connection to wastewater facilities would allow the Nathas to commence business operations, and

WHEREAS, City desires to cooperate with Natha to in such a manner that insures that Natha can commence business operations and that City will receive a fee in lieu of Transient Occupancy Tax which otherwise would be lost to City until the Motel annexes into the city limits, and

WHEREAS, the City, in the public interest of the City and its citizens, desires to resolve the claims of Natha, and to extend sewer service to Nathas' motel development under the terms and conditions contained in this Agreement, and

WHEREAS, this Agreement pertains to Nathas' disputed claims and does not constitute an admission by Natha or by the City of any liability, claim or allegation of any party in Case No. 980336.

NOW, THEREFORE, in consideration of the claim promises made herein, and in consideration of the parties' intent to resolve the pending litigation disputed among them, the parties agree as follows:

I.

Wastewater Connection

1. . . Nathas, on behalf of Nathas' own selves and on behalf of all persons or legal entities hereafter succeeding to Nathas' interest in and to the Premises and any part thereof, agree to comply with all terms and conditions applicable to sewers, wastewater connections, public sewer permits and wastewater pretreatment set forth in the Crescent City Municipal Code (and its Appendixes) from time to time amended and supplanted, resolutions of the City Council and administrative rules and procedures set out by the City of Crescent City, now in effect or hereafter promulgated and to pay all costs, charges, penalties, fees, levies and assessments from time to time so imposed. Nathas and their grantees, heirs, successors and assigns hereby grant the City of Crescent City a blanket easement upon, across, over and under all the property at the address indicated for all acts necessary to maintain the functional existence of the wastewater system, including but not limited to, ingress, egress, installation, replacing, repairing and maintaining all wastewater laterals and utilities. Nathas, on behalf of Nathas' own selves and on behalf of all persons or legal entities hereafter succeeding to Nathas' interest in and to the Premises and any part thereof, hereby irrevocably dedicate to the City of Crescent City all wastewater effluent improvements constructed, including but not limited to lateral lines. Nathas, on behalf of Nathas' own selves and on behalf of all persons or legal entities hereafter succeeding to Nathas' interest in and to the Premises and any part thereof, agree to remain responsible to repair all improvements located at the Premises.

2. Subject to revocation as hereinafter provided, and further provided that all terms and conditions of this Agreement to be met by Natha and all lienholders of record upon the Premises are satisfied, City shall issue its standard permit authorizing connection of the plumbing facilities serving the Motel building constructed on the Premises to the sewer system owned and operated by City. A material inducement to City agreeing to

allow a direct connection to its effluent system is Natha's representation that it will support and do all acts necessary to annex into the jurisdictional limits of City and so that City's Transient Occupancy Tax pursuant to Chapter 3.20 of the Crescent City Municipal Code becomes applicable to the Motel's occupancy. A further material inducement to City to enter this agreement is the representation that the Motel's operation shall generate, in favor of City, revenue in lieu of the Transient Occupancy Tax while the Premises are not annexed into City's jurisdictional boundaries. It is expressly understood that, so long as the Premises are not annexed into the City of Crescent City, that should, for any reason, the City not receive the fee in lieu of the Transient Occupancy Tax that City shall have after 30 days written notice to Natha the absolute and unequivocal right to revoke the wastewater connection permit and to disconnect the wastewater lateral connecting the Premises directly to the City's effluent facility and that the then present owners of the Premises shall have no further right to such direct connection nor to any refund of any monies paid to City in connection with this agreement or the provision of wastewater service to the Premises. Natha shall have the right to cure said revocation and disconnection by payment to the City of said in lieu fee within 30 days after service of said written notice.

3. City consents to Natha's connection to City's existing wastewater system at the intersection of Anchor Way and Starfish Road, Del Norte County, California.

II.

Costs of Sewer Connection

4. In addition to the other fees provided for in this Agreement, Natha shall pay City the sum of \$18,400. City waives any further sewer connection charges or sewer capacity charges that could potentially be imposed by city in conjunction with or as a condition of approving this permit for wastewater service. Further development on Natha's property may result in additional connection fees for the further capacity to serve later development which fees will be imposed by the City on the terms and conditions applicable at the time of that development. Nothing in this Agreement is intended to commit City to permit any further utility connections other than as specified in paragraph 2 above. Nothing in this Agreement is intended to divest City of its discretion to impose sewer service fees, sewer standby fees, or special assessments levied in accordance with one or a

combination of the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code), the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code), or the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code.

5. Nathas shall pay all costs incurred to connect by pipeline and related equipment the Motel to the City's wastewater system.

III.

Annexation Commitment

6. Nathas agree to execute, in a form sufficient for recordation with the Del Norte Recorder's Office, the Annexation, Subordination, Easement and Secondary Easement Agreement attached hereto as Exhibit "A" and incorporated herein by this reference. Said Annexation, Subordination, Easement and Secondary Easement Agreement shall be executed by the authorized representative of each lienholder holding a Deed of Trust secured by the Premises and each such lienholder shall agree to subordinate their rights under their respective Deeds of Trust to the obligations imposed in the Annexation, Subordination, Easement and Secondary Easement Agreement. Failure by a lienholder to so subordinate and execute the Annexation, Subordination, Easement and Secondary Easement Agreement shall constitute a default terminating any right of Natha (on behalf of Nathas' own selves and on behalf of all persons or legal entities hereafter succeeding to Nathas' interest in and to the Premises and any part thereof) to directly connect to City's effluent facilities or to remain connected in the event such connection has already occurred. Fees charged for the recordation of the Annexation, Subordination, Easement and Secondary Easement Agreement shall be the responsibility of City.

IV.

Transitory Occupancy Tax

7. Nathas on behalf of Nathas' own selves and on behalf of all persons or legal entities hereafter succeeding to Nathas' interest in and to the Premises and any part

thereof, agree to pay to the City a fee in lieu of the transitory occupancy tax as defined by Crescent City Municipal Code § 3.2.010, et. Seq. Provided, however, that (1) the amount shall at all times applicable be two percent (2%) of gross revenues generated by the Motel, but only those gross revenues which would be subject to the City's Transient occupancy tax as if the Motel were located within the City; and (2) this two percent fee shall cease upon annexation of the Natha Motel property to the City, at which time Nathas shall pay such transitory occupancy tax as generally applicable to like businesses under the City's ordinances. The "in lieu" fee shall be reported and remitted in that same manner that transient occupancy taxes are to be reported and remitted under the Crescent City Municipal Code. In the event the premises are not annexed to City the obligation to pay the "in lieu" fee shall terminate sixty years after the last execution of this Agreement. Nothing herein shall be construed to infer that, absent this agreement, businesses outside the City's territorial limits are or are not subject to the City's transient occupancy tax and Natha hereby waives any defense to payment of aforesaid 2% in lieu fee which may be based, in whole or in part, on such an inference.

VII.

Acts Upon Execution

8. Nathas will forthwith execute and deliver to the City a Request for Dismissal with Prejudice of the above-described Case No. 980336 with each party bearing its own fees and costs therein.

VIII.

Releases

9. Nathas, on behalf of their heirs, executors, administrators and assigns, hereby fully release the City and its successors and all other persons and associations, known or unknown from all claims and causes of action by reason of any injury or damage which has been sustained, or may be sustained, as a result of Nathas' claims made in the complaint in Case No. 980336.

10. The City on behalf of its heirs, executors, administrators and assigns, hereby fully releases Nathas and their successors, and all other persons and associations, known or unknown, from all claims and causes of action by reason of any injury or damage which has been sustained, or may be sustained, as a result of any claims made in Case No. 980336.

11. All parties acknowledge and agree that this release applies to all claims in existence at the time of execution of this Agreement that any party may have against any other party arising out of Natha's motel property, except any obligations arising under the terms of this Agreement.

12. Waiver of California Civil Code Section 1542. All parties certify that they have read Section 1542 of the California Civil Code, set out below, and indicates that fact by signing their initials here:

City:

By:

Nathas:

 /

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

13. All parties hereby waive application of § 1542 of the Civil Code. All parties understand and acknowledge that the significance and consequence of this waiver of § 1542 of the Civil Code is that even if any party should eventually suffer additional damages arising out of the above-described transaction, such party will not be permitted to make any claim for those damages. Furthermore, all parties acknowledge that said party intends these consequences even as to claims for injury or damages that may exist as of the date of this release but which such party does not know exist, and which, if known, would materially affect such party's decision to execute this release, regardless of whether

Releasor's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

IX.

Miscellaneous Provisions

14. If any action or proceeding, arising out of or relating to this Agreement is commenced by any party to this Agreement, then the prevailing party shall be entitled to receive from any party upon whom liability is imposed, in addition to any other relief that may be granted, the reasonable attorney fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

15. Any notice, tender, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered, mailed, or sent by wire or other telegraphic communication in the manner provided in this paragraph, to the following persons:

(a) If to Natha:

933 Fourth Street
Eureka, CA 95501

(c) If to City:

City Manager
City of Crescent City
377 J Street
Crescent City, CA 95531

Either party may change that party's address for these purposes by giving written notice of the change to the other party in the manner provided in this section.

If sent by mail, any notice, delivery, or other communication shall be effective or deemed to have been given 48 hours after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above.

16. This agreement shall be binding on and shall inure to the benefit of the parties hereto and their heirs, successors, assigns, grantees, and administrators.

17. This Agreement constitutes the entire agreement between the parties concerning settlement of the dispute referred to herein. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by all parties.

18. Nathas on behalf of Nathas' own selves and on behalf of all persons or legal entities hereafter succeeding to Nathas' interest in and to the Premises and any part thereof, give up and waive all right to seek injunction or writ of mandate or other legal or equitable process (including the assertion of an affirmative defense) in any suit, action, or proceeding in any court against City or against any officer or employee of City to prevent or enjoin the collection by City or the payment to City of the "in lieu" fee or any other charges required to be paid hereunder.

19. The payment of the "in lieu" fees and Nathas commitment to annexation is integral to this Agreement and may not be severed from the remainder of the provisions of this Agreement. In the event any portion of this Agreement is invalid or inoperable or any party is denied the full benefits conferred under this Agreement as set forth herein, in whole or in part, then Nathas on behalf of Nathas' own selves and on behalf of all persons or legal entities hereafter succeeding to Nathas' interest in and to the Premises and any part thereof, and City agree to reform this Agreement and any and all documents attached hereto or executed concurrently herewith to accomplish the intent of Nathas and City as set forth herein. In the event Nathas and City cannot reach an understanding in regard to the reformation of this Agreement within six months, then Nathas and/or City may file a petition with the Del Norte County Superior Court to judicially reform this Agreement.

20. The nonprevailing party agrees to pay the following costs, expenses, and attorneys' fees paid or incurred by prevailing party, or adjudged by a court: (1) reasonable costs of collection, costs, and expenses, and attorneys' fees paid or incurred in connection with the collection of the "in lieu" fees or enforcement of this Agreement, whether or not suit is filed; and (2) costs of suit and such sum as the court may adjudge as attorneys' fees in any action to enforce payment of the "in lieu" fees or any part of them.

In addition to the foregoing award of attorneys' fees, the prevailing party shall be entitled to its attorneys' fees incurred in any postjudgment proceedings to enforce any judgment in connection with this Agreement and/or the Sewer Service and Annexation Agreement. This provision is separate and separate and shall survive the merger of this provision into the judgment.

Executed the last date written below at Crescent City, California.

Dated: 8/19/99

Magan L. Natha
MAGAN L. NATHA

Dated: 8/19/99

Sarla M. Natha
SARLA M. NATHA

Dated: 8/26/99

CITY OF CRESCENT CITY
a California municipal corporation

By: David Wells
DAVID WELLS, City Manager

DECLARATION OF NATHA'S ATTORNEY

I, Thomas Becker, a member of the State Bar of California and attorney for MAGAN L. NATHA and SARLA M. NATHA, certify that I am satisfied that the Nathas fully understand the effect, significant and consequences of the release set forth above.


Date: 8-19-'99

Thomas Becker
Thomas Becker
Attorney for Nathas

DECLARATION OF CITY OF CRESCENT CITY ATTORNEY

I, John R. Henion, a member of the State Bar of California and attorney for The City of Crescent City, certify that I am satisfied that the officials of the City of Crescent City fully understand the effect, significance and consequences of the release set forth above.

Date: _____



John R. Henion
Attorney for City of Crescent City

FLOYD LAW FIRM

819 Seventh Street
Eureka, California 95501
Telephone:(707) 445-9754
Facsimile:(707) 445-5915
E-mail: bcfloyd@floydlawfirm.net

Attorneys:

Bradford C. Floyd
Carlton D. Floyd

September 9, 2019

Martha D. Rice, Esq.
City of Crescent City
Black & Rice LLP
710 H Street
Crescent City, CA 95531

Re: Anchor Beach Inn

Dear Ms. Rice,

As I indicated to you by telephone last week, I represent Magan and Sarla Natha, the owners of Anchor Beach Inn located just South of Crescent City.

In 1999, Mr. And Mrs. Natha entered into an Annexation, Subordination, Easement and Secondary Easement Agreement ("Agreement") with the City of Crescent City ("City") related solely the Nathas connecting to the City sewer. In fact, issuance of a building permit for the construction of what was to become Anchor Beach Inn was contingent upon the Nathas entering into this Agreement. Among other things, the Agreement called for a 2% transitory occupancy tax ("TOT"), paid by the Nathas quarterly to City, as consideration (a tax) for the Nathas connecting to City's sewer services. (Agreement p. 5, para. 3.2.) Since 1999 the Nathas have annually paid between \$16,000 and \$20,000 to City for this 2% TOT. The Agreement signed by the Nathas contemplates this tax lasting for as many as 60 years. (Id.)

Recently, the Nathas and City entered into negotiations for the City to cease payment this 2% TOT. Last week the Nathas met with me regarding this 2% TOT. Based upon my understanding of the facts, in conjunction with the legal research I preformed, I believe the 2% tax being charged by the City is illegal.

Health & Safety Code § 5471(a) states:

In addition to the powers granted in the principal act, any entity shall have power, by an ordinance or resolution approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees, tolls, rates, rentals, or other charges for services and facilities furnished by it, either within or without its territorial limits, in connection with its water, sanitation, storm drainage, or sewerage system." In 1991 Health & Safety Code § 5471 did not have the term "or resolution" in its body. In other words, for an entity to charge any type of fee,

EXHIBIT 2

Martha D. Rice, Esq.
September 9, 2019
Page 2

toll, rate or other service charge, the City had to have an ordinance approved by a two-thirds vote of the members before it could legally charge the Nathas a 2% fee.

Health & Safety Code § 5471(a) has been the subject of much litigation. See for instance *Pinewood Investors v. City of Oxnard* (1982) 133 Cal.App.3d 1030; *Cavalier Acres Inc. v. San Simeon Acres Community Services District* (1984) 151 Cal.App.3d 798. In both the *Pinewood Investors* and *Cavalier Acres* cases the governing public body failed to pass an ordinance before it collected fees from the plaintiffs. The Courts specifically found that since no ordinance had been passed no fee could be collected.

In the instant matter, it is my understanding that the Nathas are the only individuals or entity being charged a 2% TOT for connecting to City's sewer regardless of whether the individuals or entity were located in or out of the City. Per Health and Safety Code section 5471(a), this conduct by City is precluded by law.

At this time my clients are requesting City to immediately cease charging the Nathas the 2% TOT since it is an illegal tax. Then there is the issue of disgorgement of past payments made by the Nathas to City. We would like to discuss with you and perhaps the City fathers resolution of this unfortunate matter. If we cannot reach a resolution then my clients are prepared to file litigation against the City and as part of that litigation seek disgorgement of the improper taxes paid as well as costs and attorney fees. All payments by the Nathas in the future, as well as their past payments, are/were made under protest.

After you have had an opportunity to review this letter and the authorities cited please contact me to discuss this matter further.

Sincerely,

Bradford C Floyd
Attorney at Law

BCF/h/a

BLACK RICE & LUNA LLP

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rblack@attyblack.com

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Michael T. Taney, Associate
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January 3, 2020

Bradford Floyd
The Floyd Law Firm
819 Seventh Street
Eureka, CA 95501

Re: Anchor Beach Inn – Letter dated September 10, 2019

Mr. Floyd:

I have received and reviewed your letter dated September 10, 2019 regarding the Annexation, Subordination, Easement and Secondary Easement Agreement (“Agreement”) entered into between the City of Crescent City (“City”) and your clients, Magan and Sarla Natha (“Nathas”) and recorded on August 23, 1999 at Book 511, Page 387 in the Official Records of Del Norte County. Your letter contends that the 2% in lieu of TOT fee is invalid and unlawful under Health & Safety Code § 5471(a). I disagree with your conclusion as to the validity of the fee described in the Agreement and I will explain why in this letter. I will also give you some additional background on how the parties came to this Agreement as it is not clear that you have any of this information.

The Annexation, Subordination, Easement and Secondary Easement Agreement is an integral part of a Settlement Agreement and General Release of Litigation Claims entered into between the parties on August 17, 1999 to resolve a lawsuit filed by the Nathas against the City on July 2, 1998 as Del Norte County Superior Court Case No. 980336. The lawsuit alleged three causes of action: (1) administrative mandamus, (2) inverse condemnation for regulatory taking and (3) deprivation of rights under color of state law. All three causes of action were based upon the Nathas’ assertion that they were entitled to a wastewater service connection to their motel, the Anchor Beach Inn. At the time of the complaint, the Nathas were approved to receive a wastewater connection from County Service Area No. 1, but not directly from the City as City policy was to require properties outside of the Incorporated area to connect via the appropriate County Service Area. The dispute arose because the City service line was much closer to the property than the CSA service line and, therefore, much less costly to tie into.

The settlement also came on the heels of an Appellate Court decision upholding the City’s policy decision to not allow new *water* service connections outside the city limits. *County of Del Norte v. City of Crescent City*, 71 Cal. App. 4th 965 (First App. Dist. 1999). The city had the same policy when it came to sewer service connections. The appellate court, quoting *Dateline Builders*,

Phone: 707-464-7637

Fax: 707-464-7647

EXHIBIT 3

Inc. v. City of Santa Rosa (1983 146 Cal.App.3d 520 at 530, stated “[n]either common law nor constitutional law inhibits the broad grant of power to local government officials to refuse to extend utility service so long as they do not act for personal gain nor in a wholly arbitrary or discriminatory manner.” The appellate court found that the City’s policy was not arbitrary and was in fact grounded upon a reasonable basis in that the City was using utility connection policies as a means to manage the growth of the City and capacity of the system. The same policy was applied to sewer connections. At the time in question, the City Council approved a policy to not allow sewer connections directly to the City’s sewer lines unless the property was within city limits. This was a valid policy and purpose, which has already been litigated.

Following the determination of the appellate court, the parties came to an agreement to resolve the lawsuit between them. The fact is that the City was not required to allow the Nathas to hook up to the City sewer line because their property was outside the city limits. That could have killed the project. Clearly, the major benefit to the City of having the motel property annexed was the TOT revenue (10%). The Nathas were charged the same connection fees for water and sewer as everyone else. However, unlike everyone else at the time, the settlement allowed them to connect directly to the City sewer line without being inside the city limits. As a settlement of a lawsuit that had already dragged on for a year and gotten literally nowhere, each party gave some. The City gave up 8% TOT (for up to 60 years) and the Nathas gave up 2% fee in lieu of TOT (for up to 60 years) but also gained the savings in not hooking into the CSA line at a much steeper price.

The City and the Nathas entered into this settlement agreement more than 20 years ago. About a year ago, after the County raised its TOT to 10% to meet the City TOT and the Nathas approached the City to see if there was anything that could be done to lessen the 2% fee in lieu of TOT they were paying under the settlement agreement. The Nathas put forth their plans to improve a hotel property within the city limits (and perhaps more in the future). Such improvements are beneficial to both the Nathas and the City. The improvements the Nathas were suggesting would almost certainly result in increased revenue and TOT at that particular hotel. The City was quite amenable to the Nathas requests to be allowed to “offset” the 2% fee in lieu of TOT with increased TOT at their hotel property within the city limits.

I have included a copy of the settlement agreement for your review. Please note that it was signed by both your clients and their attorney Thomas Becker. I draw your attention to the following paragraphs: (i) paragraph 3 (TOT in lieu fee is a material inducement for City entering into agreement and allowing Nathas to connect to City sewer line, failure to pay TOT in lieu fee will result in disconnection to sewer collection system); (ii) paragraph 7 (Nathas waived all defense to payment of TOT in lieu fee); and (iii) paragraph 18 (Nathas waive right to seek injunction or writ of mandate or other process to challenge the TOT in lieu fee or any other charges laid out in the agreement).

Regardless of how current city staff or council feel about the terms of the settlement agreement, the fact remains that it is a contract which obligates your client to pay the City a percentage of annual revenue. These are funds owed to the City. The City cannot simply “forgive” the obligation. To do so would be a “gift” of public funds, which the California Constitution prohibits in no uncertain terms. The City was willing to be a little creative so as to not create a “gift of public



City of Crescent City
Where the Redwoods Meet the Sea

377 J Street, Crescent City, CA 95531 • 707.464.7483 • Fax 707.465.4405 • www.crescentcity.org



December 9, 2020

Anchor Beach Inn
Attn: Mr. Magan Natha
880 Hwy 101 S
Crescent City, CA 95531

Re: Past Due Transient Occupancy Tax Return

Dear Mr. Natha:

According to our records, we have not received your Transient Occupancy Tax (TOT) Return for the quarters ending March 31, 2020, June 30, 2020, and September 30, 2020. If you have already submitted the reports and payments, please let me know.

Under the settlement agreement between yourself and the City of Crescent City dated August 17, 1999, you agreed "to pay to the City a fee in lieu of the transitory occupancy tax as defined by Crescent City Municipal Code 3.2.010 et seq." and that "the in lieu fee shall be reported and remitted in that same manner that transient occupancy taxes are to be reported and remitted under the Crescent City Municipal Code."

These reports were due on the last day of the month following the close of the quarter (Muni Code Section 3.20.060). For the quarter ended March 31, 2020, the due date was April 30, 2020, although the City Council passed an urgency ordinance waiving late fees for that quarter if paid by August 31, 2020. For the quarter ended June 30, 2020, the due date was July 31, 2020 and for the quarter ended September 30, 2020, the due date was October 31, 2020. Please remit the report and fees in lieu of TOT for the quarters ended March 31, 2020, June 30, 2020, and September 30, 2020 as soon as possible.

A penalty of 10% of the tax due is incurred on returns filed up to 30 days late. Returns filed more than 30 days late incur a second penalty of 10%. In addition to penalties, you owe interest on the past due tax. Interest is calculated as 0.5% of the past due tax for each month or fraction of a month past the due date (Muni Code Section 3.20.120). Penalties and interest for the quarter ended March 31, 2020 began on September 1, 2020 (due to the urgency ordinance passed by the City Council). Penalties and interest for the quarter ended June 30, 2020 began on August 1, 2020.

EXHIBIT 4

The settlement agreement states in paragraph 2 that should "the City not receive the fee in lieu of TOT within 30 days after written notice, then the City shall have the absolute and unequivocal right to revoke the wastewater connection permit and to disconnect the wastewater lateral connecting the Premises to the City's effluent facility and that the then present owners of the premises shall have no further right to such direct connection nor to any refund of any monies paid to City in connection with this agreement or the provision of wastewater services to the Premises."

Additionally, you have waived your right to challenge the validity or legality in fees in the settlement agreement. Should litigation be pursued for enforcement of the agreement, the prevailing party will be entitled to an award of attorney's fees.

Please file your TOT returns and remit the total amount due, including interest and penalties, on or before January 8, 2021 to avoid further penalties and legal action by the City.

As a reminder, the TOT report and fees for the quarter ending December 30, 2020 are due by January 31, 2021.

If you have any questions or concerns, you can contact Linda Leaver, City Finance Director at 707-464-7483 ext. 224 or lleaver@cityofcrescent.org.

Sincerely,



Eric Wier
City Manager

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State number, and address): Bradford C Floyd 136459 Floyd Law Firm 819 Seventh Street Eureka CA 95501 TELEPHONE NO.: (707) 445-9754 FAX NO. (Optional): (707) 445-5915 E-MAIL ADDRESS (Optional): bcfloyd@floydlawfirm.net ATTORNEY FOR (Name): Magan and Sarla Natha	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF DEL NORTE STREET ADDRESS: 450 H Street MAILING ADDRESS: CITY AND ZIP CODE: Crescent City CA 95531 BRANCH NAME:	
PETITIONER/PLAINTIFF: Magan L. Natha and Sarla M. Natha RESPONDENT/DEFENDANT: City of Crescent City, a Municipal Corporation of the State of California	
PROOF OF SERVICE BY FIRST-CLASS MAIL - CIVIL	CASE NUMBER: CVPT-2021-1184

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age and **not a party to this action**. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is:
819 Seventh Street
Eureka CA 95501
3. On (date): **October 14, 2021** I mailed from (city and state): **Eureka, California**
 the following documents (specify):
Petitioners' Opposition to Demurrer and

Declaration of Bradford C Floyd in Support of Petitioners' Opposition to Demurrer

The documents are listed in the Attachment to Proof of Service by First-Class Mail - Civil (Documents Served) (form POS-030(D)).

4. I served the documents by enclosing them in an envelope and (check one):
 - a. **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - b. **placing** the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
5. The envelope was addressed and mailed as follows:
 - a. **Name** of person served: **Martha D. Rice, Esq.**
 - b. **Address** of person served:
Black & Rice, LLP
The McNulty House
710 H Street
Crescent City CA 95531

The name and address of each person to whom I mailed the documents is listed in the Attachment to Proof of Service by First-Class Mail-Civil (Persons Served) (POS-030(P)).

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

Date: **October 14, 2021**

Gina M. Emery
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)