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SUPERIOR COURT OF CALIFORNIA

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COUNTY OF SANTA BARBARA

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11 SANTA BARBARA ASSOCIATION OF  
REALTORS and ROBERT D. HART

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Petitioners/Plaintiffs,

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v.

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15 CITY OF SANTA BARBARA and MEMBERS  
OF THE SANTA BARBARA CITY COUNCIL,  
in their official capacities,

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Respondents/Defendants

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No. 17CV04720

**OPPOSITION TO MOTION  
TO STRIKE PORTIONS OF  
PETITIONERS'/PLAINTIFFS'  
VERIFIED SECOND AMENDED  
PETITION AND COMPLAINT**

Date: August 27, 2018  
Time: 9:30 AM  
Place: Dept. 5  
Judge: Hon. Colleen Sterne

Action Filed: 10/19/2017  
Trial Date: None Set

1 **INTRODUCTION**

2 Defendants’ motion to strike inappropriately encompasses material, properly included  
3 sections of Petitioners’ complaint, and this Court should not strike the sections to which Defendants  
4 object. The purpose of a motion to strike is to invite the court to remove inappropriate material not  
5 challengeable by a demurrer from the face of a pleading. Code of Civ. Proc. § 436; *Pierson v. Sharp*  
6 *Mem’l Hosp., Inc.*, 216 Cal. App. 3d 340, 342 (1989). The text of the general motion to strike statute  
7 grants the court power to strike out, pursuant to a motion to strike or at its discretion, (a) “any  
8 irrelevant, false, or improper matter inserted in any pleading” or (b) “all or any part of any pleading  
9 not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.”  
10 Code of Civ. Proc. § 436. The sections of Petitioners’ complaint to which Defendants object do not  
11 contain irrelevant, false, improper, or improperly filed matter.

12 Irrelevant matters are allegations superfluous to the statement of a claim or neither pertinent  
13 to nor supported by an otherwise sufficient claim, or requests for relief plainly inconsistent with  
14 the allegations. Code of Civ. Proc. §§ 431.10(b)(1)-(3). Improper matters are material such as  
15 abusive statements, *Oiye v. Fox*, 211 Cal. App. 4th 1036, 1070 (2012), unnecessary exhibits, *see*  
16 *Mercury Interactive Corp. v. Klein*, 158 Cal. App. 4th 60, 104 n.35 (2007) (35-page complaint with  
17 48 pages of exhibits attached did more than state the allegation “in ordinary and concise  
18 language.”), unauthorized pleadings, *see Himmel v. City Council of the City of Burlingame*, 169  
19 Cal. App. 2d 97, 100 (1959) (pleading by a corporation in pro per where corporation must appear  
20 by attorney), and pleadings nonconforming to legal requirements, *see Lodi v. Lodi*, 173 Cal. App.  
21 3d 628, 630-31 (1985) (complaint failed to state a cause of action in conformity with Code of Civ.  
22 Proc. § 425.10).

23 A motion to strike is an inappropriate vehicle to attack a complaint for insufficiency of  
24 allegations to justify relief, which is ground for general demurrer. *Pierson*, 216 Cal. App. 3d at 342.  
25 Motions to strike should be used sparingly, because they are an extension of the court’s discretion,  
26 and should not afford parties a “line-item veto.” *See PH II, Inc. v. Superior Court*, 33 Cal. App. 4th  
27 1680, 1682-83 (1995).

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1 **ARGUMENT**

2 **A. The Sections of the Complaint to Which Defendants Object Are**  
3 **Relevant, Proper, and Properly Filed, Therefore Appropriately Included**

4 Defendants inappropriately attempt to attack the merits of Petitioners’ claims rather than  
5 any substantive defect on the face of Petitioners’ complaint. Notice of Demurrer at 3-7. Defendants  
6 attack the following sections of Petitioners’ complaint, which fairly plead triable issues:

7 **1. Petitioners’ Fourth Amendment Claims**  
8 **Are Relevant, Proper, and Properly Filed**

9 The court should not strike ¶¶ 65, 69, and 83 of Petitioners’ complaint, because the  
10 allegations are relevant and proper. *See Quiroz v. Seventh Ave. Ctr.*, 140 Cal. App. 4th 1256, 1281  
11 (2006) (“[M]atter that is essential to a cause of action should not be struck and it is error to do so.”).  
12 The allegations clearly raise triable issues that lie at the heart of this case. *E.g.*, SAP ¶ 65 (“The  
13 ZIR Ordinance authorizes warrantless searches of private property that violate the Fourth  
14 Amendment’s warrant requirement, and qualify for no exception to this requirement.”). Defendants  
15 argue that the Zoning Administrator’s interpretation of the Ordinance not to require inspection of  
16 the interior of a subject property defeats Petitioners’ claim of unconstitutionality on its face. Notice  
17 of Demurrer at 3. This is an argument as to the merits of Petitioners’ allegation, and as such is  
18 inappropriate for a motion to strike, because Petitioners argue that the Zoning Administrator lacked  
19 legal authority to adopt the interpretation. Code of Civ. Proc. § 437(a); *see also Bernstein v. Smutz*,  
20 83 Cal. App. 2d 108, 115 (1947) (“Neither the Zoning Administrator nor the Board of Zoning  
21 Appeals is a law-making body and neither has power to disregard or amend the ordinance under  
22 which it functions.”).

23 Defendants alternately argue that facial challenges to the Ordinance are barred by the statute  
24 of limitations set forth in Code of Civ. Proc. § 338(a) and/or Gov’t Code § 65009(c)(1)(B), the  
25 Ordinance last having been amended in 2010. Their argument must fail because Petitioners’  
26 complaint raises a valid as-applied challenge. *E.g.*, SAP ¶ 66. (“The ZIR Ordinance was  
27 unconstitutional as-applied to Hart’s previously sold residential property, because a City agent  
28 entered his private property without a warrant.”). When a plaintiff raises a valid as-applied

1 challenge to the application of an ordinance to them, they may raise an additional facial attack on  
2 the ordinance’s validity. *Travis v. Cty. of Santa Cruz*, 33 Cal. 4th 757, 769 (2004). Alternately,  
3 because this Court has found that the Ordinance is not a zoning ordinance, Petitioners’ claims are  
4 removed from Gov’t Code § 65009(c)(1)(B)’s ambit. Tentative Ruling at 13.

5 Petitioners’ claims are therefore not subject to Section 338’s three-year limit or  
6 Section 65009(c)(1)(B)’s 90-day limit, and this Court should not strike these paragraphs.

7 **2. Petitioners’ Void for Vagueness Claims**  
8 **Are Relevant, Proper, and Properly Pleaded, and**  
9 **Withstand Section 65009(c)(1)(B)’s Statute of Limitations**

10 The Court should not strike ¶ 103 of Petitioners’ complaint, because the allegations are  
11 relevant and proper. *See Quiroz*, 140 Cal. App. 4th at 1281. The paragraph alleges that the ZIR  
12 Ordinance is unconstitutional under the “void for vagueness” doctrine. SAP ¶ 103 (“The ZIR  
13 Ordinance is void for vagueness on its face, because the ZIR Ordinance does not provide adequate  
14 notice as to the legal obligations and legal rights of anyone to which it is applicable.”). Defendants  
15 argue to the merits of Petitioners’ claim and again claim that all facial challenges to the Ordinance  
16 are barred by Section 65009(c)(1)(B)’s statute of limitations. Notice of Demurrer at 3-4. As this  
17 Court has found that the Ordinance is not a zoning ordinance, Petitioners’ claims are removed from  
18 Gov’t Code § 65009(c)(1)(B)’s ambit. Tentative Ruling at 13. Defendants’ argument as to the  
19 merits of Petitioners’ allegation is improper for a motion to strike because the claim is fairly pleaded  
20 on its face. *See Code of Civ. Proc.* § 437(a).

21 **3. Petitioners’ As-Applied Challenge to Hart’s 2017 ZIR**  
22 **and Search Is Relevant, Proper, and Properly Pleaded,**  
23 **and Withstands Section 65009(c)(1)(E)’s Statute of Limitations**

24 The Court should not strike ¶¶ 2, 30-35, 66, 80, and 100 of Petitioners’ complaint, because  
25 the allegations are relevant and proper. *See Quiroz*, 140 Cal. App. 4th at 1281. These paragraphs  
26 raise valid, material allegations that the ZIR Ordinance is unconstitutional as-applied to both  
27 Petitioner Hart’s application for a ZIR in March of 2017 and the subsequent search of Hart’s  
28 residence in April of 2017. *E.g.*, SAP ¶ 32 (“Hart did not want to apply for a ZIR and agreed to a  
warrantless search as a condition of selling his home, because he did not want to be subject to  
criminal and civil penalties.”), SAP ¶ 66 (“The ZIR Ordinance was unconstitutional as-applied to

1 Hart’s previously sold residential property, because a City agent entered his private property  
2 without a warrant.”). Defendants argue that Petitioners’ challenge is barred by Gov’t Code  
3 § 65009(c)(1)(E)’s 90-day statute of limitations, based on the theory that Hart’s last interaction  
4 with the City regarding the ZIR constituted a “decision on the matters listed in Section[] 65901,”  
5 that is, a “decision” “related to zoning.” Notice of Demurrer at 4-5. This argument misstates the  
6 law and improperly attacks the merits of Petitioners’ argument.

7 A “decision on the matters listed in Section[] 65901” means an exercise of power that is  
8 granted by ordinance. *See, e.g., Stockton Citizens for Sensible Planning v. City of Stockton*, 210  
9 Cal. App. 4th 1484, 1493-94 (2012). Section 65901 therefore requires an ordinance to grant the  
10 Zoning Administrator any power she exercises, and no ordinance exists that grants the Zoning  
11 Administrator power to adopt interpretations of unambiguous statutory language contrary to its  
12 plain meaning. Gov’t Code § 65901(a).

13 Petitioners will contend at trial that Gov’t Code § 65009(c)(1)(E)’s statute of limitations is  
14 not applicable to this action because the Zoning Administrator lacked the power to make the  
15 “decision” related to the Ordinance (which is not a zoning ordinance, *see* Tentative Ruling at 13)  
16 that Defendants believe brings Petitioners’ claims under Gov’t Code § 65009(c)(1)(E)’s ambit.  
17 Petitioners’ claim that the application of the Ordinance to Hart’s property violated the Fourth  
18 Amendment is fairly pleaded on its face, and presents a triable question of law, so is inappropriate  
19 to strike. *See Quiroz*, 140 Cal. App. 4th at 1281.

20 **4. Ripeness of Petitioner Hart’s As-Applied**  
21 **Challenge to the Ordinance’s Application to His**  
22 **Present Residence Is Relevant, Proper, and Properly Pleaded**

23 The Court should not strike ¶¶ 2, 36-38, 67, 81, 101, 115-18, and 120-21 of Petitioners’  
24 complaint, because the allegations are relevant and proper. *See Quiroz*, 140 Cal. App. 4th at 1281.  
25 These paragraphs allege that the ZIR Ordinance is unconstitutional as-applied to Petitioner Hart’s  
26 current residence. *E.g.*, SAP ¶ 38 (“Hart seeks to avoid another violation and waiver of his Fourth  
27 Amendment rights to be free from warrantless searches of his private property as a condition of  
28 selling this second residential property without being subject to criminal and civil penalties.”).  
Defendants argue that Petitioners’ challenge is not yet ripe for review because the sale Petitioner

1 Hart wishes to undertake of his property is not yet under way. Notice of Demurrer at 5-7. This  
2 argument attacks the merits of Petitioners' claim, which are not at issue in a motion for demurrer,  
3 and do not show plainly from the face of the complaint that Petitioners' allegation does not comport  
4 with the requirements of law. *See* Code of Civ. Proc. § 436; *see also Pierson*, 216 Cal. App. 3d  
5 at 342.

6 The ripeness doctrine's "basic rationale is to prevent the courts, through premature  
7 adjudication, from entangling themselves in abstract disagreements," *Abbott Labs. v. Gardner*, 387  
8 U.S. 136, 148 (1967), or from ruling on "contingent future events that may not occur as anticipated,  
9 or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998). There are no  
10 "contingent future events that may not occur as anticipated, or indeed may not occur at all" in this  
11 case. Hart is currently in the process of selling his home. *See* SAP ¶ 36 ("Hart now seeks to sell  
12 another single-family home in the City of Santa Barbara."). In order to successfully do so without  
13 being exposed to civil and criminal penalties, SAP ¶ 24-26, under the ZIR Ordinance Hart will be  
14 forced to allow a warrantless search of the property, SAP ¶ 27. Hart's as-applied challenge related  
15 to his current property will not entangle this Court in an "abstract disagreement," *Abbott*, 387 U.S.  
16 at 148, but instead will raise an issue fit for judicial decision with the potential to alleviate Hart's  
17 hardship to proceed, *see id.*

18 Even if Defendants argue that because Hart's "wish" to sell his current home is not  
19 sufficiently definite because he has not yet applied for a ZIR (as he doubtlessly will be required to  
20 do in order to avoid the attendant penalties), his petition for declaratory relief alleges a present  
21 controversy supported by specific facts. A declaratory relief action operates prospectively, "serving  
22 to set controversies at rest before . . . rights are invaded or wrongs are committed." *Cal. Pub.*  
23 *Records Research, Inc. v. Cty. of Yolo*, 4 Cal. App. 5th 150, 185 (2016). Petitioners' claim that the  
24 legally required application of the Ordinance to Hart's property violated the Fourth Amendment is  
25 fairly pleaded on its face, so is inappropriate to strike.

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**5. Petitioners’ Taxpayer Standing Claim  
Is Relevant, Proper, and Properly Pleaded**

The Court should not strike ¶¶ 40, 68, 82, and 102 of Petitioners’ complaint, because the allegations are relevant and proper. *See Quiroz*, 140 Cal. App. 4th at 1281. These paragraphs allege that SBAOR has taxpayer standing to raise an as-applied challenge to the ZIR Ordinance. *E.g.*, SAP ¶ 40 (“Realtors have paid, and will continue to pay, taxes used to facilitate and enforce the unconstitutional warrantless searches required by the ZIR Ordinance.”). Defendants argue that because the Ordinance is not applied directly to SBAOR, SBAOR lacks standing to bring an as-applied challenge. Notice of Demurrer at 7. This argument ignores the existence of taxpayer standing, which clearly supports SBAOR’s standing to challenge the expenditure of tax revenue to which SBAOR contributed on “illegal, injurious, or wasteful actions” by City officials. *See Weatherford v. City of San Rafael*, 2 Cal. 5th 1241, 1249 (2017). In order to establish taxpayer standing, “it is sufficient for a plaintiff to allege she or he has paid, or is liable to pay, to the defendant locality a tax assessed on the plaintiff by the defendant locality.” *Id.* at 1252. Petitioners’ claim fairly pleads the existence of taxpayer standing on its face, so is inappropriate to strike.

DATED: August 14, 2018.

Respectfully submitted,

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By   
MERIEM L. HUBBARD

Attorneys for Petitioners/Plaintiffs

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**DECLARATION OF SERVICE BY MAIL**

I, Meriem L. Hubbard, declare as follows:

I am a resident of the State of California, employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 930 G Street, Sacramento, California 95814.

On, August 14, 2018, true copies of **OPPOSITION TO MOTION TO STRIKE PORTIONS OF PETITIONERS'/PLAINTIFFS' VERIFIED SECOND AMENDED PETITION AND COMPLAINT** were placed in FedEx envelopes addressed to:

THOMAS B. BROWN  
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which envelopes, with postage thereon fully prepaid, were then sealed and deposited with a FedEx Courier for overnight delivery in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 14th day of August, 2018, at Sacramento, California.

  
MERIEM L. HUBBARD