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*[Exempt from Filing Fee (Gov. Code § 6103)]*

6 Attorneys for Plaintiff  
7 CITY OF ENCINITAS

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN DIEGO, NORTH DISTRICT  
10

11 CITY OF ENCINITAS,

12 Plaintiff,

13 v.

14 THE CALIFORNIA DEPARTMENT OF  
HOUSING AND COMMUNITY  
15 DEVELOPMENT; and DOES 1-25, inclusive

16 Defendants.

Case No.: 37-2019-00047963 CU-OR-NC

Assigned for all Purposes to:  
Department N-28  
THE HON. EARL H. MAAS, III

**DECLARATION OF JACE SCHWARM  
IN SUPPORT OF PLAINTIFF CITY OF  
ENCINITAS'S OPENING BRIEF**

IMAGED FILE

Date: June 3, 2021  
Time: 2:00 p.m.  
Dept: N-28

Action Filed: September 6, 2019

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26 ///  
27 ///

1 I, JACE SCHWARM, declare:

2 1. I have been employed by the City of Encinitas (the City) since September 8, 1992.  
3 My first position with the City was Risk Management Analyst. I held that position until May 6,  
4 1995, when the City reclassified me as Risk Manager. I was the City's Risk Manager until July  
5 1, 2002, when I became the City's Risk Department Manager. I have been in that position since  
6 July 1, 2002.

7 2. My duties as the Risk Department Manager have and currently do include  
8 overseeing litigation filed against the City, reviewing attorneys' fees and costs incurred in such  
9 litigation, handling matters that may involve a threat of litigation or regulatory compliance  
10 actions against the City, handling workers compensation and safety issues, and otherwise  
11 overseeing risk management issues for the City. As such, I have obtained personal knowledge of  
12 the facts stated in this Declaration and, if called to testify about them, could and would do so  
13 competently.

14 3. The City has been named and served in four lawsuits which involved claims that  
15 the City had violated the state's Housing Element Law by allegedly failing to update the City's  
16 Housing Element in a timely manner. The cases are *Building Industry Ass'n v. City of Encinitas*,  
17 *et al*, Case No. 37-2014-00034550-CU-WM-NC; *DCM Properties, Inc. v. City of Encinitas, et*  
18 *al.*, Case No. 37-2016-00002342-CU-MC-NC; *San Diego Tenants United v. City of Encinitas, et*  
19 *al*, Case No. 37-2017-00013257-CU-WM-NC; *Building Industry Association v. City of*  
20 *Encinitas, et al.*, Case No. 37-2017-00023267-CU-WM-NC. (RJN Exs. L, N, P and Q.)

21 4. I have reviewed and processed the statements for attorneys' fees and costs  
22 incurred by the City in the four cases described in paragraph 3. I am also familiar with the  
23 amounts paid by the City to settle attorneys' fees claims in the cases. I am also familiar with the  
24 amounts the City has incurred for attorneys' fees for advice to the City for Housing Element Law  
25 compliance issues, incurred since the passage of the Vote Requirements in 2013.

26 5. Altogether, the City has incurred a total of approximately \$2.4 million in  
27

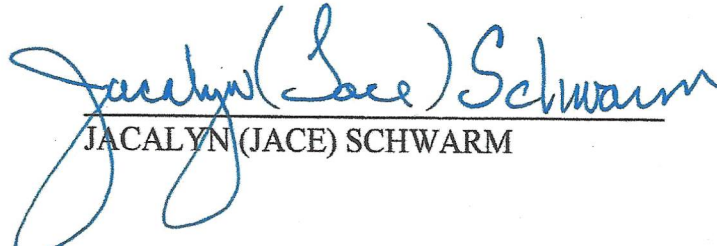
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1 attorneys' fees and costs for: (1) defense of the City in the four actions; (2) amounts paid in  
2 settlement of the plaintiffs' attorneys' fees and costs claims in the four cases, and (3) fees and  
3 costs incurred by the City for advice and representation on Housing Element Law compliance  
4 issues.

5 6. Generally speaking, my understanding is that the Vote Requirements mandate that  
6 certain increases in density in the City must be approved by the voters. If a special election is  
7 needed to obtain approval of an increase of density, the City will incur substantial additional cost  
8 for convening a special election. I have been advised by the City Clerk that the estimate of City  
9 cost for a special election is approximately \$500,000.

10 I declare under penalty of perjury under the laws of the state of California that the  
11 foregoing is true and correct, and that this Declaration was executed on April 5, 2021 at  
12 Encinitas, California.

13  
14   
15 JACALYN (JACE) SCHWARM  
16  
17  
18

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