



\*7970295\*

1 Stephen E. Ronfeldt (SBN 41044)  
The Public Interest Law Project  
2 449 15th Street, Suite 301  
Oakland, CA 94612  
3 Telephone: (510) 891-9794  
Facsimile: (510) 891-9727

4 Stephen P. Berzon (SBN 46540)  
Jonathan Weissglass (SBN 185008)  
5 Peder J. V. Thoreen (SBN 217081)  
6 Altshuler Berzon LLP  
177 Post Street, Suite 300  
7 San Francisco, CA 94108  
Telephone: (415) 421-7151  
8 Facsimile: (415) 362-8064

9 Attorneys for Plaintiffs

**FILED**  
**ALAMEDA COUNTY**

SEP 28 2009

CLERK OF THE SUPERIOR COURT  
By Jasha Penik thead

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA - UNLIMITED JURISDICTION**

12  
13 ROBERT SWANSON, DEBORAH  
FREDERICK, TRACY ASTURIAS,  
14 MARY ANN OLGUIN, JOHN ELIFSEN,  
BEVERLY MARIS, KATHERINE  
15 MATTHEW, PALLADIN LEMKE,  
MARY WOODS, and CALTRANS  
16 TENANTS ORGANIZATION, On Behalf  
Of Themselves and All Others Similarly  
17 Situated,

18 Plaintiffs,

19 vs.

20 THE CALIFORNIA DEPARTMENT OF  
TRANSPORTATION; and THE CITY OF  
21 HAYWARD,

22 Defendants.

Case No. **RG 09476468**

CLASS ACTION

**CLASS ACTION COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF**

23  
24  
25  
26  
27  
28

1 On information and belief, Plaintiffs allege as follows:

2 INTRODUCTION

3 1. This is a class action against Defendants the California Department of  
4 Transportation (the "Department") and City of Hayward (the "City"), pursuant to the California  
5 Government Code §§14528.5, *et seq.* (the "LATIP legislation"), California Government Code  
6 §§54235, *et seq.* (the "Roberti legislation"), and Government Code §§7260 *et seq.*, Health and  
7 Safety Code §§50460 *et seq.*, 25 C.C.R. §6034(b)(3) (the "Relocation laws").

8 2. Plaintiffs, primarily tenants renting from the Department in what is commonly  
9 known as the State Highway Route 238 Corridor ("Corridor"), bring this action on behalf of  
10 themselves and similarly situated tenants ("Plaintiff Class") pursuant to California Code of Civil  
11 Procedure §382.

12 3. This action alleges that the Department's and City's plan to sell certain excess  
13 residential property located in the Corridor (the "Excess Properties") has triggered or is about to  
14 trigger obligations of the Department and the City, pursuant to the LATIP legislation and  
15 Relocation laws, to provide for (a) relocation assistance to Corridor residents who may be  
16 displaced by such sales and (b) replacement of the affordable housing stock that may be lost by  
17 such sales. This action further alleges that the planned sale of Excess Properties that are single  
18 family residences ("Corridor SFRs") has triggered or is about to trigger the Department's  
19 obligation under the Roberti legislation to offer to sell such properties to their current residents  
20 ("Corridor SFR Tenants") at an "affordable price."

21 4. Through their class-wide claims, Plaintiffs seek to ensure that the Department and  
22 City provide for (a) relocation assistance to current tenants who rent from the Department and  
23 reside in single or multi-family residential units in the Corridor ("Corridor Tenants"), (b)  
24 replacement of affordable housing units that may be lost by the sale of Excess Properties, and (c)  
25 opportunities for Corridor SFR Tenants to purchase their homes or alternative properties at a  
26 price which, with appropriate subsidies, is affordable to them.

27 5. For well over one year prior to the filing of this Complaint, the Parties have  
28 engaged in negotiations in an attempt to resolve Plaintiffs' claims. The Parties have now reached

1 agreement on terms that, if approved by the Court, would resolve Plaintiffs' claims on behalf of  
2 the class of individuals they seek to represent. Plaintiffs will soon be filing a proposed settlement  
3 agreement and a motion for conditional certification of the class and preliminary approval of the  
4 settlement.

5 PARTIES

6 Plaintiffs

7 6. Plaintiff Robert Swanson is a resident of Alameda County, California who is a  
8 current tenant in Department-owned Corridor Property and brings this action on his own behalf  
9 and on behalf of all other persons similarly situated.

10 7. Plaintiff Deborah Frederick is a resident of Alameda County, California who is a  
11 current tenant in Department-owned Corridor Property and brings this action on her own behalf  
12 and on behalf of all other persons similarly situated.

13 8. Plaintiff Tracy Asturias is a resident of Alameda County, California who is a  
14 current tenant in Department-owned Corridor Property and brings this action on her own behalf  
15 and on behalf of all other persons similarly situated.

16 9. Plaintiff Mary Ann Olguin is a resident of Alameda County, California who is a  
17 current tenant in Department-owned Corridor Property and brings this action on her own behalf  
18 and on behalf of all other persons similarly situated.

19 10. Plaintiff John Elifsen is a resident of Alameda County, California who is a current  
20 tenant in Department-owned Corridor Property, and brings this action on his own behalf and on  
21 behalf of all other persons similarly situated.

22 11. Plaintiff Beverly Maris is a resident of Alameda County, California who is a  
23 current tenant in Department-owned Corridor Property and brings this action on her own behalf  
24 and on behalf of all other persons similarly situated.

25 12. Plaintiff Katherine Matthew is a resident of Alameda County, California who is a  
26 current tenant in Department-owned Corridor Property and brings this action on her own behalf  
27 and on behalf of all other persons similarly situated.

28 13. Plaintiff Palladin Lemke is a resident of Alameda County, California who is a

1 current tenant in Department-owned Corridor Property and brings this action on his own behalf  
2 and on behalf of all other persons similarly situated.

3 14. Plaintiff Mary Woods is a resident of Alameda County, California who is a current  
4 tenant in Department-owned Corridor Property and brings this action on her own behalf and on  
5 behalf of all other persons similarly situated.

6 15. The above named individual plaintiffs are collectively referred to as "Plaintiff  
7 Class Representatives."

8 16. The Caltrans Tenants Organization is an unincorporated association representing  
9 the housing and relocation interests of Corridor Tenants. Since its establishment in 1981, the  
10 Caltrans Tenants Organization has been representing, and continues to represent, interests of  
11 Corridor Tenants in such matters as relocation assistance, home ownership, replacement housing,  
12 housing repairs, and rent increases.

13 17. Unless otherwise indicated, the Caltrans Tenants Organization and the Plaintiff  
14 Class Representatives are collectively referred to as "Plaintiffs."

15 Defendants

16 18. Defendant California Department of Transportation is an agency of the State of  
17 California.

18 19. Defendant City of Hayward is a California municipality located in Alameda  
19 County.

20 20. Defendants City of Hayward and California Department of Transportation are  
21 collectively referred to as "Defendants."

22 JURISDICTION AND VENUE

23 21. This Court has jurisdiction over all causes of action herein pursuant to the  
24 California Constitution, Article VI, §10, because this case is a cause not given by statute to other  
25 trial courts.

26 22. Venue is proper in this Court because the unlawful acts alleged in this complaint  
27 occurred and continue to occur in Alameda County.

28

CLASS ACTION ALLEGATIONS

1  
2           23.     This action is brought and may be properly maintained as a class action pursuant  
3 to California Code of Civil Procedure §382. Plaintiff Class Representatives bring this case as a  
4 class action on behalf of a proposed class of all individuals currently residing in Department-  
5 owned, residential properties located in the Corridor. The Corridor is the right of way acquired  
6 by the Department for the purpose of constructing a freeway or bypass to traversable State Route  
7 238 in the City of Hayward and the unincorporated area of Alameda County, as more specifically  
8 defined in the City's Route 238 Bypass Land Use Study Area. All Plaintiff Class Representatives  
9 are members of the Class on whose behalf all claims are brought.

10           24.     The proposed class is so numerous that joinder of all members is impracticable.  
11 Plaintiffs are informed and believe, and on that basis allege, that the total number of Corridor  
12 Tenants, including members of each household, exceeds 400 persons. Although the exact number  
13 and identities of Class members are unknown to Plaintiffs at this time, this information is readily  
14 ascertainable from the Department through discovery of its records.

15           25.     Common questions of law and fact predominate over any questions affecting  
16 individual class members. Questions of law and fact common to the Plaintiff Class as a whole  
17 include, but are not limited to, the following:

18                   (a)     Whether the Department's sale of the Excess Properties obligates  
19 Defendants to provide relocation assistance to Class Members pursuant to California Government  
20 Code §§14528.5, *et seq.*, California Government Code §§7260, *et seq.*, Health and Safety Code  
21 §§50460 *et seq.*, and 25 C.C.R. §6034(b)(3).

22                   (b)     Whether the Department's sale of the Excess Properties obligates  
23 Defendants to develop replacement housing pursuant to California Government Code §§14528.5,  
24 *et seq.*; and

25                   (c)     Whether the Department's sale of the Excess Properties obligates  
26 Defendants to offer any Class Members the opportunity to purchase their residence at an  
27 affordable price, pursuant to California Government Code §§54235, *et seq.*

28           26.     Plaintiff Class Representatives will fairly and adequately represent and protect the

1 interests of the members of the Class. Plaintiffs have retained counsel who are competent and  
2 experienced in complex class actions, in housing litigation, and have represented plaintiff classes  
3 in other litigation over the Department-owned properties at issue in this case.

4 27. Class certification is superior to other available methods for fair and efficient  
5 adjudication of this controversy. The damages suffered by individual Class members are small  
6 compared to the expense and burden of individual prosecution of this litigation. In addition, class  
7 certification is superior because it will eliminate the need for unduly duplicative litigation, which  
8 might result in inconsistent judgments. Finally, to Counsels' knowledge, there has been no  
9 substantial individual litigation concerning the present controversy. Plaintiffs know of no  
10 difficulties in the management of this litigation that would preclude its maintenance as a class  
11 action.

12 28. The names and addresses of the Plaintiff Class Members are available from  
13 Defendants. To the extent required by law, notice will be provided to the Plaintiff Class via First  
14 Class Mail and/or by the use of techniques and a form of notice similar to those customarily used  
15 in class actions.

#### 16 FACTUAL ALLEGATIONS

17 29. During the 1960s, the Department acquired, through the exercise of eminent  
18 domain, substantial real property in Southern Alameda County in anticipation of a proposed  
19 freeway or expressway project to be constructed in the State Highway Route 238 Corridor,  
20 originally a 14-mile stretch of land that passes through Hayward, Union City and Fremont,  
21 California. These properties were purchased with the expectation that they would be razed to  
22 provide a path for the planned freeway. Pending the anticipated construction, the Department  
23 leased the residential properties to tenants.

24 30. A federal lawsuit, known as *La Raza Unida v. Volpe*, Case No. C-71-1166 (N.D.  
25 Cal.), was filed on June 16, 1971, and successfully halted land acquisition and other preparation  
26 for the Route 238 project. See *La Raza Unida v. Volpe*, 337 F.Supp. 221 (N.D.Cal. 1971). The  
27 complaint alleged that Defendants had failed to adhere to certain requirements regarding the  
28 construction of "federal-aid" highways, including the provisions of the Uniform Relocation

1 Assistance and Real Property Acquisition Policies Act of 1970, §§205 and 210, 42 U.S.C.  
2 §§4625, 4630, §4(f) of the Department of Transportation Act of 1966, 49 U.S.C. §1653(f) and the  
3 Federal Aid Highway Act of 1968, §24, 23 U.S.C. §128. In addition, plaintiffs alleged that  
4 defendants' conduct had deprived them of due process and equal protection guaranteed by the  
5 Fifth and Fourteenth Amendments to the United States Constitution.

6 31. In 1982, the California Legislature passed Government Code §§14528.5, *et seq.*,  
7 "[t]o resolve local transportation problems resulting from the infeasibility of planned state  
8 transportation facilities on State Highway Route 238 in the City of Hayward and Alameda  
9 County." Gov't Code §14528.5(a). That legislation enabled local authorities to develop a "local  
10 alternative transportation improvement program" ("LATIP"), which could be funded by the sale  
11 of Department-owned properties in the Corridor. This LATIP legislation thus created an  
12 exception to other statutory provisions that would have required funds generated by the sale of the  
13 properties to be used for state-wide purposes.

14 32. The original Route 238 project was never constructed. Instead, the City, in  
15 conjunction with other local entities, has developed a LATIP pursuant to Government Code  
16 §14528.5. Pursuant to that LATIP, the Department and the City now seek to sell those residential  
17 properties in the Corridor (the "Corridor Units") that were acquired for the original Route 238  
18 project.

19 33. As detailed below, the Department's and the City's sale of these properties  
20 triggers, or is about to trigger, rights of the tenants to relocation assistance, replacement housing,  
21 and an opportunity to purchase their homes at a subsidized price.

22 34. In 1979, the California Legislature enacted Government Code §§54235, *et seq.*,  
23 also known as the "Roberti Legislation." Based on findings that "that highway and other state  
24 activities" have contributed to "a serious shortage of decent, safe, and sanitary housing which  
25 persons and families of low or moderate income can afford," the legislation specifies how state  
26 agencies shall dispose of surplus residential properties, including by offering those properties to  
27 low- or moderate-income occupants at "affordable" prices relative to their income. Although the  
28 Roberti Legislation was later amended so that it did not apply to freeway routes rescinded on or

1 after January 1, 1984 (Gov't Code §54238.3(a)), Plaintiffs allege that it is applicable to the sale of  
2 the SFR Corridor Units because, by California Transportation Commission resolution, the  
3 freeway route that had been planned for the relevant portion of Route 238 was effectively  
4 rescinded in or about 1982.

5 ALLEGATIONS REGARDING INJUNCTIVE AND DECLARATORY RELIEF

6 35. Defendants' threatened wrongful conduct, unless and until enjoined and restrained  
7 by order of this Court, will cause imminent and irreparable injury to the Plaintiff Class by, among  
8 other things, displacing them without providing adequate relocation assistance, replacement  
9 housing or opportunities to purchase, thereby causing homelessness and loss of adequate housing,  
10 overcrowded housing, and resulting destitution and harm to their health and welfare.

11 36. Said threatened conduct would also harm the public interest by, among other  
12 things, depleting the affordable housing stock and causing burdens to public agencies providing for  
13 shelter, affordable housing, and health care.

14 37. It would be extremely difficult, if not impossible, to ascertain the amount of  
15 compensation which will afford Plaintiffs adequate relief if Defendants' wrongful conduct is not  
16 enjoined.

17 38. Plaintiffs have no adequate alternative legal remedy to the relief sought in this  
18 complaint.

19 39. Unless compelled by this Court to comply with the various legal obligations raised  
20 in this lawsuit, Defendants will continue to refuse to perform their duties, and Plaintiffs will be  
21 injured as a result.

22 40. An actual controversy has arisen and presently exists between Plaintiffs and  
23 Defendants. Plaintiffs claim that Defendants are obligated by law to provide for relocation  
24 assistance, replacement housing and opportunities to purchase their homes, as explained above.  
25 Defendants dispute these contentions and, instead, claim that they have no such obligations or  
26 that they have been met.

27 41. Plaintiffs desire a judicial determination of their rights and duties and a declaration  
28 as to Plaintiffs' right to relocation assistance, replacement housing, and opportunities to purchase.



1 A judicial declaration is necessary and appropriate at this time under the circumstances in order  
2 that Plaintiffs may ascertain their rights and duties as set forth above.

3 FIRST CAUSE OF ACTION

4 (Violation of California Government Code §§14528.5, *et seq.*, California Government Code  
5 §§7260, *et seq.*, California Health and Safety Code §§ 50460, *et seq.*, and Title 25 of  
6 California Code of Regulations §6034(b)(3))

7 42. Plaintiffs incorporate paragraphs 1-41 by reference.

8 43. California Government Code §14528.6 requires that any Route 238 LATIP must  
9 include:

10 (a) A program to provide relocation assistance for residents eligible for  
11 relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of  
12 Division 7 of Title 1 of this code and guidelines adopted pursuant to Section  
13 50460 of the Health and Safety Code.

14 (b) A program to provide relocation assistance for all lower income  
15 households, regardless of their eligibility for assistance pursuant to subdivision  
16 (a), who will be displaced from their residences because of actions taken to  
17 finance or implement the local alternative improvement transportation program,  
18 including sale or removal of their residences. To be eligible for assistance, lower  
19 income households shall have occupied their residence on the date that the local  
20 alternative transportation improvement program was approved by the  
21 commission. The program shall comply with the requirements, except eligibility  
22 requirements, of Chapter 16 (commencing with Section 7260) of Division 7 of  
23 Title 1 of this code and with guidelines adopted pursuant to Section 50460 of the  
24 Health and Safety Code.

25 (c) A program to provide all persons or families who are not otherwise  
26 eligible for assistance pursuant to subdivisions (a) and (b), with relocation advice  
27 and moving expenses, as defined in Section 7261 and subdivisions (a) and (b) of  
28 Section 7262.

44. The Plaintiff Class includes individuals eligible for relocation assistance pursuant  
to Government Code §14528.6(a)-(c), Government Code §§7260 *et seq.*, and Health and Safety  
Code §§ 50460, *et seq.*

45. California Code of Regulations, Title 25, §6034(b)(3) requires that:

Where a public entity, or property it owns, is making housing available on a permanent  
basis, a post-acquisition tenant who moves as a result of a written order from the public  
entity to vacate is eligible for relocation assistance and benefits if the order to vacate is  
related to a plan to demolish, rehabilitate or change the use of such units.





