

**CITY OF SEBASTOPOL  
CITY COUNCIL  
STAFF REPORT**

**Meeting Date:** June 7, 2016  
**To:** Honorable Mayor and City Councilmembers  
**From:** City Manager-City Attorney Larry McLaughlin  
City Clerk Mary Gourley  
**Subject:** Rejection of Claim for Money or Damages Against the City of Sebastopol Filed by Malcolm E. Barrack Representing Tombe Realty  
**Recommendation :** That the City Council Approve the Rejection of the Claim Filed and Forward to Redwood Empire Municipal Insurance Fund (REMIF) for Processing  
**Funding:** Currently Budgeted: \_\_\_\_\_ Yes \_\_\_\_\_ No XX N/A  
Net General Fund Cost:  
Amount: \$

**INTRODUCTION:** This item is to request that the City Council Approve the Rejection of the Claim Filed and Forward to Redwood Empire Municipal Insurance Fund (REMIF) for Processing

**BACKGROUND:**

A claim was filed against the City of Sebastopol on May 9, 2016.

The applicant's claim is attached for your information.

**DISCUSSION:**

City staff and REMIF have reviewed the claim submitted and believe the claim is without merit. City Staff has been directed by REMIF to reject the claim and forward it to REMIF for processing.

**RECOMMENDATION:**

Staff recommends that the City Council Approve the Rejection of the Claim Filed and Forward to Redwood Empire Municipal Insurance Fund (REMIF) for Processing

**Attachment:**

Claim Filed May 18, 2016 (Tombe Realty)

Law Offices  
**TARKINGTON, O'NEILL, BARRACK & CHONG**  
A Professional Corporation  
100 STONY POINT ROAD  
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201 MISSION STREET, SUITE 710  
SAN FRANCISCO, CALIFORNIA 94105  
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REPLY TO

May 3, 2016

Office of the City Manager/City Clerk  
City of Sebastopol  
7120 Bodega Avenue  
Sebastopol, CA 95472

**RE: Claim Against the City of Sebastopol pursuant to Government Code  
§§ 905, 910, 910.2 and 911.2**

To Whom It May Concern:

Please find enclosed a Claim against the City of Sebastopol pursuant to the applicable Government Code Sections made in relation to litigation that is currently filed in Sonoma County entitled *WANDA ROBIN v. RICHARD PELLASCINI DBA TOME REALTY, et al.*, Action No. 257810. As indicated in the enclosed claim and attached complaint, it arises as a result of sewage backup on September 28, 2013 on a parcel/parcels of property located at 134 Florence Avenue, City of Sebastopol, County of Sonoma, State of California. I am advised that the City of Sebastopol is already a defendant in this matter and is currently represented by Ms. Adrienne Moran of Shapiro, Galvin, Shapiro and Moran.

By copy of this letter to Ms. Moran, I am hoping that we can dispense with the claims process and that I be allowed to proceed with the pursuit of my client's cross-complaint against the City of Sebastopol. If this is not agreeable, I would ask that the City of Sebastopol place this claim in line for consideration. Thank you.

Very truly yours,

TARKINGTON, O'NEILL, BARRACK & CHONG  
A Professional Corporation



Malcolm E. Barrack

MEB  
Enclosures  
cc: Ms. Adrienne Moran

Received

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City of Sebastopol

1 MALCOLM E. BARRACK, SBN 99276  
2 TARKINGTON, O'NEILL, BARRACK & CHONG  
3 A Professional Corporation  
4 100 Stony Point Road, Suite 270  
5 Santa Rosa, CA 95401  
6 Telephone: (707) 576-1380  
7 Facsimile: (707) 544-3144

8 Attorneys For Claimant  
9 RICHARD PELLASCINI DBA TOMBE REALTY

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10 IN THE MATTER OF THE CLAIM OF  
11 RICHARD PELLASCINI DBA TOMBE  
12 REALTY,

City of Sebastopol

13 Claimants,  
14 vs.  
15 CITY OF SEBASTOPOL,  
16 Respondent.

CLAIM AGAINST THE CITY OF  
SEBASTOPOL PURSUANT TO  
GOVERNMENT CODE §§ 905, 910,  
910.2 and 911.2

17 **TO THE CITY OF SEBASTOPOL:**

18 Claimant RICHARD PELLASCINI DBA TOMBE REALTY hereby make a claim against the  
19 CITY OF SEBASTOPOL for any and all sums to which said claimant may be found or held liable,  
20 or for any and all sums paid out in the settlement of the action entitled: *WANDA ROBIN v. RICHARD*  
21 *PELLASCINI DBA TOME REALTY, et al.*, now pending in the Superior Court, State of California in  
22 and for the County of Sonoma, Action No. 257810, and makes the following statements in support  
23 of said claim:

24 1. The claimant's name is RICHARD PELLASCINI DBA TOMBE REALTY and their  
25 mailing address is 127 N. Main Street, Sebastopol, California 95472. .

26 2. Notices concerning the claims should be sent to Malcolm E. Barrack, Esq., Tarkington,  
27 O'Neill, Barrack & Chong, 100 Stony Point Road, Suite 270, Santa Rosa, CA 95401.

28 3. The occurrence giving rise to this claim allegedly arises as a result of a sewage backup  
and or blockage that occurred on September 28, 2013 on a parcel/parcels of property located at 134

1 Florence Avenue, City of Sebastopol, County of Sonoma, State of California. The complaint filed in  
2 this matter alleges that as a result of the sewage backup and/or blockage, sewage overflowed into  
3 residential property of the plaintiff Wanda Robin, who lived in a rental unit at 134 Florence Avenue  
4 in Sebastopol, California. As a result, Ms. Robin contends that her living unit and personal property  
5 items contained therein were contaminated with raw sewage from the sewer back up.

6  
7 4. As set forth in the complaint of WANDA ROBINS, attached hereto as Exhibit A and  
8 incorporated herein by this reference, plaintiff alleges the nature and extent of her damages. Claimant  
9 RICHARD PELLASCINI DBA TOMBE REALTY denies that they are obligated to pay to plaintiff  
10 any sums of money whatsoever in connection with the matters alleged in said complaint, and further  
11 denies that he has any responsibility for any damages, if any there were. However, in the event that  
12 the claimant is found liable to plaintiff, as alleged in said complaint, claimant is entitled to full and  
13 complete, or in the alternative, partial equitable indemnity from the City of Sebastopol, based on the  
14 fact that such liability would be derivative or would, in fact, be attributable to the conduct, actions or  
15 omissions of the City of Sebastopol.

16  
17 5. The liability of the City of Sebastopol is based upon said City of Sebastopol's  
18 negligent, improper and defective maintenance, control, design, construction, repair and service of the  
19 subject sewer lines and sewer pipes that run under and adjacent to said subject property. Specifically,  
20 the City of Sebastopol:

21 (a) Causing or permitting said sewer lines and/or piping to become clogged or  
22 overwhelmed, causing raw sewage to back up into and on the property rented by the plaintiff at 134  
23 Florence Avenue in Sebastopol, California.

24 (b) Causing or permitting the inadequate, improper and negligent design, construction and  
25 maintenance of said sewer lines so as to allow ongoing problems with these sewer lines, including but  
26 not limited to, the back up of actual sewage and sewage fumes on the property rented by the plaintiff  
27 at 134 Florence Avenue in Sebastopol, California. Failure to adequately and properly design and

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1 construct said sewer lines in this location created an uninhabitable, unsafe and noxious situation at the  
2 subject property.

3 (c) Failing to repair, remedy, or protect against such noxious conditions when the City of  
4 Sebastopol either knew or should have known of such conditions and had ample time and opportunity  
5 to repair or remedy such condition.  
6

7 (d) Negligence in the hiring of re-mediation contractors on behalf of the City of Sebastopol  
8 who, as alleged by the plaintiff, removed and destroyed personal property items of the plaintiff without  
9 her consent or approval and also adversely altered the grade of the property to the detriment of the  
10 plaintiff and Claimant when they removed soil around that subject premises that had allegedly been  
11 contaminated and failed to replace the soil, thereby adversely altering the grade around the property.  
12

13 6. The names of the public employees, and the independent contractors, of the City of  
14 Sebastopol are presently unknown.

15 7. As of the date of this claim, this claim is for an unspecified amount of contribution and  
16 indemnity, since there has been no determination by the court as to the amounts, if any, to which  
17 plaintiff WANDA ROBINS is entitled. Similarly, Claimant also make claim upon the City of  
18 Sebastopol for their costs of suit, attorneys' fees and other expenses incurred in connection with the  
19 defense of this action in the event the City of Sebastopol does not agree to take over the defense of  
20 the claimants. Claimant will provide any further information regarding damages, not already provided  
21 to the City of Sebastopol, or their counsel, when such information becomes available.  
22

23 8. Claimant received notice of this lawsuit on or about February 25, 2016.

24 Dated: May 3, 2016

TARKINGTON, O'NEILL, BARRACK & CHONG  
A Professional Corporation

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27 City of Sebastopol

By: 

28 MALCOLM E. BARRACK  
Attorneys for Claimant RICHARD PELLASCINI  
DBA TOMBE REALTY

1 Lisa L. Gygax, Esq.  
State Bar No. 176029  
2 6490 Front Street #203  
Forestville, CA 95436  
3 Telephone: (707) 299-6308/ 540-1864  
4 Attorney for the Plaintiff,  
5 Wanda Robin

ENDORSED  
FILED

FEB 24 2016

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA

6  
7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SONOMA

10 (An Unlimited Liability Action)

11  
12 WANDA ROBIN,

CASE NO.: SCV-257810

13 Plaintiff,

FIRST AMENDED COMPLAINT FOR  
NEGLIGENCE, CONVERSION, NEGLIGENT  
INFLECTION OF EMOTIONAL DISTRESS,  
BREACH OF THE COVENANT OF QUIET  
ENJOYMENT, BREACH OF A STATUTORY  
DUTY OF HABITABILITY, RETALIATORY  
RENT RAISE, VIOLATION OF THE CLEAN  
WATER ACT AND SEWAGE DUMPING  
LAWS OF CALIFORNIA, ELDER ABUSE  
AND EQUITABLE RELIEF OF A WRIT OF  
MANDATE TO REPAIR

14  
15  
16 Vs.

17  
18  
19 CITY OF SEBASTOPOL, TOMBE  
REALITY AND PROPERTY  
20 MANAGEMENT, a business of  
unknown entity type, and DOES 1-30,

JURY TRIAL DEMANDED ~~City of Sebastopol~~

21  
22 Defendants, /

23  
24 COMES NOW WANDA ROBIN WHO COMPLAIN AS FOLLOWS:

25 1. Plaintiff is a resident of Sonoma County and over the age of 75 and at all times

26 *First Amended Complaint*

1 mentioned below is a resident of Sebastopol, CA, hereafter the "home").

2 2. The City of Sebastopol, hereafter the "city" is a municipality within Sonoma County  
3 California that owns, is responsible for and manages sewers, drains, and storm drains not  
4 located on private property including those directly below the grade of the home.

5 3. TOMBE Reality and Property Management are a business entity of unknown type  
6 located in  
7 Sebastopol, CA and property managers of the home responsible for habitability, housing code  
8 and residential care in compliance with the statutes of California, Federal laws and common  
9 laws.

10 4. Does 1-30 are owners of the home including partners, title holders and any entities  
11 or others with an ownership interest or executor interest in the property where the home is one  
12 of several residential units, partners, corporations, businesses, assigns, successors all who  
13 profit or gain in any manners from the ownership or rents, directly or indirectly, from the  
14 plaintiff's tenancy at the home.

15 JURISDICTION

16 5. Jurisdiction is proper in that the property at issue and the defendants are all located  
17 in Sonoma county, California and the contract between the landlord and tenant was entered  
18 into in Sonoma County.

19 GENERAL ALLEGATIONS

20 6. Wanda Robin became a tenant at the home after entering a lease 2006 after Tombe  
21 Reality and Property Management, hereafter "Tombe", showed her the unit at 134 Florence  
22 Avenue, City of Sebastopol, County of Sonoma.

23 7. The written lease was a contract drafted, presented and signed by Tombe and that  
24 lease allows the tenant to have two cats and prohibits the tenant from altering the premises.

25 8. The home is a one-bedroom, one bathroom unit located on the south section of a  
26 duplex on the same parcel as another apartment and a residential home that is about 480  
square feet in size and has a living room, a bedroom, a kitchen and a bathroom with a  
walkthrough hallway of about 3-4 feet wherein one must pass through the kitchen or  
bathroom to reach the bedroom.

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**City of Sebastopol**

1 9. The home includes a private back yard thanks to the fence and gate kindly installed  
2 by the landlord, a designated parking spot directly in front of the home on the gravel driveway  
3 areas and half of the open front, small storage/shop area with no door.

4 10. The parcel that the home is on is vertically higher than the parcel behind it.

5 11. Although Tombe staff was aware, they never disclosed that all sewage from every  
6 unit goes under and through the home, continuing to the City owned line to the main below  
7 the parcel such that if the City line or the property has an issue, the home will be flooded with  
8 sewage.

9 12. Plaintiff is informed and therein alleges that the City drainage joins the same sewer  
10 such that if the City fails to keep the storm drain clean, raw sewage backs up in the line  
11 wherein plaintiff's home is the first unit to suffer a backup.

12 13. On September 28, 2013 Wanda Robin, hereafter the "tenant", arrived home about  
13 8:30 P.M. and when the tenant went to use the toilet noticed that the water was very low.

14 14. The tenant flushed the toilet and some sewage and water overflowed and spilled all  
15 over the bathroom and the tenant immediately borrowed a plunger from her neighbor and tried  
16 to open the clog.

17 15. The tenant plunged the toilet, the sink and the bathtub and thought everything went  
18 down in the toilet; and then the tenant spent an hour and a half cleaning up the mess all over  
19 the bathroom and mopped the floor and put the soiled towels, wash-rags, pajamas and other  
20 things into a bag and then wiped off several pairs of shoes that were in the bathroom.

21 16. The stench was overwhelming and the tenant opened the door and windows,  
22 deciding that it was better to be cold than to want to vomit from the odor.

23 17. The tenant put all destroyed contaminated articles in a bag she placed into the  
24 garbage, closed the front door and went to bed at about 10:00 P. M after using 1.5 hours of  
25 time mostly on her knees to clean the backed up sewage.

26 18. On September 29, 2013 in the morning when the tenant flushed the toilet huge  
amounts of sewage came quickly overflowing out of the toilet all over the bathroom and the  
tenant tried to stop the flow by shutting off the valve behind the toilet but it did not stop the  
flow.

19. During the fast backup, the tenant was splattered in the face and torso trying to  
*First Amended Complaint*

1 shut off the valve with sewage destroying a second pair 2nd pair of pajamas and slippers and  
2 the tenant was nearly instantly standing in about 8-10 inches of sewage and the bathtub also  
3 had inches of raw sewage in it.

4 20. The tenant called the neighboring unit in the same duplex and asked him if he was  
5 having any problems and he said his toilet was clogged and he said he would call the landlord  
6 to fix the problem because there must be a clog in the sewer pipe.

7 21. Although the putrid odor was overwhelming causing the tenant nausea, the tenant  
8 began to move some things out of the bathroom and tried to clean up the mess because afraid  
9 she would be blamed for the backup and lose her tenancy.

10 22. The tenant had to open all the windows and two exterior doors making it very cold  
11 in the home.

12 23. About an hour later, Russ, the handyman from Tombe, arrived and said he was  
13 sure it was a sewage problem from the City of Sebastopol because he had worked for the City  
14 in the past and was aware that the drain and mains were inadequate.

15 24. Russ then opened the drain clean-out in the back yard of the home and at least 5  
16 inches of raw sewage that included wads of toilet paper came flowing into the back yard and  
17 went under the home.

18 25. Had Russ opened a clean out located on the parcel behind and below the property  
19 and or unclogged the City drain, the tenant believes and herein alleges, that the flooding of her  
20 yard and under her house with raw sewage would have been avoided.

21 26. The sewage drained partly off the back of the parcel into the storm drains that go  
22 into the creek.

23 27. About a half hour after flooding the yard and under the home, three men from  
24 Florencio Chavez-Restoration Certified Specialists came to the door of the home with full  
25 body suits and masks and started to clean out my bathroom and hallway.

26 28. Shortly after that, Lori Hunt came to the home and said she was there to manage  
the situation, or words to that effect, and she directed the workers.

29. Some time later, the tenant learned Ms. Hunt works for an insurance company the  
City pays called Cal North Adjusters LLC.

1 30. The three workers sent by the City began removing some of the tenant's including  
2 but not limited to, a bath mat, towels, shampoo caddy and other items from the bathroom.

3 31. The tenant had no privacy as to what the City's worker Lori went through, no one  
4 spoke to the tenant about the process or any of her options, and the invasion of people was  
5 extremely stressful not knowing who they were, their names, what companies or what they  
6 were actually going to do.

7 32. No one offered the tenant a mask while they were in body suits and masks.

8 33. The tenant has a beloved in-door cat and stayed at the home during all work  
9 because no one cared about closing doors or keeping the inside cat from running away.

10 34. The crew of three men worked all day until evening removing the flooring and  
11 hall rug and cleaning the rug, scooped the topsoil and over half a foot deep from the back yard  
12 of the home.

13 35. The topsoil has never been replaced and because it is dug out, water now puddles  
14 back in the yard with the slightest amount of rain and goes under the home.

15 36. Before the men left they put in large machines in the bathroom of the home and  
16 shut the door, and the machines were very loud and it was very uncomfortable to go to the  
17 bathroom and the tenant could not take a shower.

18 37. No one said anything about what had happened, what going to happen to the  
19 tenant, or what the tenant was suppose to do without a shower while living in a place where  
20 the stink made it hard not to vomit and the machines were so loud and the smell so penetrating  
21 the tenant hardly slept.

22 38. The Restoration Company operations at the home rendered the unit unusable  
23 because for several days they brought and plugged in six heavy machines including one in the  
24 bath tub they said had to run 24 hours a day.

25 39. The noise was so loud that the tenant could not concentrate or do any of the normal  
26 things she would do in her daily life and when she tried to do some, it was very difficult and  
27 cumbersome.

28 40. Due to the heat from the machines, when the tenant went into the bathroom the  
29 toilet seat was so hot the tenant couldn't even sit on it and air from the machines blew directly  
30 into her face; in addition, there was bare-wood in the bathroom so the shower could not be

31 *First Amended Complaint*

1 used.

2 41. The workers had removed part of the carpet padding under the carpet just outside  
3 the bathroom door and laid the carpet back down leaving a nearly invisible rise at the point  
4 where the floor without pad met the edge of the pad hidden under the carpeting without telling  
5 the tenant or marking the change height in any manner causing the tenant to trip and fall on  
6 the uneven surface, damaging her glasses and hurting her wrist and back.

7 42. No one ever explained their plans, the process, how many days or anything more  
8 than a day in advanced.

9 43. In early October, Lori Hunt called the tenant, who told her the tenant was having  
10 trouble sleeping because of the noise and difficulty using the bathroom.

11 44. Ms. Hunt said the tenant might consider going to a motel but did not offer  
12 accommodations or reimbursement and nothing for the cat; and she was silent when the tenant  
13 mentioned there are no motels near the unit that allow a cat.

14 45. The carpet in the unit is twice as old as the wearable life and long beyond the  
15 depreciated value where the landlords were able to write off the entire value off their tax  
16 burden; yet instead of replacing the carpet that would take a day, the City and landlord Tombe  
17 chose a long and invasive process.

18 46. At no time when the City's workers were removing the tenant's property and  
19 trashing it, did they say she was responsible to photograph and list it or she could never be  
20 reimbursed, not until they had taken the garbage away did Ms. Hunt state pictures and receipts  
21 were necessary.

22 47. To supplement her social security with income to make ends meet, the tenant  
23 works part time as an adjunct faculty member at SRJC.

24 48. The teaching position requires the tenant to use her home as an office, checking,  
25 email, creating and printing lesson plans, contracting stillife sets, assembling supplies to take  
26 to each class, and using her own computer and store class attendance and work files to  
respond to students/staff.

49. The sanitizing company workers sprayed the backyard and under the house with  
chemicals that made it hard to breath and intensely irritating to the tenant, making her eyes  
water and making her cough & sneeze with the cough lasting months and the irritation to her

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nose caused it to form scabs in her nose.

50. On October 7, 2013, over a period of about 7.5 hours, the workers came from the Restoration Company to lay the floor in the bathroom and the tenant could not use the bathroom all day.

51. A leak was discovered that had begun under the kitchen sink about the second day of the workers coming and there was no leak prior to the sewage spill and the tenant was told by Russ that extremely pressurized air was used to clear out the pipes and that often causes such leaks.

52. In mid October, the tenant was told by the workers with about a day's notice that she had to move everything out of the living room for carpet cleaning to remove all the streaks the sanitizing caused.

53. Having no secure place to store her valuables, papers, and furniture or safe secure place for her cat, the tenant stacked boxes leaving barely room to sit in her kitchen waiting for the work to be done.

54. Work continued into the latter part of October 21, 2013.

55. The tenant spent three full days putting her remaining house contents back in order, discovering that many things, some of her mail, including unpaid bills and personal papers were missing and that the heat had separated her cosmetics destroying them.

56. Although the City brought in workers who came in and took things out and put many in the garbage without consulting with the tenant, they made no list of what they took and threw away but later Lori Hunt said the tenant's failure to take photographs prevented any reimbursement and that to gain reimbursement, the tenant must sign a release not just for this spill but waiving any right to be reimbursed for any future spills, injury or harm.

57. Even months later the tenant could smell and was irritated by the chemicals.

58. The tenant is informed and believes and therefore alleges that the sewage spill is the result of the absence of care and a backflow valve.

59. The tenant is informed and the City and the landlord are refusing to put a back flow prevention check valve in so it is only a matter of time until it happens again.

60. Looking back, during almost every rain storm, the tenant smelled extreme odors

1 coming from the bathroom but had no idea sewer gases were coming in until the horrible  
2 events of September 28, 2103 and what she learned thereafter.

3 61. Unfortunately, the risk of a repeat sewer flood in her back yard and under the  
4 house is highly likely without a valve preventing a back up from being installed.

5 62. In addition to the sewer back up, plaintiff over a period of about last year and a  
6 half or so has complained that when it rains, water drips out of the light switch located in the  
7 bedroom that turns on the light inside the bathroom.

8 63. Although fearing eviction and a rent raise, on at least three occasions, the tenant  
9 told the landlord about the drips of water coming from the bedroom light switch and the first  
10 few attempts to patch things were made without calling a contractor and were proven to be  
11 inadequate by the next heavy storm.

12 64. The tenant has also complained about the neighbor who among other things, keeps  
13 interfering with her privacy and has been verbally abusive, trespassing in her yard, looking  
14 into her home and yard, excessive noise and saw dust from the neighbor's projects in the  
15 shared carport, and Tombe has basically said that because one of her neighbors is disabled, the  
16 actions of his wife will be ignored and plaintiff must just put up with it.

17 65. After finally curing the water leaking in from the light switch and cleaning the  
18 mold and painting, the landlords retaliated by raising the tenant's rent.

19 **First Cause of Action: NEGLIGENCE**

20 **(Against both the City and Tombe)**

21 66. The plaintiff hereby incorporates the above facts within paragraphs 1-65 as if they  
22 were fully set forth below.

23 67. The City knew or should have known that failing to have a proper backflow cut off  
24 valve and failing to clean and maintain the sewers will result in flooding and even flooding  
25 within dwellings and had a duty to clean and maintain the sewers to code and clean the storm  
26 drains within the City of Sebastopol.

68. Because Tombe reality and property management employed a former City worker  
named Russ, who was aware of the lack of adequate sewer flow problems, Tombe was aware  
or should have known of the risk of a potential sewer back up into the home and had a duty to  
protect the home from

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1 such sewer flooding.

2 69. Both defendants breached their duty prior to and on September 28, 2013 sewer  
3 back up which was completely preventable with proper drainage maintained and a valve to  
4 prevent the back flow of sewer but neither the City or Tombe bothered to prevent this  
5 foreseeable sewer flood into the tenant's unit.

6 70. Both the City and Tombe still have a pipe with a cap that pops off from pressure  
7 held down by simple fishing line weights that does not work and is located the backyard of the  
8 tenant's home that spews sewer gases into her yard, that has still not been restored after the  
9 topsoil was removed, and making the yard unusable due to the stench.

10 71. The pipe placed in the backyard with a homemade valve was done without permits  
11 and not to code and it is open spewing sewer gases into the yard such that prevents the tenant  
12 from using her windows for ventilation or having her back door open to this day.

13 72. A rental lease is a contract wherein by law the tenant owns the right of full use of a  
14 residential property free of any interference or reduced use.

15 73. The changes in the yard and the lost use during the work interfered with the  
16 tenant's right to use her unit that fully includes the yard.

17 74. Plaintiff has been damaged in the permanent loss of her yard and windows for  
18 ventilation in a monetary amount of special damages of not less that \$5,000.00 with the  
19 damages increasing daily since the lost use and refusal to correct the sewer defects that  
20 continues.

21 **Second Cause of Action: CONVERSION**

22 **(Against both the City and Tombe)**

23 75. The plaintiff hereby incorporates the above facts within paragraphs 1-74 as if they  
24 were fully set forth below.

25 76. The tenant possessed personal property including but not limited to, clothes, shoes,  
26 electric toothbrush, cosmetics, food, and other items that came in contact with the sewage  
27 flood.

28 77. After Tombe's worker Russ opened the clean out and flooded sewage into the back  
29 yard and under the home, he left and the landlord made no effort to protect the rights of the

1 tenant or care for her in any way and such delegation does not absolve them from their duty of  
2 care owed to the tenant.

3 78. The City and the sanitizing workers came into the tenant's unit and basically took  
4 over moving and bagging things, never asking her or informing her as to the work and the  
5 process.

6 79. Between the things the tenant had to throw out and those taken by the workers  
7 brought in by the City who threw away her property but did not keep a record or attempt to  
8 sanitize and return it to its prior usable state, the tenant has lost valuable personal property due  
9 to the preventable sewer backup into her residential unit contaminating her personal property.

10 80. The workers of the City and landlord intentionally and substantially interfered with  
11 the tenant's property by and permanently taking it away and destroying all of it.

12 81. The heat producing methods chosen by the City and landlord further destroyed her  
13 cosmetics, creams and oils.

14 82. The tenant did not consent to the conversion of her property.

15 83. Plaintiff was harmed by the loss of her property.

16 84. The City and Tombe's conduct in concert and separately were substantial factors  
17 in causing the tenant's harm.

18 85. The tenant suffered special damages of not less than \$1,960.00.

19 **Third Cause of Action: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

20 (As to both the City and Tombe)

21 86. The plaintiff hereby incorporates the above facts within paragraphs 1-85 as if they  
22 were fully set forth below.

23 87. The tenant has a pre-existing relationship with the landlord that creates a duty of  
24 care owned from the landlord to tenant.

25 88. The City has a duty to the citizens to use the tax money to care and manage sewer  
26 drains and repair substandard conditions to prevent sewer spills.

89. The tenant is a tax-paying citizen of the City of Sebastopol.

90. The City made a conscious decision to take on the care of the Tenant along with  
and or for the landlord prior to entering her unit.

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91. The tenant claims that the conduct of the workers along with the affirmative and omissions of the City and it's agents that refuse to do the repairs and changes to permanently prevent future sewer floods into her home and or under her home or in her yard have cause her to suffer serious emotional distress.

92. In addition to the sewage backup flood in September of 2013 causing disturbance to her life for about a month, the tenant lives in constant fear of another backup or flood when it rains because she is aware that the City nor the landlord has properly fixed the sewer system or drainage problems properly.

93. Both the City and Tombe have been and continue to be negligent.

94. The breach of the City and Tombe has caused the tenant to suffer serious emotional distress to the extent that any elderly person in the same or similar circumstance would suffer.

95. Both the City's conduct and Tombe's conduct and their conduct in concert with one another's negligence were a substantial factor in causing plaintiff's serious emotional distress.

96. The tenant's emotional distress includes suffering, anguish, fright, horror, nervousness, grief, anxiety, depression, worry, shock, worry and physical symptoms including headaches, nausea, and sleeplessness.

97. As a result of the distress caused by the defendants, the tenant has suffered in an amount of at least \$5,000.00 and continues to suffer such that the damages increase as long as the landlord and city refuse to repair properly the sewer system to prevent sewer gas and floods from the property the tenant's home is on.

**Forth Cause of Action: BREACH OF THE COVENANT OF QUIET ENJOYMENT  
(Against Tombe)**

98. The plaintiff hereby incorporates the above facts within paragraphs 1- 97 as if they were fully set forth below.

99. Every lease includes an implied covenant of quiet enjoyment protecting the lessee from any act or omission by the lessor which interferes with the lessee's right to use and enjoy the premises for the purposes contemplated by the lease.

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1 100. The tenant had fully performed her requirements in the lease and her rent was  
2 paid in full at the time of the incident and following months through the date of this  
3 complaint.

4 101. The actions of the property managers Tombe who the tenant believes are the  
5 owners laid out above show that the landlords breached and violated the tenant's right to quiet  
6 enjoyment.

7 102. The tenant's quiet enjoyment was destroyed not by just the sewer flood but the  
8 following long intrusive work and in the refusal to care for and perform the work that would  
9 prevent to a certainty any sewer gases in her yard, coming through open windows, or future  
10 flooding and or possible back ups due to the lack of valve and proper sewer and proper  
11 drainage system that is the responsibility of the landlord.

12 103. The landlord also breached the tenant's quiet enjoyment by repeatedly not hiring a  
13 licensed professional to fix the water leaking into the unit through the bedroom light switch  
14 located in the back bedroom that is the switch that turns the bathroom light on and off and the  
15 allowing of water in the electrical switch has caused great risk during storms forcing the  
16 tenant not use the light out of fear of electrocution.

17 104. The tenant did report the safety hazard that clearly violates the housing code at  
18 least three times and the handyman and management treated her as an irritant such that the  
19 tenant was afraid her rent would be increased if she complained.

20 105. The continued moisture caused mold and destroyed some of the tenant's original  
21 valuable artwork.

22 106. As a result of the landlord's deliberate pattern of the breach of the covenant of  
23 quiet enjoyment that continues to this day, the tenant has suffered lost use of part of her unit,  
24 lost use of her yard, suffered damage to some of her original art works, and lost full use of the  
25 property and peace she pays for as a renter.

26 107. The tenant still lives in fear of retaliation and future sewer flood as a result of the  
landlord's breach resulting in emotional distress damages equal to that amount that any elderly  
person in the same or similar circumstances would suffer.

108. Due to the breaches of the landlord, the tenant has suffered general and special  
damages in an amount not less than \$25,000.00; and due to the long continued pattern of bad

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1 faith and failing to correct the fixable risk of harm, punitive damages should be awarded to the  
2 tenant.

3 **Fifth Cause of Action: BREACH OF A STATUTORY DUTY OF HABITABILITY**  
4 **(Against Tombe)**

5 109. The plaintiff hereby incorporates the above facts within paragraphs 1-108 as if  
6 they were fully set forth below.

7 110. California mandates that landlords keep all residential units habitable and in  
8 compliance with building and housing codes.

9 111. Among the many requirements are a clean sanitary place to cook, proper heating,  
10 running water, and operational plumbing.

11 112. As described above, the landlords failed to provide the tenant with a habitable  
12 unit from September 28, 2013 through the latter part of October doing nothing to provide  
13 alternate housing or to insure the work was done quickly.

14 113. In addition, the landlords allowed the water leak that appeared to reoccur many  
15 times over about a year and half to continue with unprofessional workers trying to patch it  
16 together with no regard as to the mold and safety of the tenant.

17 114. The landlords and the City refuse to pay for the lost use of the unit during that  
18 period although a request for compensation was made through the City's administrative  
19 process.

20 115. The tenant was clearly damaged in the reduced use and damages from the  
21 deferred maintenance and dilapidations allowed by the landlord and his agents.

22 116. The tenant is entitled to statutory and special damages of at least \$250.00 per day  
23 plus attorney's fees and costs in an amount not less than \$12,000.00.

24 **Six Cause of Action: RETALIATORY RENT RAISE**  
25 **(Against Tombe)**

26 117. The plaintiff hereby incorporates the above facts within paragraphs 1-116 as if  
they were fully set forth below.

118. Tombe has engaged in a pattern and practice of doing nothing to assist the tenant  
even when building defects including but not limited to the ones that caused the horrible  
sewage backup and flood and also water dripping from an electrical ~~switch~~ that the tenant

1 complained about, she was basically ignored and nothing material and proper was done in a  
2 reasonable amount of time.

3 119. The water leaking in and coming through the electrical switch of the bedroom  
4 was a safety hazard and violation of both the building and housing codes.

5 120. After finally fixing the dilapidated roof, unprotected siding, and removing the  
6 molded carpet and cleaning the walls covering them with paint, the landlord retaliated against  
7 the plaintiff by raising the tenant's rent within 180 days of a repeated habitability complaint  
8 and she is informed that it is much higher proportionally than the rent raises other tenants  
9 suffered in the same complex.

10 121. No rent reduction or compensation were provided for the reduced use and  
11 ongoing safety issues the tenant suffered at the home; instead, the landlord raised the rent in a  
12 proportion higher than the other tenant's rent raises in complex.

13 122. Retaliation for asking for habitability repairs is prohibited and the tenant is due  
14 compensatory damages for the reduction in use and risk over the period it was not corrected  
15 along with special and punitive damages since the failure to hire a licensed professional to  
16 remove the unsafe hazard and fix the building was deliberate and the rent raise willful and  
17 malicious conduct.

18 123. The tenant seeks damages of not less than \$6,000.00 and punitive damages of  
19 \$18,000.00 plus statutory attorney's fees and costs.

20 **Seventh Cause of Action:**  
21 **VIOLATION OF THE CLEAN WATER ACT AND SEWAGE DISCHARGE LAWS**  
22 **OF CALIFORNIA**  
23 **(Against the City and Tombe)**

24 124. The plaintiff hereby incorporates the above facts within paragraphs 1-123 as if  
25 they were fully set forth below.

26 125. Both California law and the Federal Clean Water Act prohibit the dumping of raw  
sewage onto the surface ground or in any drainage, waterway, creek or tributary.

126. The law punishes even negligent spills harshly to deter any risk taking that might  
result in a spill into the environment.

127. Holders of sewage discharge permits are required to have a permit, treat the water

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1 to high standards and accidental discharges are fines at a minimum of \$23,000.00 and include  
2 a private right of action to enforce.

3 128. The city and Tombe clearly were aware or should have been that there was a  
4 serious lack of a check valve and that, left uncleaned, the drain could back the sewage up from  
5 the entire complex into the tenant's home.

6 129. Instead of calling in a pump truck, Tombe's worker Russ (who previously worked  
7 for the City), opened the sewer line flooding underneath the tenant's home, the yard and it  
8 seeped down the slope section on the parcel behind her unit that is downhill from the home.

9 130. As a result of the untreated raw sewer discharge the tenant has suffered lost use,  
10 illness, nausea, and interference with her rental unit and home as described above and the  
11 environment has suffered as well.

12 131. The tenant is informed and herein alleges that the city never reported the sewage  
13 spill to the Regional Quality Control Board and such self-reporting is mandatory.

14 132. For violations of the sewer discharge law, the tenant seeks damages of not less  
15 than \$23,000.00 including the imposition of the minimum fine, plus all costs of suit and  
16 attorney's fees.

17 **Eighth Cause of Action: ELDER ABUSE**

18 **(Against the City and Tombe)**

19 133. The plaintiff hereby incorporates the above facts within paragraphs 1-132 as if  
20 they were fully set forth below.

21 134. Plaintiff is over the of 65 and Tombe knew this fact before she rented the unit.

22 135. The City knew or should have known that plaintiff was elderly and over 65 years  
23 old.

24 136. The actions of the City and of Tombe caused plaintiff financial harm and all the  
25 defendants were aware of her suffering some harm at the time of sewage spill and following  
26 weeks.

137. Tombe has been aware that plaintiff is elderly yet her concerns regarding  
habitability have been ignored or not fixed without repeated complaints.

1 138. Plaintiff has a limited income below the Sonoma County average that Tome is are  
2 of such that they know that such an elderly person would have great difficulty findings a new  
3 affordable unit.

4 139. Both the City and Tombe took advantage of plaintiff is vulnerable state to not  
5 compensate her or to bring the building up to the required housing and building codes.

6 140. Tombe reality retaliated against plaintiff by raising her rent within 180 days of  
7 reporting a habitability issue and the report was for water seepage out of an electrical switch  
8 that had been previously reported but was not repaired.

9 150. Plaintiff has been damaged in general and special damaged in not les than  
10 \$6,500.00 and should be awarded trebled damaged along with all attorneys fees and costs  
11 pursuant to Cal. Civil Code § 1942 and California's Elder Abuse Act.

### 12 **REQUEST FOR WRIT OF MANDATE TO REPAIR**

#### 13 **(Against the City and Tombe)**

14 151. The plaintiff hereby incorporates the above facts within paragraphs 1-150 as if  
15 they were fully set forth below.

16 152. To this day sewer gases come out of the pipe in the back of the home where the  
17 city changed things after the sewer backup and flood.

18 153. The tenant asserts that the danger of another surface spill is more likely than not  
19 and that neither the City or Tombe have installed the necessary valves to prevent another  
20 sewage back up nor modified the sewer and drains to accommodate heavy long duration rains.

21 154. The tenant requests a writ of mandate to force the City and Tombe to correct the  
22 sewer drains and fix the system preventing backs ups floods and sewer gases in the tenant's  
23 unit and yard by bringing the system up fully to current codes with proper permits and  
24 inspections by State authorities and not just the city's own personnel.

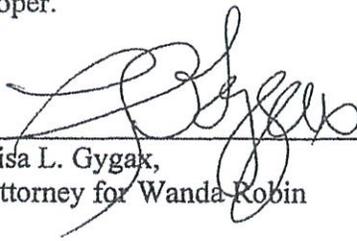
### 25 **WHEREFORE THE PLAINTIFF PRAYS FOR THE FOLLOWING RELIEF,**

- 26 1. General and special damages as listed above and incorporated herein,
2. Punitive damages for the violations listed above and incorporated herein,
3. A write of mandate ordering repair to the unit to current building & housing codes,

1 4. Statutory damages, costs and attorney's fees according to the codes above and all  
2 other allowable codes;

3 5. All relief this court deem just and proper.

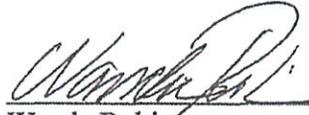
4 Dated: February 1, 2016

  
\_\_\_\_\_  
Lisa L. Gygas,  
Attorney for Wanda Robin

7 **VERIFICATION**

8 I, Wanda Robin have read the above complaint and the facts within it are true and  
9 correct except for those alleged on a good faith belief, those two are alleged as true. I verify  
10 under the penalty of perjury in the state of California that the facts are true and correct.

11 *February 23, 2016*  
12 Dated: ~~February 1, 2016~~

  
\_\_\_\_\_  
Wanda Robin

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